Texas Workforce Commission

Financial Manual for Grants and Contracts

Administrative Requirements and Cost Principles for Local Workforce Development Boards, Other Agency Grantees, and Lower Tier Subrecipients/Subgrantees

Last Update: October 1, 2023

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# Introduction

## Purpose

The Texas Workforce Commission’s (TWC) Financial Manual for Grants and Contracts (FMGC) reflects selected administrative, cost, and audit requirements that apply to [Grantees](#grantee) under [TWC grant awards](#twcgrantaward).

## Scope & Use

The manual covers selected administrative, cost, and audit requirements from federal, state and [Agency](#agency) sources. It also includes selections of specific related program requirements.

While the FMGC includes information relating to applicable federal, state, and Agency requirements, this manual does not supersede or replace those requirements. Any omission of an applicable requirement from this manual does not waive a [Grantee’s](#grantee) responsibility to comply with that requirement. Grantees must comply with all requirements that apply under the terms and conditions of their [TWC grant awards](#twcgrantaward).

In the event of a conflict between an applicable federal or state requirement and this manual, the federal or state requirement will apply.

In the event that a conflict appears to exist between a provision of the FMGC and a TWC grant award, TWC should be contacted to determine which, if either, provision will prevail. Requests should be emailed to TWC’s Fiscal-TA mailbox at [fiscal.ta@twc.texas.gov](mailto:fiscal.ta@twc.texas.gov).

## Applicability

The FMGC applies to [Grantees](#grantee) under [TWC grant awards](#twcgrantaward). Unless indicated otherwise, this includes both Local Workforce Development Boards ([Boards](#board)), as well as other Agency Grantees. Unless indicated otherwise, the requirements also apply to [subgrantees (subrecipients)](#subgrantee) of [subgrants](#subgrant) issued under those awards.

## Effective Date

The current version of the FMGC rescinds and replaces preceding versions, except as specified otherwise. Unless otherwise specified, any changes occurring to this manual take effect on the date those changes are posted in this manual.

## Distribution of Manual

The FMGC is published on the Agency’s website. Hard copies of the manual are only distributed in instances where the information is needed to carry out the terms of a [TWC grant award](#twcgrantaward) and there is no means to send the document electronically.

## Request for Fiscal Technical Assistance

[Grantees](#grantee) may request clarification on the requirements of this manual by emailing TWC’s Fiscal-TA mailbox at [fiscal.ta@twc.texas.gov](mailto:fiscal.ta@twc.texas.gov). [Subgrantees (subrecipients)](#subgrantee) should request clarifications from Grantees. A Grantee may forward a subgrantee’s (subrecipient’s) question to TWC at the Grantee’s discretion.

## Resources

The specific resources used in the revision of this manual are identified in the respective sections of each chapter, and appendices, where applicable. These generally include references to:

* U.S. Office of Management and Budget (OMB) “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (Uniform Guidance), codified at Title 2, Part 200 of the Code of Federal Regulations (CFR) (cited as 2 CFR Part 200), and the adoptions and exceptions in federal agencies’ related implementing regulations in Title 2, Subtitle B of the CFR
* Texas Grant Management Standards (TxGMS), issued by the Texas Comptroller of Public Accounts (Texas Comptroller), as published on the Texas Comptroller’s website
* Program statutes and regulations
* State statutes, including Texas Government Code, Texas Labor Code, and others
* Federal Guides, including those for One-Stops and indirect costs
* TWC Rules and systems

## Structure

Chapters and appendices are navigable by hyperlinks from the [table of contents](#toc) and throughout the manual. Each chapter is organized into sections that are structured by a policy statement, supporting requirements or discussion, program or entity specific considerations, and the cited resources.

## Updates

Updates to the FMGC will be made as needed. When possible, changes will be made annually to coincide with the beginning of the state’s fiscal year, September 1. However, updates may be made more frequently when significant changes require more timely revisions. The date a section was last updated is identified at the beginning of the section.

## Change Log & Archives

Requirements that are replaced or updated will be described in [Appendix L](#app_l) to this manual. Please refer to Appendix L to this manual for instructions for accessing or requesting archived material.

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# Chapter 1 Overview

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# Chapter 2 Internal Controls

Adequate internal control is a key defense (but no guarantee) against fraud, waste and program abuse. All [Grantees](#contractor) have a responsibility to reduce the risk of fraud, waste and program abuse by implementing effective [internal controls](#internalcontrols) that adequately safeguards assets. This chapter compiles the applicable federal, state and agency requirements and guidance governing internal control. In the event of conflict between these standards and federal statute or regulation, the federal statute or regulation will apply. This chapter is organized as follows:

[2.1 General](#two_one) Internal Control Requirements

[2](#two_two)[.2 Components of Internal Control](#two_two)

[2.3 Fraud](#two_three)

Individuals who suspect fraud, waste, or program abuse may report the matter to the [Agency](#agency)’s Fraud and Abuse Hotline (800) 252-3642. The Hotline is available 24 hours a day, 7 days a week and permits anonymous reporting.

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## 2.1 General Internal Control Requirements

**Policy:**

**In relation to TWC grant awards, effective control and accountability must be maintained for all funds, property, and other assets. Assets must be adequately safeguarded and used solely for authorized purposes. Internal controls must provide reasonable assurance of compliance with grant requirements, reliable reporting, and effective, efficient operations.**

The [Uniform Guidance](#uniformguidance) and [TxGMS](#txgms) include a definition for [internal controls](#internalcontrols). They also include internal control standards for financial management systems and grant compliance. This Section recaps those internal control requirements. It also identifies some related resources.

### Definition

As defined by the Uniform Guidance and TxGMS, internal controls means, processes designed and implemented by entities to provide reasonable assurance regarding the achievement of objectives in the following categories:

* Effectiveness and efficiency of operations;
* Reliability of reporting for internal and external use; and
* Compliance with applicable laws and regulations.

### Internal Control Standards for Financial Management Systems

Under the Uniform Guidance and TxGMS, [Grantees’](#grantee) financial management systems must provide for effective control over, and accountability for, all funds, property, and other assets. Grantees must adequately safeguard all assets and must assure that they are used solely for authorized purposes.

### Grant Compliance: Federal Awards

For [federal awards](#federalaward), the internal control standards in the Uniform Guidance and TxGMS require that Grantees must:

* Establish and maintain effective internal control over the federal award that provides reasonable assurance that entity is managing the federal award in compliance with federal statutes, regulations, and the terms and conditions of the federal award;
* Comply with the U.S. Constitution, federal statutes, regulations, and the terms and conditions of the federal awards;
* Evaluate and monitor the entity's compliance with statutes, regulations and the terms and conditions of federal awards;
* Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; and
* Take reasonable measures to safeguard [protected personally identifiable information](#protectedPII) and other information the [federal awarding agency](#federalawardingagency) or [pass-through entity](#passthruentity) designates as [sensitive](#sensitiveinformation) or the entity considers sensitive consistent with applicable federal, state, local, and tribal laws regarding privacy and responsibility over confidentiality.

### Grant Compliance: State Awards

For [state awards](#stateaward), the internal control standards in TxGMS call for a Grantee to:

* Establish and maintain effective internal control over the state award that provides reasonable assurance that the entity is managing the state award in compliance with statutes, rules, and the terms and conditions of the state award;
* Comply with statutes, rules, and the terms and conditions of the state awards;
* Evaluate and monitor the entity’s compliance with statutes, rules, and the terms and conditions of state awards;
* Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; and
* Take reasonable measures to safeguard [protected personally identifiable information](#protectedPII) and other information the [state awarding agency](#stateawardingagency) designates as [sensitive](#sensitiveinformation) or the entity considers sensitive consistent with applicable federal, state, and local laws regarding privacy and obligations of confidentiality.

### Resources

Resources pertaining to internal control include but are not limited to the following:

* Standards for Internal Control in the Federal Government (“Green Book”), issued by the Comptroller General of the United States,
* Internal Control Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO),
* The Office of Management and Budget (OMB) Compliance Supplement (Appendix XI to 2 CFR Part 200), and
* OMB Circular A-123, Management’s Responsibility for Enterprise Risk Management and Internal Control.

For federal awards, the Uniform Guidance recommends that a Grantee’s internal controls “should” comply with the Green Book or the Internal Control Integrated Framework, issued by the COSO. The Green Book generally aligns with the COSO framework. Auditors use the OMB Compliance Supplement to identify important compliance requirements for federal awards. Part 6 of the Compliance Supplements helps auditors to understand an auditee’s internal control over federal programs. It addresses the “objectives, principles, and components of internal control” based on the Green Book and COSO framework. Part 6 also illustrates entity-wide internal controls over federal awards and internal controls specific to each type of compliance requirement. Lastly, the Uniform Guidance definition of internal controls notes that federal awarding agencies are required to follow internal control compliance requirements in OMB Circular A-123.

Each of these can be useful resources to Grantees. The U.S. Comptroller General publishes the Green Book on its website. The OMB publishes the OMB Compliance Supplement and OMB Circular A-123 on its website. Visit the COSO website for information about the COSO framework. The COSO framework is also discussed in [Section 2.2 Components of Internal Control](#two_two), in this manual.

Reference:

OMB Uniform Guidance: 2 CFR §§ 200.1 (definition of internal controls), 200.302(b)(4), and 200.303

OMB Compliance Supplement (Appendix XI to 2 CFR Part 200)

TxGMS: “Incorporation of Federal Uniform Guidance and Implementing Regulations,” “Financial Management,” “Internal Controls,” and Appendix 2 (definition of internal controls)

Last Update: October 1, 2023

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## 2.2 Components of Internal Control

**Policy:**

**Internal controls shall be designed, implemented and evaluated based on the ability of the controls to provide reasonable assurance for compliance with applicable requirements in a cost effective manner.**

The Office of Management and Budget (OMB) Compliance Supplement provides assistance in complying with [internal control](#internalcontrols) and audit requirements by identifying types of compliance requirements and describing for each, the objective of internal control and certain characteristics of internal control that, when present and operating effectively, may ensure compliance with program requirements. The guidance, however, is not intended as a “checklist of required internal controls characteristics.” Judgment will need to be exercised in determining the most appropriate and cost effective internal control in a given environment or circumstance to provide reasonable assurance for compliance with program requirements.

The types of compliance requirements are primarily described in Parts 3 and 6 of the Compliance Supplement. Part 3 provides fourteen types of compliance requirements that it identifies as being generic to most federal programs that are administered by entities subject to the audit requirements of 2 CFR Part 200, Subpart F. Part 6 describes internal control characteristics for thirteen of these fourteen types of compliance requirements (all except those pertaining to special tests and provisions). These characteristics are organized within the five components of internal control presented by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) framework discussed in [Section 2.1 General Internal Control Requirements](#two_one), in this manual.

### Five Components of Internal Control

The five components of internal control are as follows.

#### Control Environment

According to the COSO Report, the control environment “sets the tone of an organization and influences the control consciousness of its people.” It provides structure and discipline, and forms the foundation for all other components of internal control.

#### Risk Assessment

Risk assessment refers to the “identification, analysis, and management of risks relevant to the preparation of financial statements that are fairly presented in conformity with [generally accepted accounting principles [GAAP]](#generallyacceptedaccountingprinciples) (or another comprehensive basis of accounting).”

#### Control Activities

Control activities are the policies and procedures that help ensure that management’s directives are carried out.

#### Information and Communication

The identification, capture and exchange of information in a form and timeframe that enables people to carry out their responsibilities.

#### Monitoring

In relation to the COSO report, monitoring refers to the process used to assess the quality of internal control performance over time.

Reference:

OMB Compliance Supplement (Appendix XI to 2 CFR Part 200)

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## 2.3 Fraud

Policy:

Fraud, program abuse [including waste], possible illegal expenditures, unlawful activity, violations of law, Agency rules, or policies and procedures occurring under any grant or program contract awarded by the Agency are prohibited. Suspicion of such misuse must be reported to the Agency’s Office of Investigations no later than five business days from the date of discovery of such act.

[Grantees](#contractor) shall establish and implement procedures for preventing, reporting, investigating, and taking appropriate legal and/or administrative action concerning any fraud, program abuse, possible illegal expenditures, unlawful activity, violations of law, or Agency rules, policies, and procedures occurring under any grant awarded by the [Agency](#agency).

Any [board](#board) member, staff, or [subgrantee (subrecipient)](#subgrantee) staff having knowledge of such misuse is required to report such information to the Agency’s Office of Investigations no later than five business days from the date of discovery of such act. Individuals who suspect fraud, waste, or program abuse may report the matter to the Agency’s Fraud and Abuse Hotline (800) 252-3642, which is available 24 hours a day, 7 days a week and permits anonymous reporting. Grantees shall establish and implement reasonable internal program management procedures that are sufficient to ensure that its employees, participants, and [subgrantees (subrecipients)](#subgrantee) are aware of this Hotline. Hotline posters shall be displayed to ensure maximum exposure to all persons associated with or having an interest in the programs or services provided under a grant or contract awarded by the Agency.

The Office of Investigations may elevate the report to the appropriate federal or state authority, accept the case for investigation and/or action at the state level, or return the case to the Grantee or subgrantee for action including, but not limited to:

* further investigation;
* referral for prosecution under the Texas Penal Code, or other federal or state laws; and/or
* other corrective action, as may be appropriate.

In the event that the Agency refers the case back to the Grantee or subgrantee, the Grantee or subgrantee shall submit a final investigation closing report to the Office of Investigations upon completing the investigation and after all feasible avenues of legal and/or corrective action have been taken.

Grantees shall ensure the confidentiality of all reports of violations as listed above except as provided by law or court order. No retaliation shall be taken against any person filing a report. Additional information about reporting fraud, including examples of reportable violations, is available on the [Agency's website](https://twc.texas.gov/).

Reference:

Agency Board Agreement Section 21 (October 2022)

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# Chapter 3 Insurance

This chapter compiles the applicable federal, state and agency requirements governing insurance. In the event of conflict between these standards and federal or state statute or regulation, the federal or state statute or regulation will apply. This chapter is organized as follows:

[3.1 Fidelity Bonds](#three_one)

[3](#three_two)[.](#three_two)[2 Insurance](#three_two)

Record retention and access requirements are provided in [Appendix K](#app_k) to this manual. All financial and programmatic records, supporting documents, statistical records, and other records pertaining to an award of federal or state funds must be retained and made available to authorized entities or their representatives in accordance with applicable administrative requirements.

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## 3.1 Bonding Requirements

Policy:

A fidelity bond, or other method to secure funds against loss must be in place, and submitted to the Agency as required by this Section.

The [Agency](#agency) requires [Grantees](#grantee) to maintain fidelity bond coverage. TWC specifies the requirement in the general terms and conditions of [TWC grant awards](#twcgrantaward) and in the Agency Board Agreement. This Section recaps those requirements. This Section also recaps additional requirements that apply for [Boards](#board) and their [workforce service providers](#workforceservicecontractor) under Commission rules at 40 TAC § 802.21.

### Exceptions

Entities backed by a taxing authority are exempt from the TWC fidelity bonding requirements. Examples of entities that are backed by a taxing authority include, but are not limited to public colleges, public universities, independent school districts, and consolidated school districts.

### Covered Parties

Funds provided by a TWC grant award must be included in coverage provided by a fidelity bond that indemnifies the Agency against loss arising from a fraudulent or dishonest act of the Grantee’s officers and employees holding positions of fiduciary trust; i.e., individuals responsible for receiving or depositing Agency funds, or issuing financial documents, checks or other instruments of payment. Similarly, if the Grantee has a separate fiscal agent, TWC grant funds must be included in coverage provided by a fidelity bond that indemnifies the Agency from loss arising from a fraudulent or dishonest act of the Grantee’s fiscal agent.

### Insured Entity and Certificate Holder

The Grantee must be the insured entity and the Agency must be the assigned certificate holder.

### Submission

The Grantee must submit the bond to the Agency’s Payables Department within 15 calendar days of the beginning date of a grant award. Failure to do so may result in [termination](#termination) of the grant award.

### Hold on TWC Disbursement of Funds

Under no circumstances will the Agency disburse to the Grantee an amount of cash that exceeds the coverage provided by the fidelity bond that is on file with the Agency. In the event the Agency disburses an amount in excess of the bond amount, the Grantee shall immediately return the portion of the amount of the disbursement in excess of the bond.

### Amount

The fidelity bond must be in an amount that is sufficient to cover the largest cumulative amount of all cash requests submitted on a given day or the cumulative amount of funds on hand at any given point. Such amount will be determined based on cumulative amounts drawn during any consecutive three-day period for single or multiple funding sources.

### Additional Amount (Boards)

Commission rule at 40 TAC § 802.21(b) requires a Board or its workforce service provider to secure an additional amount of funds against loss as follows:

* if the amount secured by the Board’s fidelity bond is “sufficient to cover the largest cumulative amount of all cash requests submitted on a given day or the cumulative amount of funds on hand at any given point,” but is less than ten percent of the funds subject to the control of its workforce service providers, the difference must be secured through bonds, insurance, escrow accounts, cash on deposit, or other methods in accordance with the requirements of 40 TAC § 802.21;
* if, when the Board conducts a fiscal integrity evaluation in accordance with 40 TAC § 802.21(a), the Board determines that more than ten percent of the funds subject to the control of its workforce service providers must be secured against loss, the additional amount must be secured through bonds, insurance, escrow accounts, cash on deposit, or other methods in accordance with the requirements of 40 TAC § 802.21; or
* if the Board’s fidelity bond is sufficient to cover all amounts required above, no additional funds must be secured against loss.

When determining whether coverage is sufficient to secure ten percent of the funds subject to the control of the Board’s workforce service providers, the Board should only consider the amount of funds that are drawn by and in the possession of its workforce service provider during any consecutive three-day period, not the total award amount issued to the workforce service provider.

If a Board or workforce service provider establishes an escrow account to secure funds under 40 TAC § 802.21, the escrow of funds must meet the following criteria:

* the funds placed in escrow require the signature of persons other than the persons with signatory authority for the Board’s workforce service providers;
* the funds must not lapse due to requirements for timely expenditure of funds; and
* this provision does not conflict with any provision in contract, rule, or statute for the timely expenditure of funds.

Also see Bonding Cost, Verifications (Boards), and Changes (Boards), in this Section.

### Bonding Cost

Grantees are responsible for the cost of a fidelity bond to provide the coverage described in this Chapter 3 of this manual. For Boards, when this coverage is not sufficient to satisfy the requirements of the Commission rule at 40 TAC § 802.21, the Board may at its discretion pay for the additional bonding, insurance, other protection methods; or the Board may require its workforce service provider to fund the cost to the extent allowable under federal and state law. The cost is reimbursable with TWC grant funds. For more information about the allowability of bonding costs refer to [Section 8.3.9 Bonding Costs](#eight_3_9), in this manual.

### Sureties

Fidelity bonds must be executed by a corporate surety or sureties holding certificates of authority to do business in the State of Texas, and acceptable to the Agency. If a surety upon a bond loses its authority to do business in the State of Texas, or the bond is cancelled, reduced or otherwise amended, the Grantee must immediately notify the Agency and provide a replacement bond that is adequate to cover the terms and conditions of its contract and this manual. Until such time that an adequate replacement bond is secured by the insurer and provided to the Agency, no further disbursements will be made to the Grantee.

### Verifications (Boards)

For Boards, when amounts that are in addition to the Board’s fidelity bond must be secured in accordance with 40 TAC § 802.21, the Board must ensure, based on the schedule referenced in 40 TAC § 802.21(a)(2), that each of its workforce service providers is required to verify that:

* the insurance or bond policy is valid, premiums are paid to date, the company is authorized to provide the bonding or insurance, and the company is not in receivership, bankruptcy or some other status that would jeopardize the ability to draw upon the policy;
* the escrow account balances are at an appropriate level;
* the method of securing the funds has not been withdrawn, drawn upon, obligated for another purpose, or is no longer valid for use as the method of security; and
* other such protections as are applicable and relied upon by the Board are verified as in force.

### Changes (Boards)

A Board shall ensure that the workforce service providers are required to disclose any changes in and circumstances regarding the method of securing or protecting funds under the workforce service providers’ control.

### Subgrants

The substance of the provisions of this Section flow down to subgrants issued under TWC grant awards. [Subgrantees (subrecipients)](#subgrantee) will submit proof of coverage to the entity that made the subgrant (pass-through entity) and name that entity as the certificate holder. Unless instructed otherwise, the documentation is not submitted to the Agency.

Reference:

OMB Uniform Guidance: 2 CFR §§ 200.304 and 200.427

TxGMS: “Bonds and Insurance” and Appendix 7 (bonding costs)

40 TAC § 802.21

Agency Board Agreement Section 12 (October 2022)

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## 3.2 Other Insurance Requirements

Policy:

Insurance coverage must comply with applicable federal, state and agency requirements.

This Section addresses general insurance allowability limitations for [TWC grant awards](#twcgrantaward), as well as some insurance that is specifically required.

### General Allowability Requirements

Costs of insurance that are required or approved and maintained pursuant to a [federal award](#federalaward) or [state award](#stateaward) are allowable.

Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

* The types and extent and cost of coverage must be in accordance with the entity’s policy and sound business practice.
* The costs of insurance or contributions to any reserve covering the risk of loss of, or damage to, federal government or state property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.
* Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.
* Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation. The cost of such insurance when the entity is identified as the beneficiary is unallowable. Refer also to 2 CFR § 200.431 ([Uniform Guidance](#uniformguidance)) and “Compensation—Fringe Benefits” in Appendix 7 to [TxGMS](#txgms).
* Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the entity’s materials or workmanship are unallowable.
* Medical liability (malpractice) insurance. Refer to the Uniform Guidance or TxGMS, as applicable.

Actual losses that could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the award.

Costs incurred because of (1) losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and (2) minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

For contributions to a reserve for certain self-insurance programs including workers’ compensation, unemployment compensation, and severance pay, refer to the Uniform Guidance or TxGMS, as applicable.

Also refer to [Section 8.3.30 Insurance and Indemnification](#eight_3_30), in this manual.

### Specific Insurance Requirements

The following insurance coverage is required by federal, state or agency requirements.

#### Property Insurance

Provisions for property insurance are addressed in [Section 13.18 Property Insurance](#thirteen_eighteen), in this manual, including the requirements from Sections 14.4 and 14.5 of the Agency Board Agreement.

#### Errors and Omissions Insurance

Section 7.5 of the Agency Board Agreement requires Boards to ensure that their “subrecipients, contractors, and subcontractors” carry errors and omissions insurance, or establish self-funded equivalents, as well as other forms of insurance required by state or federal law or regulation.

#### Workers’ Compensation Insurance for Workforce Innovation and Opportunity Act (WIOA) Participants

Health and safety standards established under federal and state law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of participants engaged in specified activities. To the extent that the state workers’ compensation law applies, workers’ compensation shall be provided to participants in programs and activities under Title I of WIOA on the same basis as the compensation is provided to other individuals in the state in similar employment.

Reference:

Workforce Innovation and Opportunity Act § 181(b)(4)

WIOA Regulations: 20 CFR § 683.280(b)

OMB Uniform Guidance: 2 CFR § 200.447

TxGMS: Appendix 7 (insurance and indemnification))

Agency Board Agreement Sections 7.5, 14.4, and 14.5 (October 2022)

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# Chapter 4 Cost Sharing and Matching

This chapter is currently under construction.

Applicable requirements for cost sharing and matching are set forth in:

* OMB Uniform Guidance provisions at 2 CFR §§ 200.306 (cost sharing or matching) and 200.403(f) (factors affecting allowability of costs)
* TxGMS: “Cost Sharing or Matching” and Item 6 of “Factors Affecting Allowability of Costs”
* Federal Child Care Rules: 45 CFR § 98.55
* Texas Workforce Commission Child Care Rules: 40 TAC § 809.17
* TWC’s Child Care Services Guide
* Other federal, state or agency guidance
* Grant award provisions

Some TWC grant awards require a Grantee to provide leverage. For the applicable leverage requirements, refer to the respective TWC-issued grant application instructions or grant solicitation, and the terms and conditions of the TWC-issued grant award.

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# Chapter 5 Program Income

This chapter compiles the applicable federal, state and agency requirements governing program income. In the event of conflict between these standards and federal or state statute or regulation, the federal or state statute or regulation will apply. The chapter is organized as follows:

[5](#five_one)[.1 General Program Income Requirements](#five_one)

[5.2 Uses of Program Income](#five_two)

Record retention and access requirements are provided in [Appendix K](#app_k) to this manual. All financial and programmatic records, supporting documents, statistical records, and other records pertaining to an award of federal or state funds must be retained and made available to authorized entities or their representatives in accordance with applicable administrative requirements.

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## 5.1 General Program Income Requirements

Policy:

Gross income earned by the Grantee that is directly generated by a grant supported activity, or earned only as a result of the grant award during the period of performance is program income, and shall be disbursed before requesting additional cash payments for the same award.

According to the requirements cited at the end of this section, [Grantees](#grantee) are encouraged to earn [program income](#programincome) to defray program costs where appropriate.

Grantees shall disburse program income and interest earned on such funds before requesting additional cash payments for the same award.

Program income includes:

* income from fees for services performed;
* income from the use or rental of [real property](#realproperty) or [personal property](#personalproperty) acquired with grant funds;
* income from the sale of commodities or items fabricated under a grant agreement; and
* income from payments of principal and interest on loans made with grant funds.

Except as otherwise, program income does not include:

* interest on federalgrant funds (but see Program Specific Considerations);
* rebates, credits, discounts, refunds, and interest earned on any of them;
* royalties and license fees for copyrighted material, patents, and inventions developed by the grantee or subgrantee unless specifically identified as program income by the grant agreement or federal agency regulations;
* proceeds from the sale of real property or [equipment](#equipment) (such proceeds should be handled in accordance with [Chapter 13 Property](#thirteen_toc), in this manual); and
* income earned after the [period of performance](#periodofperformance).

Program Specific Consideration:

Workforce Innovation and Opportunity Act (WIOA) and Wagner-Peyser Act. Interest income earned on funds received under Title I of WIOA and the Wagner-Peyser Act must be included in program income pursuant to WIOA regulations at 20 CFR § 683.200(c)(8).

Reference:

WIOA Regulations: 20 CFR § 683.200(c)(8)

OMB Uniform Guidance: 2 CFR §§ 200.1 (definition of program income), 200.305(b)(5) (disburse before drawing other funds), and 200.307 (program income)

TxGMS: “Payment” (Item 5), “Program Income,” and Appendix

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## 5.2 Use of Program Income

**Policy:**

**Program income must be accounted for and reported in a manner that is consistent with applicable administrative and program requirements.**

The [Uniform Guidance](#uniformguidance) and [TxGMS](#txgms) provide that, unless the grant agreement or federal regulations specify another alternative (or combination of alternatives), [program income](#programincome) shall be deducted from outlays that may be both federal and non-federal as described below for the deduction method. In specifying alternatives, the federal or state agency may distinguish between income earned by the [Grantee](#grantee) and income earned by a Grantee’s [subgrantees (subrecipients)](#subgrantee), and between the sources, kinds, or amounts of income. When federal or state agencies authorize the alternatives in paragraphs (2) and (3) below, program income in excess of any limits stipulated shall also be deducted from outlays in accordance with the deduction method.

1. 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 federal or state agency authorizes otherwise. Program income that the Grantee did not anticipate at the time of the award shall be used to reduce the federal or state agency and grantee contributions rather than to increase the funds committed to the project.
2. Addition. When authorized, program income may be added to the funds committed to the grant agreement by the federalor state agency and the Contractor. The program income shall be used for the purposes and under the conditions of the grant agreement.
3. 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 federal or state grant award remains the same. Requirements for cost sharing and matching are outlined in [Chapter 4 Cost Sharing and Matching](#four_toc), in this manual.

The Uniform Guidance and TxGMS also provide that, “If authorized by federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income” (net method). If not authorized, all gross income derived from program income generating activities is accounted for as program income and all expenditures incurred in generating that income are charged to appropriate cost categories (gross method).

Program Specific Consideration:

Workforce Innovation and Opportunity Act (WIOA) and Wagner-Peyser Act. The addition method must be used for all program income earned under Title I of WIOA and Wagner-Peyser Act grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the program in which it was earned. However, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the program.

Reference:

WIOA Regulations: 20 CFR § 683.200(c)(6)

OMB Uniform Guidance: 2 CFR § 200.307

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# Chapter 6 Budget

This chapter compiles the applicable federal, state and agency requirements governing budgets of public funds administered by the [Agency](#agency). In the event of conflict between these standards and federal statute or regulation, the federal statute or regulation will apply. The chapter is organized as follows:

[6.](#six_one)[1 Budget Development](#six_one)

[6.](#six_two)[2 Submission Requirements](#six_two)

[6](#six_three)[.3 Budget Control](#six_three)

[6](#six_four)[.4 Budget Changes and Revisions](#six_four)

Record retention and access requirements are provided in [Appendix K](#app_k) to this manual. All financial and programmatic records, supporting documents, statistical records, and other records pertaining to an award of federal or state funds must be retained and made available to authorized entities or their representatives in accordance with applicable administrative requirements.

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## 6.1 Budget Development

Policy:

Each Grantee must develop a budget that will enable it to comply with uniform administrative requirements to compare actual expenditures or outlays with budgeted amounts for each grant or subgrant.

Each [Grantee](#grantee) must develop a budget for each [TWC grant award](#twcgrantaward) that it receives. For some Grantees (and for most Grantees’ [subgrantees (subrecipients)](#subgrantee)), the budget will be developed as part of a grant application or competitive procurement process. Other Grantees, such as [Boards](#board), receive [pass-through funding](#flowthrufunds) allocations and must develop budgets for those funds based on the allocations that they receive. The [Agency](#agency) recommends that each Grantee include the following procedures for budget development:

* identify expected revenues by grant award, category and year of appropriation;
* identify expenditures by functional classification and cost category;
* develop written policies and procedures that specify the process by which the budget is developed, approved, implemented, monitored and revised; and
* maintain supporting documentation for budgeted amounts.

Requirements for budget submission, budget controls, and changes to the budget are discussed in [Section 6.2](#six_two), [Section 6.3](#six_three) and [Section 6.4](#six_four) of this chapter, respectively.

Reference:

OMB Uniform Guidance: 2 CFR § 200.302(b)(5)

TxGMS: “Financial Management” (Item 5)

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## 6.2 Budget Submission Requirements

Policy:

A budget shall be submitted to the Agency within the prescribed timeframes and in the prescribed formats to satisfy federal or state law, or contractual requirements.

Federal statute or regulation, state statute or the [Agency](#agency) may require that a [Grantee](#grantee) submit a budget or additional budget information to the Agency in relation to a specific award. While most Grantees are not required to submit an operating budget beyond that which they submitted in response to an Agency solicitation for grant applications, other Grantees, such as [Boards](#_Hlt105297679), are required by state statute to provide certain budget information to the Agency.

### Non-Board Budget Submission Requirements

The Agency may, but does not generally, require Grantees that develop and submit a budget to the Agency in response to a grant application or competitive procurement to resubmit the budget after the negotiated budget has been accepted by the Agency. An exception is if the Grantee subsequently requests budgetary changes that require prior approval of the Agency (see [Section 6.4](#six_four) of this manual).

### Board Budget Submission Requirements

In addition to requests for changes discussed in Section 6.4 of this manual, Boards must also comply with budget submission requirements established by state statute. Texas Government Code § 2308.262 expressly provides that, “A board shall adopt a budget for the board that must be included in the local workforce development plan submitted to the [Workforce Development] division [of the Texas Workforce Commission].”

Each Board is required to annually file an itemized budget covering its fiscal year operations. The budget must be submitted to the Fiscal Services and Audit Resolution Unit in the Agency’s Subrecipient Monitoring Department, along with required supporting information, within 90 days following the beginning of the Board’s fiscal year. These required documents are discussed below.

#### Operating Budget and Expenditures

Each Board must submit its Board-approved operating budget as described in the preceding paragraph along with:

* Actual expenditures for the Board’s fiscal year just ending; and
* Actual expenditures for the Board’s previous fiscal year.

The budget must clearly distinguish between the operational costs of the Board and the costs paid by the Board on behalf of the Board’s [subrecipients](#subgrantee). For example, rent paid by the Board for Texas Workforce Center facilities must be separate from the cost of facilities for Board offices. Expense categories similar to the following must be used to identify expense items in the Board’s submitted operating budget:

* Personnel costs (salaries and wages)
* Personnel benefits (fringe benefits, etc.)
* Occupancy costs (rent, utilities, etc.)
* Equipment and related costs (equipment purchases, equipment rentals, maintenance, etc.)
* General office expenses (telephone, data communication, supplies, etc.)
* Professional services (legal and accounting fees, monitoring services, consulting fees, professional memberships and dues, etc.)
* Travel costs (conferences, local travel, registration fees, etc.)
* Marketing costs (marketing consulting fees, media advertising, printing, etc.)
* Service delivery costs (child care, Texas Workforce Center operations, etc.)

The details must provide a complete understanding of the nature and amount of the budgeted items. TWC provides Boards with a reporting template each year.

#### Schedule of Projected Capital Expenditures

A Schedule of Projected Capital Expenditures must be submitted to the Agency with the Board-approved operating budget. Submission of the schedule does not satisfy the prior approval requirements. TWC provides Boards with a reporting template each year.

#### Schedule of Positions

A Schedule of Positions must also be included with the Board-approved operating budget that is submitted to the Agency. Budgeted salary expenditures must be consistent with the Texas State Job Classification Salary Groups and Classification Salary Schedules located at [the](http://www.hr.sao.state.tx.us/compensation/schedules.html) [State Auditor’s website](https://hr.sao.texas.gov/) (see also, [Section 10.3](#ten_three) of this manual). TWC provides Boards with a reporting template each year.

Reference:

[Texas Government Code § 2308.262](http://www.statutes.legis.state.tx.us/ViewChapter.aspx?key=29195.25353)

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## 6.3 Budget Control

Policy:

Actual expenditures or outlays shall be compared with budgeted amounts for each grant or subgrant.

In accordance with the administrative requirements of the [Uniform Guidance](#uniformguidance) and [TxGMS](#txgms), all [Grantees](#grantee) shall compare actual expenditures or outlays with budgeted amounts for each [TWC grant award](#twcgrantaward). 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.

Additionally, the [Agency](#agency) recommends that the following budget controls be implemented:

* conduct budget-to-actual comparisons no less than quarterly;
* prescribe a threshold(s) above or below which budget variances will be investigated and reported, and the actions that will be taken; and
* prepare and analyze budget projections on a quarterly basis; i.e., expenditure projections.

A budget projection is an extension of cumulative actual operating results into the future (future anticipated expenditures), usually to the end of the entity’s fiscal year and/or contract period to project possible budget shortages and surpluses.

Reference:

OMB Uniform Guidance: 2 CFR §§ 200.302(b)(5) and 200.329(b)

TxGMS: “Financial Management” (Item 5) and “Performance Measurement”

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## 6.4 Budget Changes and Revisions

Policy:

Written Agency approval must be obtained prior to making budget changes or revisions that meet applicable thresholds.

In general, [Grantees](#grantee) may change or revise budgets within their approved direct cost budgets without the prior approval of the [Agency](#agency) when:

* such changes are necessary to meet unanticipated requirements and make limited program changes to approved projects;
* the Agency does not specifically require the Grantee to obtain prior approval for such changes; and
* the changes will not require changes to the Grantee’s grant award with the Agency or other documents required by the Agency, such as a [Board](#_Hlt105297679) plan.

Grantees should refer to their grant award to determine if prior Agency approval is required for budget changes.

Reference:

OMB Uniform Guidance: 2 CFR § 200.308

TxGMS: “Revision of Budget and Program Plans”

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# Chapter 7 Cash Management

This chapter is currently under construction.

Applicable cash management requirements are set forth in:

* Financial Manual for Grants and Contracts (1999), Sections 13.01 - 13.05, 13.06b, and 13.07
* OMB Uniform Guidance: 2 CFR § 200.305
* TxGMS: “Payment”

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# Chapter 8 Cost Principles

This chapter compiles the applicable cost principles governing the allowability of costs, whether direct or indirect. The chapter is organized as follows:

[8](#eight_one)[.1 General Allowability Criteria](#eight_one)

[8.2 Treatment of Costs](#eight_two)

[8](#eight_three)[.](#eight_three)[3 Selected Items of Cost](#eight_three)

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## 8.1 General Allowability Criteria

Policy:

In order to be allowable under a federal or state award, a cost must meet the general allowability criteria established by the Uniform Guidance and Texas Grant Management Standards, as applicable.

A cost must meet the following general criteria in order to be allowable under a [TWC grant award](#twcgrantaward):

* Be necessary and [reasonable](#reasonable) for proper and efficient performance and administration of the award.
* Be [allocable](#allocable) to the award under the provisions of the [Uniform Guidance](#uniformguidance) and [Texas Grant Management Standards (TxGMS)](#txgms).
* Be authorized or not prohibited under state or local laws or regulations.
* Conform to any limitations or exclusions set forth in cost principles established by Uniform Guidance and TxGMS, federal or state laws, terms and conditions of the award, or other governing regulations as to types or amounts of cost items.
* Be consistent with policies, regulations, and procedures that apply uniformly to both federal and/or state awards and other activities of the organization.
* Be accorded consistent treatment. A cost may not be assigned to the award as a [direct cost](#directcost) if any other cost incurred for the same purpose in like circumstances has been allocated to the award as an [indirect cost](#indirectcost).
* Except as otherwise provided for in the Uniform Guidance and TxGMS, be determined in accordance with [Generally Accepted Accounting Principles](#generallyacceptedaccountingprinciples).
* Be the net of all [applicable credits](#applicablecredits). Applicable credits, whether accruing or received, that are related to allowable costs, should be credited to the applicable award(s) as a cost reduction or cash refund, as appropriate.
* Be adequately documented. Documentation required may include, but is not limited to, travel records, time sheets, invoices, contracts, mileage records, billing records, telephone bills and other documentation that verifies the expenditure amount and appropriateness to the grant.
* Not be included as a cost or used to meet cost sharing or matching requirements of any other federal or state award in either the current or prior period, except as specifically provided by federal law or regulation.
* Be incurred during the approved [budget period](#budgetperiod).

Reference:

OMB Uniform Guidance: 2 CFR § 200.403

TxGMS: “Factors Affecting Allowability of Costs”

[ASMB C-10 Questions 2-12 and 2-16](https://www.dol.gov/sites/dolgov/files/OASAM/legacy/files/ASMB_C-10.pdf)

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## 8.2 Treatment of Costs

Policy:

Costs must be consistently treated as either a direct or indirect cost. A cost may not be allocated to a federal or state award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been charged to a federal or state award as a direct cost.

In order to be allowable under a [federal award](#federalaward) or [state award](#stateaward), a cost must be consistently treated as a [direct cost](#directcost) or [indirect cost](#indirectcost). Federal and state cost principles set forth in [Uniform Guidance](#uniformguidance) and the [Texas Grant Management Standards (TxGMS)](#txgms) provide that, “A cost may not be assigned to a federal or state award as a direct cost if any other cost incurred for the same purposes in like circumstances has been allocated to the federal or state award as an indirect cost.”

No cost can be universally classified in every accounting system as a direct or indirect cost. The following guidelines must be used for purposes of treating costs as direct or indirect under a federal or state award.

### Direct Costs

Direct costs are those that can be identified specifically with a final cost objective. For a direct cost to be assignable in its entirety to a particular cost objective, the cost objective must receive the full benefit from the goods, services, or effort that make up that cost. Costs that are typically charged as direct costs may include:

* compensation of employees for the time devoted and identified specifically to the performance of those awards;
* cost of materials acquired, consumed, or expended specifically for the purpose of those awards;
* [equipment](#equipment) and other approved [capital expenditures](#capitalexpenditure); and
* travel expenses incurred specifically to carry out the award.

Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that cost is consistently applied to all cost objectives.

Indirect Costs

Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a final cost objective without effort disproportionate to the results achieved. Costs that are typically charged as indirect costs may include:

* depreciation on buildings and equipment;
* facility operations and maintenance costs; and
* general administration and general expenses.

Indirect costs may be identified and allocated using a cost allocation plan (see [Chapter 11](#eleven_toc) of this manual), indirect cost rate (see [Chapter 12](#twelve_toc) of this manual), or both. Only costs that are consistently treated as indirect costs may be included in an indirect [cost pool](#costpool).

### Limitations on Indirect and Administrative Costs

Funding requirements may limit the amount of indirect and/or administrative costs that are allowed under a particular program or award. Indirect or administrative costs that are in excess of such limitations may not be charged to another award. Non-federal and/or non-state revenue sources must be used to pay for costs that cannot be recovered as a result of these limitations.

Indirect costs are not necessarily administrative in nature and therefore do not automatically count towards administrative cost limitations. The determination depends on the applicable administrative cost definition. If an administrative cost definition allows for a distinction between administrative and programmatic indirect costs, the individual indirect costs should be reviewed to determine whether they are administrative or programmatic in nature. For those cases, the U.S. Department of Labor’s One-Stop Comprehensive Financial Management Technical Assistance Guide (One-Stop TAG) provides the following methodology for determining the portion of indirect costs that are chargeable to administrative and program cost categories.

1. Review all the costs included in the indirect pool and label them as program or administrative costs based on the particular program definition. For example:

| Indirect Cost | Amount | Administrative | Program |
| --- | --- | --- | --- |
| Director’s Salary | $75,000 | $50,000 | $25,000 |
| Facility | $100,000 | $10,000 | $90,000 |
| Utility | $75,000 | $25,000 | $50,000 |
| Telephone | $50,000 | $5,000 | $45,000 |
| Total Pool | $300,000 | $90,000 | $210,000 |

1. Calculate the proportion of total costs for each cost category. For example:

| Type of Costs | Calculation | Calculated Proportion |
| --- | --- | --- |
| Administration | $90,000 / $300,000 | 30.0% |
| Program | $210,000 / $300,000 | 70.0% |
| Total | NA | 100.0% |

1. Calculate the total dollar amount of indirect costs attributable to the particular program. (The percentages 30%, 25%, and 45% represent each fund’s equitable share of the indirect cost pool as determined using an appropriate allocation basis.) For example:

| Cost Pool Item | Amount | Fund A (30%) | Fund B (25%) | Fund C (45%) |
| --- | --- | --- | --- | --- |
| Director’s Salary | $75,000 | $22,500 | $18,750 | $33,750 |
| Facility | $100,000 | $30,000 | $25,000 | $45,000 |
| Utility | $75,000 | $22,500 | $18,750 | $33,750 |
| Telephone | $50,000 | $15,000 | $12,500 | $22,500 |
| Total | $300,000 | $90,000 | $75,000 | $135,000 |

1. Apply the percentages calculated in step 2 to the total dollar amount of indirect costs to establish the dollar amount that is to be recorded/reported as administrative costs and the amount that is program costs for the particular program. For example:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Type of Cost | Fund A | Fund B | Fund C | Total |
| Administrative (30%) | $27,000 | $22,500 | $40,500 | $90,000 |
| Program (70%) | $63,000 | $52,500 | $94,500 | $210,000 |
| Total | $90,000 | $75,000 | $135,000 | $300,000 |

Reference:

OMB Uniform Guidance: 2 CFR §§ 200.1 (definition of “Indirect (Facilities & Administrative (F&A) Costs”), 200.403(d), 200.412, 200.413, and 200.414

TxGMS: “Factors Affecting Allowability of Costs” (Item 4), “Limitation on Allowance of Costs,” “Classification of Costs,” “Direct Costs,” “Indirect Costs” and Appendix 2 (definition of “Indirect Costs”)

U.S. Department of Labor One-Stop Comprehensive Financial Management Technical Assistance Guide, Part I, Chapter I-1 (pp. 1-3); Chapter II-5 (pp. 5-7); and Chapter II-8 (pp. 1-6)

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## 8.3 Selected Items of Cost

Policy:

Determination of allowability for a particular cost, whether direct or indirect in nature, must be based on the general allowability criteria provided in Section 8.1 and treatment or standards for similar or related items of cost as established by the Uniform Guidance and Texas Grant Management Standards, as applicable.

The items in this section form a cumulative listing of policies established by the [Uniform Guidance](#uniformguidance) and [Texas Grant Management Standards (TxGMS)](#txgms) for selected items of cost. Each item is addressed in this section by citation, or by language and citation.

Items identified as “allowable” in this section are only allowable to the extent that they also conform to the general allowability criteria discussed in [Section 8.1](#eight_one) of this manual; i.e., necessary, [reasonable](#reasonable), [allocable](#allocable), adequately documented, etc. Failure to mention a particular item of cost does not imply that it is either allowable or unallowable. If a particular item is not listed, it may be possible to determine allowability based on the degree of common characteristics between it and a similar listed item, or based on the [[Agency](#agency)’s](http://www.twc.state.tx.us/business/fmgc/fmgc_appa_glossary.doc#agency) determination for a similar item). If no similar item is discussed, the general tests of allowability must be applied. If allowability is difficult to determine, clarification may be obtained by emailing TWC’s Fiscal-TA mailbox at [Fiscal.TA@twc.texas.gov](mailto:Fiscal.TA@twc.texas.gov).

[**Proceed** **t****o Selected Items of Cost**](#eight_3_1)

Selected Items of Cost:

[8.3.1 Accounting](#eight_3_1)

[8.3.2 Advertising and Public Relations Costs](#eight_3_2)

[8.3.3 Advisory Councils](#eight_3_3)

[8.3.4 Alcoholic Beverages](#eight_3_4)

[8.3.5 Alumni/ae Activities](#eight_3_5)

[8.3.6 Audit and Related Services](#eight_3_6)

[8.3.7 Automatic Electronic Data Processing](#eight_3_7)

[8.3.8 Bad Debts](#eight_3_8)

[8.3.9 Bonding Costs](#eight_3_9)

[8.3.10 Budgeting](#eight_3_10)

[8.3.10a Collection of Improper Payments](#eight_3_10a)

[8.3.11 Commencement and Convocation Costs](#eight_3_11)

[8.3.12 Communication Costs](#eight_3_12)

[8.3.13 Compensation—Personnel Services](#eight_3_13)

[8.3.13a Compensation—Fringe Benefits](#eight_3_13a)

[8.3.14 Construction](#eight_3_14)

[8.3.14a Conferences](#eight_3_14a)

[8.3.15 Contingencies](#eight_3_15)

[8.3.16 Contributions and Donations](#eight_3_16)

[8.3.17 Deans of Faculty and Graduate Schools](#eight_3_17)

[8.3.18 Depreciation](#eight_3_18)

[8.3.19 [Reserved]](#eight_3_19)

[8.3.20 Employee Health and Welfare Costs](#eight_3_20)

[8.3.21 Entertainment](#eight_3_21)

[8.3.22 Equipment, Buildings, and Other Capital Expenditures](#eight_3_22)

[8.3.22a Exchange Rates](#eight_3_22a)

[8.3.23 Fines and Penalties](#eight_3_23)

[8.3.24 Fundraising and Investment Management Costs](#eight_3_24)

[8.3.25 Gains and Losses on Disposition of Depreciable Assets](#eight_3_25)

[8.3.26 General Costs of Government](#eight_3_26)

[8.3.27 Goods or Services for Personal Use](#eight_3_27)

[8.3.28 Housing and Personal Living Expense](#eight_3_28)

[8.3.29 Idle Facilities and Idle Capacity](#eight_3_29)

[8.3.30 Insurance and Indemnification](#eight_3_30)

[8.3.30a Intellectual Property](#eight_3_30a)

[8.3.31 Interest](#eight_3_31)

[8.3.32 [Reserved]](#eight_3_32)

[8.3.33 Legal Costs & Costs for Defense and Prosecution of Criminal and Civil Proceedings, Claims, Appeals and Patent Infringements](#eight_3_33)

[8.3.34 Lobbying](#eight_3_34)

[8.3.35 Losses on Awards or Contracts](#eight_3_35)

[8.3.36 Maintenance and Repair Costs](#eight_3_36)

[8.3.37 Materials and Supplies, Including Costs of Computing Devices](#eight_3_37)

[8.3.38 Meetings and Conferences](#eight_3_38)

[8.3.39 Memberships, Subscriptions, and Professional Activity Costs](#eight_3_39)

[8.3.40 [Reserved]](#eight_3_40)

[8.3.41 Organization Costs](#eight_3_41)

[8.3.42 Page Charges](#eight_3_42)

[8.3.43 Participant Support Costs](#eight_3_43)

[8.3.44 Patent Costs](#eight_3_44)

[8.3.45 Plant and Security Costs](#eight_3_45)

[8.3.46 Pre-Award Costs](#eight_3_46)

[8.3.47 Professional Service Costs](#eight_3_47)

[8.3.48 Proposal Costs](#eight_3_48)

[8.3.49 Publication and Printing Costs](#eight_3_49)

[8.3.50 Rearrangements and Alterations](#eight_3_50)

[8.3.51 Reconversion Costs](#eight_3_51)

[8.3.52 Recruiting Costs](#eight_3_52)

[8.3.53 Relocation Costs](#eight_3_53)

[8.3.54 Rental Costs of Real Property and Equipment](#eight_3_54)

[8.3.55 Royalties and Other Costs for Use of Patents and Copyrights](#eight_3_55)

[8.3.56 Scholarships and Student Aid Costs](#eight_3_56)

[8.3.57 [Reserved]](#eight_3_57)

[8.3.58 Selling and Marketing](#eight_3_58)

[8.3.59 Specialized Service Facilities](#eight_3_59)

[8.3.60 Student Activity Costs](#eight_3_60)

[8.3.61 Taxes](#eight_3_61)

[8.3.61a Telecommunication and Video Surveillance Costs](#eight_3_61a)

[8.3.62 Termination Costs](#eight_3_62)

[8.3.63 Training and Education Costs](#eight_3_63)

[8.3.64 Transportation Costs](#eight_3_64)

[8.3.65 Travel Costs](#eight_3_65)

[8.3.66 Trustees](#eight_3_66)

### 8.3.1 Accounting

The cost of establishing and maintaining accounting and other information systems is allowable.

Reference: TWC

### 8.3.2 Advertising and Public Relations Costs

Except as specified below or as otherwise permitted by the cost principles established in [Uniform Guidance](#uniformguidance) and [TxGMS](#txgms) (as applicable), all [advertising costs](#advertisingcosts) and [public relations costs](#publicrelationscosts) are unallowable. See citations below for specific examples of allowable advertising and public relations costs.

To the extent necessary to meet the requirements of the award, the only allowable advertising costs are those that are incurred solely for:

* the recruitment of personnel required by the organization for the performance of obligations arising under a grant award (refer also [Section 8.3.52, Recruiting Costs](#eight_3_52), in this manual);
* the procurement of goods and services for the performance of a grant award;
* the disposal of scrap or surplus materials acquired in the performance of a grant award (unless disposal costs are reimbursed based at a predetermined amount); and
* program outreach and other specific purposes necessary to meet the requirements of the grant award.

The only allowable public relations costs are:

* costs specifically required by the grant award;
* costs incurred to communicate with the public and press pertaining to specific activities or accomplishments which result from performance of the award (these costs are considered necessary as part of the outreach effort of the federal or state award); or
* costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities, financial matters, etc.

When incurred for more than one award or for both an award and other work of the organization, the advertising and public relations costs identified above are allowable only to the extent that the principles for [direct costs](#directcost) and for [indirect costs](#indirectcost) are observed.

Refer to the cited references for more information, including examples of unallowable advertising and public relations costs.

Reference: 2 CFR § 200.421 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.3 Advisory Councils

For [federal awards](#federalaward), costs incurred by advisory councils or committees are unallowable unless authorized by statute, the [federal awarding agency](#federalawardingagency), or as an [indirect cost](#indirectcost) where [allocable](#allocable) to federal awards. For [state awards](#stateaward) that are subject to [TxGMS](#txgms), such costs are unallowable unless authorized by state law or executive order.

Also refer to [Section 8.3.26 General Costs of Government](#eight_3_26), in this manual.

Reference: 2 CFR § 200.422 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.4 Alcoholic Beverages

Costs of alcoholic beverages are unallowable.

Reference: 2 CFR § 200.423 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.5 Alumni/ae Activities

Costs incurred by [institutions of higher education](#institutionsofhighereducation) for, or in support of, alumni/ae activities are unallowable.

Reference: 2 CFR § 200.424 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.6 Audit and Related Services

For [federal awards](#federalaward), a reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996, as implemented by requirements of the [Uniform Guidance](#uniformguidance), are allowable.

For [state awards](#stateaward), a reasonably proportionate share of the costs of audits required by, and performed in accordance with, state law and the audit requirements of [TxGMS](#txgms) are allowable.

Refer to the cited references for more information.

Reference: 2 CFR § 200.425 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.7 Automatic Electronic Data Processing

The cost of data processing services is allowable. (Also refer to [Section 8.3.22, Equipment, Buildings, and Other Capital Expenditures](#eight_3_22), in this manual).

Reference: TWC

### 8.3.8 Bad Debts

[Bad debts](#baddebts), including losses (whether actual or estimated) arising from uncollectible accounts and other [claims](#claim), and related collection and legal costs are unallowable. Related collections costs, and related legal costs, arising from such debts after they have been determined to be uncollectible are also unallowable.

For related requirements, also refer to [Section 8.3.10a Collection of Improper Payments](#eight_3_10a), in this manual.

Reference: 2 CFR § 200.426 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.9 Bonding Costs

Costs of bonding that are required pursuant to the terms of an award are allowable.

Costs of bonding required by the [Grantee](#grantee) in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

Bonding costs arise when the federal or state government requires assurance against financial loss to itself or others by reason of the act of default of the Grantee. They also arise in instances where the Grantee requires similar assurance, including bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

For related requirements, refer to [Section 3.1 Bonding Requirements](#three_one), in this manual.

Reference: 2 CFR § 200.427; Appendix 7 to TxGMS]

### 8.3.10 Budgeting

Except as associated with the general cost of government, costs incurred during the [budget period](#budgetperiod) for the development, preparation, presentation, and execution of grant budgets are allowable.

Refer also to [Section 8.3.26 General Costs of Government](#eight_3_26), in this manual.

Reference: TWC

### 8.3.10a Collection of Improper Payments

For [federal awards](#federalaward), refer to 2 CFR § 200.428 ([Uniform Guidance](#uniformguidance)). For [state awards](#stateaward), refer to Appendix 7 to [TxGMS](#txgms).

### 8.3.11 Commencement and Convocation Costs

For [institutions of higher education](#institutionsofhighereducation):

* For [federal awards](#federalaward), costs incurred for commencements and convocations are unallowable, except as provided in (B)(9) Student Administration and Services, in Appendix III to 2 CFR Part 200 ([Uniform Guidance](#uniformguidance)), as activity costs.
* For [state awards](#stateaward), costs incurred for commencements and convocations are unallowable unless they serve a proper public purpose and are authorized by the [state awarding agency](#stateawardingagency).

Reference: 2 CFR § 200.429 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.12 Communication Costs

Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable. However, for [federal awards](#federalaward), refer also to [Section 8.3.61a Telecommunication and Video Surveillance Costs](#eight_3_61a), in this manual.

Reference: TWC

### 8.3.13 Compensation—Personnel Services

Compensation for personnel services is generally allowable to the extent that such costs are consistent with applicable cost principles. For more information, refer to the references cited at the end of this Section 8.3.13. Also refer to [Section 8.3.13a Compensation—Fringe Benefits](#eight_3_13a) and [Chapter 10 Personnel](#ten_toc), in this manual.

Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the [Grantee](#grantee) and the employees before the services were rendered, or pursuant to an established plan followed by the Grantee so consistently as to imply, in effect, an agreement to make such payment.

Some programs are subject to federal and state salary compensation limits. Refer to Chapter 10 Personnel, in this manual, for state salary limitations that impact [Boards](#board) and certain other entities. Federal salary limitations are identified in the terms and conditions of grant awards and program requirements, as applicable. Guidance on certain federal limitations is also published in WD Letter 28-07 Change 1, and any subsequent issuances.

Note: For programs that fund training services for employees of qualifying employers, refer to the respective program requirements as to the allowability of trainee wages. For example, 40 TAC § 803.3(d)(3) reflects that Skills Development Fund grant funds may not be used for wages for trainees.

Reference: 2 CFR § 200.430 (Uniform Guidance); Appendix 7 to TxGMS; 40 TAC § 803.3(d)(3); WD Letter 28-07, Change 1.

### 8.3.13a Compensation—Fringe Benefits

Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in the applicable cost principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, [Grantee](#grantee)-employee agreement, or an established policy of the Grantee.

For more information, refer to the cited references at the end of this Section 8.3.13a.

Reference: 2 CFR § 200.431 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.14 Construction

In addition to any specific grant limitations, refer to [Section 8.3.22 Equipment, Buildings, and Other Capital Expenditures](#eight_3_22), [Section 8.3.36 Maintenance and Repair Costs](#eight_3_36), [Section 8.3.50 Rearrangements and Alterations](#eight_3_50), and [Section 8.3.51 Reconversion Costs](#eight_3_51), in this manual.

### 8.3.14a Conferences

Refer to [Section 8.3.38 Meetings and Conferences](#eight_3_38), in this manual.

### 8.3.15 Contingencies

Payments to a contingency reserve or any similar provision made for events, the occurrence of which cannot be foretold with certainty as to time, or intensity, or with an assurance of their happening, are unallowable. The term “contingency reserve” excludes self-insurance reserves, reserves for normal severance pay (if allowable), pension plan reserves, post-retirement health and other benefit reserves computed using acceptable actuarial cost methods, subject to the respective cost principles of the [Uniform Guidance](#uniformguidance) and [TxGMS](#txgms), as applicable.

For more information refer to the cited references at the end of this Section 8.3.15.

Reference: 2 CFR § 200.433 (Uniform Guidance); Appendix 7 to TxGMS.

### 8.3.16 Contributions and Donations

Contributions and donations, including cash, property, and services, made by the [Grantee](#contractor) to other entities are unallowable. (This does not prohibit the Grantee’s acceptance of contributions or donations to meet cost sharing or matching requirements, such as child care local match.)

For more information refer to the cited references at the end of this Section 8.3.16.

Reference: 2 CFR §§ 200.306 and 200.434; “Cost Sharing or Matching” and Appendix 7 in TxGMS

### 8.3.17 Deans of Faculty and Graduate Schools

Refer to the cited references in [Section 8.3.13 Compensation—Personnel Services](#eight_3_13), in this manual.

### 8.3.18 Depreciation

Compensation for the use of a [Grantee’s](#grantee) buildings, capital improvements, [equipment](#equipment) and software projects capitalized in accordance with [Generally Accepted Accounting Principles](#generallyacceptedaccountingprinciples) may be made through depreciation provided the property is used, needed in the Grantee’s activities, and properly [allocable](#allocable) to the grant award.

For more information refer to the cited references at the end of this Section 8.3.18.

Reference: 2 CFR § 200.436; Appendix 7 to TxGMS

### 8.3.19 [Reserved]

This section is reserved.

### 8.3.20 Employee Health and Welfare Costs

Costs incurred in accordance with the [Grantee’s](#grantee) documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable. Such costs must be equitably apportioned to all activities of the Grantee. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations. Additional conditions apply to losses resulting from operating food services.

For more information refer to the cited references at the end of this Section 8.3.20.

Reference: 2 CFR § 200.437 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.21 Entertainment

Costs of entertainment, including amusement, diversion, and social activities, and any associated costs are unallowable, except as follows:

* For [federal awards](#federalaward): Where specific costs that might otherwise be considered entertainment have a programmatic purpose, TWC may approve such programmatic costs only if the federal government authorized the costs in the budget for the federal award that TWC received, or if TWC receives prior written approval from the [federal awarding agency](#federalawardingagency). (For any federal funds that TWC receives via state interagency transfer, TWC may need to obtain prior concurrence through the pass-through state agency.)
* For [state awards](#stateaward): Where specific costs that might otherwise be considered entertainment have a programmatic purpose, TWC may authorize such programmatic costs in the approved budget for the grant award or in response to a request for prior written approval from the Grantee. (For funds that TWC receives via state interagency transfer, TWC may need to obtain prior concurrence from the pass-through state agency.)

Reference: 2 CFR § 200.438 (Uniform Guidance; Appendix 7 to TxGMS

### 8.3.22 Equipment, Buildings, and Other Capital Expenditures

This Section summarizes cost principles specific to [equipment](#equipment), buildings, and other [capital expenditures](#capitalexpenditure). For details refer to the cited [Uniform Guidance](#uniformguidance) and [TxGMS](#txgms) references at the end of this Section 8.3.22. Also refer to [Chapter 13 Property](#thirteen_toc), in this manual, and the applicable program requirements and award terms. A program or grant award may have more restrictions. Examples include but are not limited to those in the Notes at the end of this Section 8.3.22. Additionally, the terms of some grant awards may expressly prohibit some costs.

The following general rules of allowability apply to equipment and [other](#othercapitalasset) capital expenditures:

* capital expenditures for [general purpose equipment](#generalpurposeequipment), buildings, and land are unallowable as [direct costs](#directcost), except with prior approval;
* capital expenditures for [special purpose equipment](#specialpurposeequipment) are allowable as direct costs, provided that items with a unit cost of $5,000 or more have prior approval;
* capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with prior approval.

Prior written approval is to be requested from the [Agency](#agency) by submitting TWC Form 7100. (Form 7100 is available on the Agency’s website.) If the Agency concurs with the request, the Agency may be authorized to provide approval itself, or, depending on the funds involved, Agency staff may also need to obtain prior concurrence from another entity, such as a [federal awarding agency](#federalawardingagency) or pass-through state agency. The Agency cannot authorize prohibited costs.

When approved as a direct cost pursuant to the three bullets above, capital expenditures will be charged in the period in which the expenditure is incurred or otherwise determined appropriate and negotiated with the awarding agency.

Equipment and other capital expenditures are unallowable as [indirect costs](#indirectcost).

Notes:

* Neither the Skills Development Fund nor Self Sufficiency Fund grant awards may be used to purchase proprietary or production equipment for the training project of a single employer, such as one-time specialized needs that could not be used by other employers. (Source: [40 TAC § 803.3(d)(2)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=20&ch=803&rl=3) and [40 TAC § 835.3(c)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=20&ch=835&rl=3))
* Workforce Innovation and Opportunity Act (WIOA) Title I funds must not be spent on construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings, except with prior written approval of authorized personnel from the U.S. Department of Labor. (Source: WIOA Regulations, 20 CFR § 683.235)
* Child Care and Development Fund (CCDF) grant funds must not be used for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility. Refer to the CCDF regulations at 45 CFR § 98.56(b) for additional guidance. (Source: Child Care and Development Block Grant Act (CCDBG) § 658F(b) (42 U.S.C. 9858d(b)); 45 CFR § 98.56(b))

Reference: 2 CFR § 200.439 (Uniform Guidance); Appendix 7 to TxGMS; 40 TAC § 803.3(d)(2); 40 TAC § 835.3(c); WIOA regulations at 20 CFR § 683.235; CCDBG §658F(b) and CCDF regulations at 45 CFR § 98.56(b)

### 8.3.22a Exchange Rates

For [federal awards](#federalaward) refer to 2 CFR § 200.440 ([Uniform Guidance](#uniformguidance)). For [state awards](#stateaward) refer to Appendix 7 of [TxGMS](#txgms).

### 8.3.23 Fines and Penalties

Costs resulting from [Grantee](#grantee) violations of, alleged violations of, or failure to comply with, federal, state, local, tribal, or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the grant award, or with prior approval of the [federal awarding agency](#federalawardingagency) (for [federal awards](#federalaward)) or the [state awarding agency](#stateawardingagency) (for [state awards](#stateaward)).

Also refer to [Section 8.3.33 Legal Costs & Costs for Defense and Prosecution Criminal and Civil Proceedings, Claims, Appeals and Patent Infringements](#eight_3_33), in this manual.

Reference: 2 CFR § 200.441 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.24 Fundraising and Investment Management Costs

Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the federal program objectives are allowable with prior written approval from the [federal awarding agency](#federalawardingagency) (for [federal awards](#federalaward)) or [state awarding agency](#stateawardingagency) (for [state awards](#stateaward)). This provision does not prohibit grant writing; refer to [Section 8.3.48 Proposal Costs](#eight_3_48), in this manual.

Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable, except when associated with investments covering pension, self-insurance, or other funds which include federal participation allowed under [Uniform Guidance](#uniformguidance) and [TxGMS](#txgms), as applicable.

Fundraising and investment activities shall be allocated an appropriate share of [indirect costs](#indirectcost).

Costs related to the physical custody and control of monies and securities are allowable.

For more information refer to the cited references at the end of this Section 8.3.24.

Reference: 2 CFR § 200.442 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.25 Gains and Losses on Disposition of Depreciable Assets

Except as specified, gains and losses on the disposition of property are allowable when treated consistently with the certain requirements.

For more information refer to the cited references at the end of this Section 8.3.25.

Reference: 2 CFR § 200.443 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.26 General Costs of Government

Except as provided for travel costs, the costs of government, including accounting and budgeting costs associated with general government functions, are unallowable.

For more information refer to the cited references at the end of this Section 8.3.26.

Reference: 2 CFR § 200.444 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.27 Goods or Services for Personal Use

Costs of goods or services for personal use by a [Grantee’s](#grantee) employees are unallowable regardless of whether the cost is reported as taxable income to the employees. Also refer to [Section 8.3.28 Housing and Personal Living Expenses](#eight_3_28), in this manual.

Reference: 2 CFR § 200.445 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.28 Housing and Personal Living Expenses

Costs of housing (for example, depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as [direct costs](#directcost) regardless of whether the cost is reported as taxable income to the employees. In addition, to be allowable, the direct costs must be approved in advance by the [federal awarding agency](#federalawardingagency) (for [federal awards](#federalaward)) or [state awarding agency](#stateawardingagency) (for [state awards](#stateaward)).

Reference: 2 CFR § 200.445 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.29 Idle Facilities and Idle Capacity

The cost of [idle facilities](#idlefacilities) are unallowable except to the extent specifically provided. The cost of [idle capacity](#idlecapacity) is allowable when it exists under the specified circumstances.

For more information refer to the cited references at the end of this Section 8.3.29.

Reference: 2 CFR § 200.446 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.30 Insurance and Indemnification

Costs of insurance required or approved and maintained pursuant to the [federal award](#federalaward) or [state award](#stateaward) are allowable, respectively. Costs of other insurance in connection with the general conduct of activities are allowable subject to certain limitations.

For more information refer to the cited references at the end of this Section 8.3.30. Also refer to [Section 3.2 Other Insurance Requirements](#three_two), in this manual.

Reference: 2 CFR § 200.447 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.30a Intellectual Property

For [federal awards](#federalaward) refer to 2 CFR § 200.448 ([Uniform Guidance](#uniformguidance)). For [state awards](#stateaward) refer to Appendix 7 to [TxGMS](#txgms).

### 8.3.31 Interest

Costs incurred for interest on borrowed capital, use of the [Grantee’s](#grantee) own funds, or temporary use of endowment funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace [capital assets](#capitalassets) are allowable subject to specified conditions.

For more information refer to the cited references at the end of this Section 8.3.31. Also refer to [Section 8.3.22 Equipment, Buildings, and Other Capital Expenditures](#eight_3_22), in this manual

Reference: 2 CFR § 200.449 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.32 [Reserved]

This section is reserved.

### 8.3.33 Legal Costs & Costs for Defense and Prosecution of Criminal and Civil Proceedings, Claims, Appeals and Patent Infringements

Legal expenses required in the administration of federal or state programs are allowable subject to the limitations covered by this Section 8.3.33 and [Section 8.3.47 Professional Services Costs](#eight_3_47), in this manual.

For [state awards](#stateaward), unless authorized in advance by the [state awarding agency](#stateawardingagency), costs incurred in connection with any criminal, civil or administrative proceeding are not allowable.

For [federal awards](#federalaward), the following applies. Except as otherwise described in [Uniform Guidance](#uniformguidance), costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the federal government, a state, local government, or foreign government, or joined by the federal government (including a proceeding under the False Claims Act), against the Grantee, (or commenced by third parties or a current or former employee of the Grantee who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 2409 or 41 U.S.C. 4712), are not allowable if the proceeding:

* Relates to a violation of, or failure to comply with, a federal, state, local or foreign statute, regulation or the terms and conditions of the grant award, by the [Grantee](#grantee) (including its agents and employees); and
* Results in any of the following dispositions:
  + In a criminal proceeding, a conviction.
  + In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of Grantee liability.
  + In the case of any civil or administrative proceeding, the disallowance of costs or the imposition of a monetary penalty, or an order issued by the [federal awarding agency](#federalawardingagency) head or delegate to the Grantee to take corrective action under [10 U.S.C. 2409](https://www.govinfo.gov/link/uscode/10/2409) or [41 U.S.C. 4712](https://www.govinfo.gov/link/uscode/41/4712).
  + A final decision by an appropriate federal official to debar or suspend the Grantee, to rescind or void a federal award, or to terminate a federal award by reason of a violation or failure to comply with a statute, regulation, or the terms and conditions of the federal award.
  + A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in the four immediately preceding sub-bullets.

Refer to Uniform Guidance for additional conditions.

Additionally, the following applies to federal awards pursuant to Uniform Guidance:

* Costs incurred by the Grantee in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 ([18 U.S.C. 1031](https://www.govinfo.gov/link/uscode/18/1031)), including the cost of all relief necessary to make such employee whole, where the Grantee was found liable or settled, are unallowable.
* Costs of prosecution of claims against the federal government, including appeals of final federal agency decisions, are unallowable.
* Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the federal award.

Costs which may be unallowable under the referenced section of Uniform Guidance, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered above, the federal government must generally withhold payment of such costs. However, if in its best interests, the federal government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

Reference: 2 CFR § 200.435 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.34 Lobbying

The content in this Section 8.3.34 summarizes [TxGMS](#txgms) provisions for [state awards](#stateaward), [Uniform Guidance](#uniformguidance) provisions for [federal awards](#federalaward), and selected state law. Refer to “General” in this Section for additional requirements that may apply.

#### General

Costs associated with prohibited lobbying activities are unallowable. In addition to this Section 8.3.34, refer to program requirements, grant terms, and related Agency issuances for requirements and description of prohibited lobbying activities.

#### State Awards

For state awards to local governments, TxGMS states, “Lobbying is defined by relevant state law,” and “The costs associated with prohibited lobbying activities are unallowable.” For local governments, it also emphasizes need to separately identify lobbying costs in the local government’s indirect cost rate proposal and to thereafter treat the cos as other unallowable activity costs. For this purpose, “local government” has the meaning defined in Appendix 2 to TxGMS.

Refer to “General” in this Section for additional requirements that may apply.

#### Federal Awards

The following summarizes Uniform Guidance provisions for federal awards.

The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by relevant statutes including, among others, the provisions of 31 U.S.C. 1352), as well as the common rule “New Restrictions on Lobbying,” published February 26, 1990, including definitions, and the Office of Management and Budget “Governmentwide Guidance for New Restrictions on Lobbying” and notices published on December 20, 1989, June 15, 1990, January 15, 1992, and January 19, 1996.

For more information refer to the cited Uniform Guidance reference at the end of this Section 8.3.34.

#### Selected State Law

The lobbying provisions and prohibitions in Chapter 556, Texas Government Code apply to the following entities which are included in the definition of a “state agency” for purposes of that chapter:

* a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Texas Local Government Code;
* a local workforce development board ([Board](#board)); and
* a community center created under Subchapter A, Chapter 534, Health and Safety Code.

Under Chapter 556, Texas Government Code, a “state agency” shall not use funds appropriated by the legislature through the General Appropriations Act or other law to:

* employ as a regular full-time, part-time or contract employee, a person who is required by Chapter 305, Texas Government Code, to register as a lobbyist;
* use appropriated funds to pay membership dues to an organization that pays part or all of the salary of a person who is required by Chapter 305, Texas Government Code, to register as a lobbyist [refer also to [Section 8.3.39 Memberships, Subscriptions, and Professional Activities](#eight_3_39), in this manual];
* attempt to influence the passage or defeat of a legislative measure; or
* finance or otherwise support the candidacy of a person for an office in the legislative, executive, or judicial branch of state government or the government of the United States. This prohibition includes the direct or indirect employment of a person to support the candidacy of a person for an office in the legislative, executive, or judicial branch of state government or of the government of the United States.

Additionally, under Chapter 556, Texas Government Code, a “state agency” employee or officer, as defined by the chapter, shall not:

* use a state-owned or state-leased motor vehicle to support the candidacy of a person for an office in the legislative, executive, or judicial branch of state government or of the government of the United States;
* use official authority or influence or permit the use of a program administered by the state agency of which the person is an officer or employee to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose; or
* coerce, attempt to coerce, command, restrict, attempt to restrict, or prevent the payment, loan, or contribution of anything of value to a person or political organization for a political purpose. (Note: This provision applies to a “state agency” employee only.)

Reference: 2 CFR § 200.450 (Uniform Guidance); Appendix 7 to TxGMS; Chapter 556, Texas Government Code; WD Letter 06-05 “Restrictions on Lobbying Activities and Expenditures”

### 8.3.35 Losses on Awards or Contracts

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the [Grantee’s](#grantee) contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of flat amounts for [indirect costs](#indirectcost). Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.

Reference: 2 CFR § 200.451 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.36 Maintenance and Repair Costs

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and [equipment](#equipment) are allowable to the extent that they:

* keep the property in an efficient operating condition;
* do not add to the permanent value of the property nor appreciably prolong its intended life; and
* are not paid through rental or other agreements.

Costs that add to the permanent value of property or appreciably prolong its intended life shall be treated as [capital expenditures](#capitalexpenditure). Refer to [Section 8.3.22 Equipment, Buildings, and Other Capital Expenditures](#eight_3_22), in this manual.

Reference: 2 CFR § 200.452 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.37 Materials and Supplies Costs, Including Costs of Computing Devices

Costs incurred for materials, [supplies](#supplies), and fabricated parts necessary to carry out the grant award are allowable.

Purchased materials and supplies must be charged at their actual prices, net of [applicable credits](#applicablecredits) (such as after deducting all cash discounts, trade discounts, rebates, and allowances received). Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a property part of materials and supply costs.

Materials and supplies used for the performance of the grant award may be charged as [direct costs](#directcost). In the specific case of [computing devices](#computingdevice), charging as direct costs is allowable for devices that are essential and [allocable](#allocable), but not solely dedicated, to the performance of the grant award.

Where federally-donated or furnished materials are used in performing the [federal award](#federalaward), such materials will be used without charge to the federal award. Similarly, where state-donated or furnished materials are used in performing the [state award](#stateaward), such materials will be used without charge to the state award.

Reference: 2 CFR § 200.453 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.38 Meetings and Conferences

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the Grantee and is necessary and reasonable for successful performance under the grant award.

Allowable conference costs paid by the [Grantee](#grantee) as a sponsor or host of the conference may include costs of meals and refreshments, local transportation, rental of facilities, speakers’ fees and other items incidental to such conferences unless further restricted by the terms and conditions of the grant award. (See Note.)

As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable.

Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the grant award.

For [federal awards](#federalaward), the [federal awarding agency](#federalawardingagency) may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. For [state awards](#stateaward), the [state awarding agency](#stateawardingagency) may authorize such exceptions.

Refer also to [Section 8.3.21, Entertainment Costs](#eight_3_21), [Section 8.3.43, Participant Support Costs](#eight_3_43), and [Section 8.3.65 Travel Costs](#eight_3_65), in this manual.

Note: TWC notes that, as with all costs, conference costs must meet the general allowability conditions of being necessary and [reasonable](#reasonable) for performance of the grant award. These conditions are covered by [Section 8.1 General Allowability Criteria](#eight_one), in this manual. For example, use of grant funds to provide meals and refreshments to attendees solely as a courtesy to those attendees would generally not meet those conditions.

Reference: 2 CFR § 200.432 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.39 Memberships, Subscriptions, and Professional Activity Costs

The content in this Section 8.3.39 summarizes [TxGMS](#txgms) provisions for [state awards](#stateaward), [Uniform Guidance](#uniformguidance) provisions for [federal awards](#federalaward), and selected state law.

#### General

The following apply under Uniform Guidance and TxGMS:

* Costs of the [Grantee’s](#grantee) membership in business, technical, and professional organizations are allowable.
* Costs of the Grantee’s subscriptions to business, technical and professional periodicals are allowable.
* Costs of membership in any civic or community organizations are allowable with prior approval. For federal awards the approval must be obtained from the [federal awarding agency](#federalawardingagency). For state awards, the approval must be obtained from the [state awarding agency](#stateawardingagency). Submit prior approval requests to the TWC grant manager.
* Costs of membership in any country club, or social or dining club or organization are unallowable.
* Costs of membership in organizations whose primary purpose is lobbying are unallowable. Refer also to [Section 8.3.34 Lobbying](#eight_3_34), in this manual.

#### Selected State Law

The lobbying provisions and prohibitions in Chapter 556, Texas Government Code apply to the following entities which are included in the definition of a “state agency” for purposes of that chapter:

* a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Texas Local Government Code;
* a local workforce development board ([Board](#board)); and
* a community center created under Subchapter A, Chapter 534, Texas Health and Safety Code.

Under Chapter 556, Texas Government Code, a “state agency” shall not use funds appropriated by the legislature, through the General Appropriations Act or other law, to pay membership dues to an organization that pays part or all of the salary of a person who is required by Chapter 305 of the Texas Government Code to register as a lobbyist.

Before incurring expenditures for membership dues of any type, steps should be taken to ensure the organization to which the dues will be paid, does not have lobbyists registered with the Texas Ethics Commission. Lobbyists and lobby organizations are required to publicly disclose and regularly identify expenditures and activities with the Texas Ethics Commission. Therefore, the [Agency](#agency) recommends that the Grantee search the list of registered lobbyists on the [Texas Ethics Commission website](https://www.ethics.state.tx.us/) and print the screen that displays the result of such a search.

In addition, the Agency recommends that Boards obtain a written certification from the organization regarding the use of the membership dues when using state-appropriated funds to purchase or renew a membership. Boards shall retain a copy of the certification and provide it upon request by the Agency, the office of the Texas Comptroller of Public Accounts, or other appropriate authority.

Reference: 2 CFR § 200.454 (Uniform Guidance); Appendix 7 to TxGMS; WD Letter 06-05; Texas Government Code § 556.005

### 8.3.40 [Reserved]

This section is reserved.

### 8.3.41 Organization Costs

Costs such as incorporation fees, brokers’ fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the [Grantee](#grantee), in connection with the establishment or reorganization of an organization, are unallowable except with prior approval. For [federal awards](#federalaward) the approval must be obtained from the [federal awarding agency](#federalawardingagency). For [state awards](#stateaward), the approval must be obtained from the [state awarding agency](#stateawardingagency). Submit prior approval requests to the TWC grant manager.

Reference: 2 CFR § 200.455 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.42 Page Charges

Refer to [Section 8.3.49 Publication and Printing Costs](#eight_3_49), in this manual.

### 8.3.43 Participant Support Costs

[Participant support costs](#participantsupportcosts) are [direct costs](#directcost) for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. These costs are allowable with the prior approval. For [federal awards](#federalaward) the approval must be obtained from the [federal awarding agency](#federalawardingagency). For [state awards](#stateaward), the approval must be obtained from the [state awarding agency](#stateawardingagency). Submit prior approval requests to the TWC grant manager.

Reference: 2 CFR § 200.456 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.44 Patent Costs

Refer to [Section 8.3.30a Intellectual Property](#eight_3_30a), in this manual.

### 8.3.45 Plant and Security Costs

Necessary and [reasonable](#reasonable) expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; [equipment](#equipment); barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. [Capital expenditures](#capitalexpenditure) for plant security purposes are subject to the requirements covered in [Section 8.3.22 Equipment, Buildings, and Other Capital Expenditures](#eight_3_22), in this manual. For costs of consultants, also refer to [Section 8.3.47 Professional Service Costs](#eight_3_47), in this manual.

Reference: 2 CFR § 200.457 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.46 Pre-award Costs

[Pre-award costs](#preawardcosts) are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

Note: TWC generally does not authorize pre-award costs under [TWC grant awards](#twcgrantaward). Contact the TWC grant manager if further discussion is needed.

Reference: 2 CFR § 200.458 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.47 Professional Service Costs

Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the [Grantee](#grantee), are allowable subject to certain conditions. For additional information refer to the cited references at the end of this Section 8.3.47. Also refer to Section J.1 Consulting, Professional & Legal Services, in the FMGC Supplement on Procurement in [Attachment D](#app_d) of this manual.

In addition, legal and related services are limited under the cost principles covered in [Section 8.3.33 Legal Costs & Defense and Prosecution of Criminal and Civil Proceedings, Claims, Appeals and Patent Infringements](#eight_3_33), in this manual.

Reference: 2 CFR § 200.459 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.48 Proposal Costs

Proposal costs are the costs of preparing bids, proposals, or applications on potential awards or projects (federal, state, or other sources), including the development of data necessary to support the [Grantee’s](#grantee) bids or proposals. (Note: Texas Government Code § 2308.266, a state statute, expressly permits [Boards](#board) to “solicit additional funds from other public and private sources.” The prohibition against fundraising in [Section 8.3.24 Fundraising and Investment Management Costs](#eight_3_24), in this manual, does not prohibit a Board from writing grant applications.)

Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as [indirect costs](#indirectcost) and be allocated currently to all activities of the Grantee. No proposal costs of past accounting periods will be [allocable](#allocable) to the current period.

Reference: 2 CFR § 200.460 (Uniform Guidance); Appendix 7 to TxGMS; Texas Government Code § 2308.266

### 8.3.49 Publication and Printing Costs

Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular cost objective, they should be allocated as [indirect costs](#indirectcost) to all benefiting activities of the Grantee.

Page charges for professional journal publications are allowable where:

* The publications report work supported by the federal government (for [federal awards](#federalaward)) or state government (for [state awards](#stateaward)); and
* The charges are levied impartially on all items published by the journal, whether or not under a federal or state award.

Relating to page charges, the Grantee may charge the grant award during closeout for the costs of publication or sharing of research results if the costs are not incurred during the [period of performance](#periodofperformance) of the grant award. If charged to the award, these costs must be charged to the final [budget period](#budgetperiod) of the award, unless otherwise specified by the [federal awarding agency](#federalawardingagency) (for federal awards) or [state awarding agency](#stateawardingagency) (for state awards).

Reference: 2 CFR § 200.461 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.50 Rearrangements and Alterations

Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable as [indirect costs](#indirectcost).

Special arrangements and alterations costs incurred specifically for a grant award are allowable as a [direct cost](#directcost) with prior approval. Prior approval is to be requested using TWC Form 7100. (Form 7100 is available on the Agency’s website.) For some [federal awards](#federalaward), TWC may be required to obtain prior concurrence from the respective [federal awarding agency](#federalawardingagency) before TWC can approve the request.

Reference: 2 CFR § 200.462(a) (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.51 Reconversion Costs

Costs incurred in the restoration or rehabilitation of the [Grantee’s](#grantee) facilities to approximately the same condition existing immediately prior to commencement of the [federal award](#federalaward) or [state award](#stateaward), respectively, less costs related to normal wear and tear, are allowable.

Reference: 2 CFR § 200.462(b) (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.52 Recruiting Costs

Recruiting costs are allowable to the extent that such costs are incurred pursuant to the [Grantee’s](#grantee) standard recruitment program, and in accordance with certain conditions. Where the Grantee uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

For more information refer to the cited references at the end of this Section 8.3.52.

Reference: 2 CFR § 200.463 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.53 Relocation Costs

Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than twelve (12) months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to certain limitations.

For more information refer to the cited references at the end of this Section 8.3.53.

Reference: 2 CFR § 200.464 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.54 Rental Costs of [Real Property](#realproperty) and [Equipment](#equipment)

Subject to certain limitations, rental costs are allowable to the extent that the rates are [reasonable](#reasonable) in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased. Rental agreements should be reviewed periodically to determine if circumstances have changed and other options are available.

For more information refer to the cited references at the end of this Section 8.3.54. Also refer to [Chapter 13 Property](#thirteen_toc), in this manual, especially relating to prior approval for certain leases.

Reference: 2 CFR § 200.465 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.55 Royalties and Other Costs for Use of Patents and Copyrights

Refer to [Section 8.3.30a Intellectual Property](#eight_3_30a), in this manual.

### 8.3.56 Scholarships and Student Aid Costs

Costs of scholarships, fellowships, and other programs of student aid at [institutions of higher education](#institutionsofhighereducation) are allowable only when the purpose of the respective [federal award](#federalaward) or [state award](#stateaward) is to provide training to selected participants and the charge is approved by the [federal awarding agency](#federalawardingagency) (for federal awards) or [state awarding agency](#stateawardingagency) (for state awards). However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable, subject to certain conditions.

For more information refer to the cited references at the end of this Section 8.3.56.

Reference: 2 CFR § 200.466 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.57 [Reserved]

This section is reserved.

### 8.3.58 Selling and Marketing

Costs of selling and marketing any products or services of the [Grantee](#grantee) (unless allowed under the cost principles covered in [Section 8.3.2 Advertising and Public Relations Costs](#eight_3_2), in this manual) are unallowable, except as [direct costs](#directcost), with prior approval of the [federal awarding agency](#federalawardingagency) (for [federal awards](#federalaward)) or [state awarding agency](#stateawardingagency) (for [state awards](#stateaward)) when necessary for performance of the award. Submit prior approval requests to the TWC grant manager.

Reference: 2 CFR § 200.467 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.59 Specialized Service Facilities

The costs of services provided by highly complex or specialized facilities operated by the [Grantee](#grantee), such as computing facilities, wind tunnels, and reactors, are allowable, subject to certain conditions.

For more information refer to the cited references at the end of this Section 8.3.59.

Reference: 2 CFR § 200.468 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.60 Student Activity Costs

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the respective [federal award](#federalaward) or [state award](#stateaward).

Reference 2 CFR § 200.469 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.61 Taxes

Taxes that an organization is legally required to pay are allowable, subject to certain limitations.

For more information refer to the cited references at the end of this Section 8.3.61.

Reference: 2 CFR § 200.470; Appendix 7 to TxGMS

### 8.3.61a Telecommunication and Video Surveillance Costs

For [federal awards](#federalaward), refer to 2 CFR § 200.471 (Uniform Guidance) and Section P.2a Prohibition on Certain Telecommunications and Video Surveillance Services and Equipment, in the FMGC Supplement on Procurement, in [Attachment D](#app_d) of this manual.

### 8.3.62 Termination Costs

[Termination](#termination) of a grant award generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the award not been terminated. Cost principles covering these items are set forth in the [Uniform Guidance](#uniformguidance) and [TxGMS](#txgms) citations at the end of this Section 8.3.62. They are to be used in conjunction with the other provisions of Uniform Guidance and TxGMS, as applicable, in termination situations.

Such costs may or may not be allowable as follows:

* The cost of items that are reasonably usable on other work of the [Grantee](#grantee) are unallowable, unless the Grantee submits evidence that it would not retain such items at cost without sustaining a loss as described in the Uniform Guidance and TxGMS (as applicable);
* Costs that cannot be discontinued immediately after the effective date of termination, despite all [reasonable](#reasonable) efforts, are generally allowable within the limitations ofUniform Guidance or TxGMS (as applicable), except that any such costs continuing after termination due to the neglect or willful failure of the Grantee to discontinue such costs are unallowable;
* Costs continuing after termination due to the negligent or willful failure of the organization to discontinue such costs are unallowable;
* Loss of useful value of special tooling, machinery and equipment is generally allowable if it meets the respective conditions of the Uniform Guidance and TxGMS, as applicable.
* Rental costs under unexpired leases are generally allowable subject to conditions discussed in theUniform Guidance and TxGMS, as applicable;
* Settlement expenses, such as those described in the Uniform Guidance and TxGMS (as applicable) are generally allowable; and
* [Claims](#claim) under subgrants, including the [allocable](#allocable) portion of claims which are common to the award, and to other work of the Grantee are generally allowable. An appropriate share of the Grantee’s [indirect costs](#indirectcost) may be allocated to the amount of settlements with [contractors](#contractor) and/or [subgrantees (subrecipients)](#subgrantee), provided that the amount allocated is otherwise consistent with the basic guidelines contained in 2 CFR § 200.414 (for [federal awards](#federalaward)) and “Indirect Costs” in TxGMS (for [state awards](#stateaward)), as applicable. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

For more information refer to the cited references at the end of this section 8.3.62.

Reference: 2 CFR § 200.472 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.63 Training and Education Costs

The cost of training and education provided for employee development is allowable.

Note: Skills Development Fund grant funds may not be used to pay the training costs and related costs of an employer who relocates the employer’s worksite from one place in Texas to another. ([40 TAC § 803.3(d)(1)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=20&ch=803&rl=3))

Reference: 2 CFR § 200.473 (Uniform Guidance); Appendix 7 to TxGMS; 40 TAC § 803.3(d)(1)

### 8.3.64 Transportation Costs

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the item involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot be readily made, inbound transportation cost may be charged to the appropriate [indirect cost](#indirectcost) accounts if the [Grantee](#grantee) follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the grant award, should be treated as a [direct cost](#directcost).

Reference: 2 CFR § 200.474 (Uniform Guidance); Appendix 7 to TxGMS

### 8.3.65 Travel Costs

Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees traveling on official business subject to certain provisions.

For more information refer to the cited [Uniform Guidance](#uniformguidance) and [TxGMS](#txgms) references at the end of this Section 8.3.65. Refer also to [Chapter 9 Travel](#nine_toc), in this manual.

Note: [Boards](#board) are also generally subject to the state travel regulations in the current General Appropriations Act and Texas Government Code, Chapter 660. Accordingly, Textravel, which is published by the Texas Comptroller of Public Accounts also generally applies. For more information, refer to Chapter 9 Travel, in this manual.

Note: Skills Development funds may not be used to pay for trainee or instructor travel costs or trainee drug tests. ([40 TAC § 803.3(d)(4)](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=20&ch=803&rl=3))

Reference: 2 CFR § 200.475 (Uniform Guidance); Appendix 7 to TxGMS; 40 TAC § 803.3(d)(4)

### 8.3.66 Trustees

For [federal awards](#federalaward), the [Uniform Guidance](#uniformguidance) establishes that travel and subsistence costs of trustees (or directors) at [institutions of higher education](#institutionsofhighereducation) and [non-profit organizations](#nonprofit) are allowable. The costs are subject to restrictions regarding lodging, subsistence, and air travel costs for Travel. (Refer also to [Section 8.3.65 Travel Costs](#eight_3_65), in this manual).

For [state awards](#stateaward), [TxGMS](#txgms) establishes that such costs are not allowable unless authorized by state law.

Reference: 2 CFR § 200.476 (Uniform Guidance); Appendix 7 to TxGMS

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# Chapter 9 Travel

This chapter summarizes the applicable travel requirements for [TWC grant awards](#twcgrantaward). This chapter is organized as follows:

9.1 General Travel Requirements

Record retention and access requirements are provided in [Appendix K](#app_k) to this manual. All financial and programmatic records, supporting documents, statistical records, and other records pertaining to an award of federal or state funds must be retained and made available to authorized entities or their representatives in accordance with applicable administrative requirements.

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Link to Policy Statements

## 9.1 General Travel Requirements

**Policy:**

**Grantees must comply with applicable travel requirements when using TWC grant funds to pay travel expenses.**

This section summarizes applicable travel requirements for [Grantees](#grantee), to the extent that they use [TWC grant awards](#twcgrantaward) to pay the expenses.

### Cost Principles for Travel Costs

All Grantees are subject to the cost principles for travel costs that are set forth in 2 CFR § 200.475 of the [Uniform Guidance](#uniformguidance) and Appendix 7 of [TxGMS](#txgms), as applicable. These requirements are also referenced in [Section 8.3.65 Travel Costs](#eight_3_65), in this manual.

### Grant Award Provisions

In addition to the cost principles for travel costs, all Grantees must follow any additional limitations that apply under their respective TWC grant awards when using grant funds to pay travel expenses.

### State Travel Regulations

State law requires some entities to follow state travel regulations when using state appropriated funds to pay travel costs for their employees. In those cases, state travel regulations apply to the extent that those requirements do not conflict with the cost principles set forth in Uniform Guidance and TxGMS, as applicable. All TWC grant awards are financed with state appropriated funds.

#### Units of Local Government (Includes Boards)

Article IX, Section 4.04 of the state General Appropriations Act (GAA) as passed by the 87th Texas Legislature, continues to require that funds appropriated by the GAA must not be expended in the form of a grant to, or a contract with, a “unit of local government” unless the terms of the grant or contract require that the funds received under the grant or contract will be expended subject to certain limitations, including compliance with travel limitations similar to those set forth in Article IX, Part 5 of the GAA. TWC includes that requirement in TWC grant awards by inclusion of reference to this manual and other [Agency](#agency) issuances.

For that purpose, the GAA defines a “unit of local government” to mean:

* a council of governments, a regional planning commission, or a similar regional planning agency created under Chapter 391, Texas Local Government Code;
* a local workforce development board ([Board](#board)); or
* a community center as defined by Texas Health and Safety Code, § 534.001(b).

For this purpose, TWC uses the phrase “state travel regulations” to mean the travel requirements set forth in:

* Article IX, Part 5 of the GAA for the applicable state biennium;
* Texas Government Code, Chapter 660;
* Textravel, as published on the Texas Comptroller’s website; and
* Any other state travel requirement that ordinarily applies to the “unit of local government” with respect to its use of state appropriated funds for travel expenses.

To the extent that these entities use TWC grant funds to pay for the travel expenses of their employees, they will comply with state travel regulations, excluding those regulations that are impracticable to apply. Examples of state travel regulations that might be impracticable for some entities to apply include those that involve direct interaction with the Texas Comptroller of Public Accounts (CPA) (such as regulations that call for submission of travel vouchers and forms to CPA, obtaining prior CPA approval for certain travel transactions, and participation in CPA post-payment audits), regulations that require the use of state travel contracts (which do not apply unless the entity is otherwise authorized or required by state law to use those contracts), and similar regulations.

#### Units of State Government (Includes Institutions of Higher Education)

Article IX, Part 5 of the GAA, as passed by the 87th Texas Legislature, continues to apply state travel regulations to entities that fall within the definition of “state agency” at Texas Government Code, § 660.002(19), to the extent that those entities use funds appropriated under the GAA (state appropriated funds) to pay travel expenses of their employees. Under Texas Government Code, § 660.002(19), the definition of “state agency” includes a unit of state government that uses appropriated funds to pay or reimburse a travel expense of a state employee. Texas Government Code § 660.002(22) defines a “unit of state government” to include an institution of higher education as defined by Texas Education Code § 61.003.

For those entities, Article IX, Section 5.02 of the GAA requires compliance with the travel conditions and limitations in:

* the GAA;
* Texas Government Code, Chapter 660; and
* the CPA’s Rules on travel.

The CPA publishes Textravel as a guide for applying these requirements. Textravel is available on the Texas Comptroller’s website.

When an [institution of higher education](#institutionsofhighereducation) receives a TWC grant award, TWC may monitor that entity’s compliance with state travel regulations with respect to travel expenses that the institution charges to the TWC grant award for the travel of its employees.

### Travel Requirements for Subgrantees (Subrecipients)

Grantees must require any [subgrantees (subrecipients)](#subgrantee) existing under the TWC grant award to comply with the cost principles for travel costs and with any grant award provisions that flow down to subgrants.

Grantees that are subject to “state travel regulations” described in this Section 9.1 are not necessarily required to impose those same requirements to their subgrantees. Those subgrantees would not be required to follow state travel regulations unless specifically required by:

* State law
* The TWC grant award
* The Grantee, or
* The subgrantee’s own travel policy.

Otherwise, those subgrantees must adhere to the cost principles for travel costs and with any TWC grant award provisions that otherwise flow down to subgrants.

### Travel Requirements for Contractors

Unless specified otherwise, the cost principles for travel costs, TWC grant award provisions, and state travel regulations do not flow down to contractors (vendors). This does not preclude TWC from including terms in a TWC grant award, or a Grantee from including terms in a contract that require contractors to adhere to state travel rates or other specific travel requirements.

**Reference:**

OMB Uniform Guidance: 2 CFR § 200.475

TxGMS: Appendix 7

State General Appropriations Act, 87th Texas Legislature, Regular Session, Article IX, Section 4.04 and Part 5

Texas Government Code, Chapter 660

TexTravel

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# Chapter 10 Personnel

This chapter summarizes the applicable federal, state and agency requirements governing personnel issues. In the event of conflict between these standards and federal statute or regulation, federal statute or regulation will apply. This chapter is organized as follows:

[1](#ten_one)[0](#ten_one)[.](#ten_one)[1 Personnel Policies](#ten_one)

[10.2 Personnel Compensation](#ten_two)

[10.3 State Classification Salary Schedule](#ten_three)

Record retention and access requirements are provided in [Appendix K](#app_k) to this manual. All financial and programmatic records, supporting documents, statistical records, and other records pertaining to an award of federal or state funds must be retained and made available to authorized entities or their representatives in accordance with applicable administrative requirements.

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## 10.1 Personnel Policies

Policy:

Written personnel policies and procedures must be developed, maintained and distributed to each employee.

This section addresses general personnel policy and procedures requirements. It also includes a program specific requirement.

### General Personnel Policy & Procedures Requirements

The Grantee’s written policies and procedures must describe the following:

* measures to ensure the physical security of personnel records relevant to this chapter;
* methodology utilized to ensure compliance with policies relating to conflicts of interest (see [Chapter 14 Procurement, in this manual)](#fourteen_toc);
* measures to ensure compliance with applicable workplace laws and regulations, including, but not limited to:
  + the Drug-Free Workplace Act of 1988,
  + the Fair Labor Standards Act,
  + the Family Medical Leave Act,
  + the Americans with Disabilities Act, and
  + other Equal Employment Opportunity laws;
* employment benefits of the organization;
* personnel actions of the organization, relevant to [Section 10.3 State Classification Salary Schedule](#ten_three), in this chapter; and
* complaint and grievance procedures of the organization.

In addition, the Grantee’s written policies and procedures must provide the following as it pertains to personnel compensation:

* payrolls shall be reviewed for accuracy and validity, and are signed by the reviewer;
* appropriate approval authority is exercised as outlined in an established approval process;
* payroll registers be reconciled to independent controls (such as totals to the prior month’s totals);
* fringe benefit charges are supported by an approved system or plan;
* all staff and participants be paid only by check or direct deposit;
* preparation of the payroll is separate from and independent of delivery of the paychecks;
* distribution of paychecks shall be performed by persons not involved with timekeeping or bank reconciliation; and
* removal of a terminated employee from the payroll system shall be performed by persons not involved in the processing of payroll.

### Program Specific Consideration

Workforce Innovation and Opportunity Act (WIOA). As provided in WIOA Regulations at 20 CFR § 683.200(g), no individual may be placed in a WIOA employment activity if a member of that person’s immediate family is directly supervised by or directly supervises that individual. The regulation further requires that to the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such State or local requirement must be followed.

Reference:

Drug-Free Workplace Act (Public Law 100-690, Subtitle D codified at 41 U.S.C. §§ 701-707)

Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et. seq.)

The Family and Medical Leave Act of 1993, Public Law 103-3

Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. 2000e et seq.

Age Discrimination, 29 U.S.C. 621 and 626

Rehabilitation Act of 1973, codified at 29 U.S.C. 701 et seq.

Americans with Disabilities Act of 1990, Public Law 101-336

WIOA Regulations: 20 CFR § 683.200(g)

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## 10.2 Personnel Compensation

Policy:

Charges to TWC grant awards for salaries and wages must be based on records that accurately reflect the work performed. The records must meet the standards for documentation of personnel expenses as set forth in the Uniform Guidance and Texas Grant Management Standards, as applicable.

Payrolls must be based on records that accurately reflect the work performed. The records must meet the standards for documentation of personnel expenses as set forth in 2 CFR § 200.430(i) of the [Uniform Guidance](#uniformguidance) (for [federal awards](#federalaward)) and paragraph (i) of “Compensation—Personal Services” in Appendix 7 of [TxGMS](#txgms) (for [state awards](#stateaward)).

Refer also to [Section 10.3 State Classification Salary Schedule](#ten_three), in this manual, regarding state salary classification, and [Section 8.3.13 Compensation—Personnel Services](#_8.3.13_Compensation_for), in this manual, regarding the allowability of compensation. Also refer to [Section 8.3.13a Compensation—Fringe Benefits](#eight_3_13a), in this manual.

Reference:

OMB Uniform Guidance: 2 CFR § 200.430

TxGMS: Appendix 7

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## 10.3 State Classification Salary Schedule

Policy:

Salary expenditures of a council of governments, regional planning commission, or similar regional planning agency; local workforce development board; or community center that receives funds from the Texas Workforce Commission must conform to state salary classification requirements.

A council of governments, regional planning commission (or similar regional planning agency created under Texas Local Government Code, Chapter 391), local workforce development board ([Board](#board)), or community center (as defined by Texas Health and Safety Code, § 534.001(b)) that receives a grant or a contract directly from the Texas Workforce Commission must comply with the state salary classification requirements set forth in the current General Appropriations Act (Act). The provisions do not apply to these entities’ [subgrantees (subrecipients)](#subgrantee).

Affected entities must, at a minimum, develop a schedule of positions, job titles, and salaries identifying the corresponding state position job title and salary for each position, or it may formally adopt the state salary schedule. The state positions and salaries are set forth in the “Classified Positions” and “Salary Schedules” of the Act. The schedules published by the Act are applicable for the period covered by the Act.

In the event that a [Grantee](#grantee) formally adopts the state salary schedule, it should list the positions, job titles, and salaries in use. The information should be provided for all salaried positions, including those not directly paid with grant funds. The Grantee must submit its Salary Classification Schedule to the [Agency](#agency) as part of the grant application process. For Boards, the schedule is submitted along with its Board-approved operating budget that is described in [Section 6.2 Budget Submission Requirements](#six_two), in this manual.

In complying with the classification requirements, the salary for a given position classification shall not exceed the maximum salary for that classification for the applicable biennium. Employees working less than full-time (75 percent, 50 percent, 25 percent) are to be paid a proportionate amount of their monthly salary identical to the percent of time worked.

Reference:

General Appropriations Act, Article IX, Section 4.04, 87th Texas Legislature, Regular Session

Guidance Memorandum Relating to Article IX, Section 33, of the General Appropriations Act by the Governor’s Office of Budget and Planning, February 1998

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# Chapter 11 Cost Allocation

Depending on organization and function, an entity may use a cost allocation plan, indirect cost rate, or both to identify and assign [indirect costs](#indirectcost) to benefiting cost objectives. This chapter compiles the federal, state and agency requirements that apply to cost allocation plans. In the event of conflict between these standards and federal statute or regulation, the federal statute or regulation will apply. The chapter is organized as follows:

[1](#eleven_one)[1](#eleven_one)[.1 Cost Allocation Plan](#eleven_one)

[1](#eleven_two)[1](#eleven_two)[.2 Allocation Methodology](#eleven_two)

[11.3 Cost Pools](#eleven_three)

[11.4 Allocation (Distribution) Bases](#eleven_four)

[1](#eleven_five)[1](#eleven_five)[,5 Adjustments](#eleven_five)

[1](#eleven_six)[1](#eleven_six)[.6 [Reserved]](#eleven_six)

Requirements pertaining to indirect cost rates are addressed in [Chapter 12](#twelve_toc) of this manual while underlying cost principles for the general allowability and treatment of costs (as direct or indirect) are discussed in [Chapter 8](#eight_toc) of this manual.

Record retention and access requirements that apply to cost allocation plans are provided in [Appendix K](#app_k) to this manual. All financial and programmatic records, supporting documents, statistical records, and other records pertaining to an award of federal or state funds must be retained and made available to authorized entities or their representatives in accordance with applicable administrative requirements.

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## 11.1 Cost Allocation Plan

Policy:

The cost allocation plan must be adequately documented and must include all costs that will be claimed as allocated costs under federal or state awards.

The cost allocation plan must include all costs that will be claimed as an allocated cost under a [federal award](#federalaward) or [state award](#stateaward). This includes both allocated and billed costs as described in the paragraphs below. Costs that are omitted from the cost allocation plan will not be reimbursed. Documentation requirements are discussed in the remainder of this section.

Note: The content that follows is based on Appendix V to 2 CFR Part 200 State/Local Governmentwide Central Service Cost Allocation Plans. Refer to Appendix VI to 2 CFR Part 200 for information about Public Assistance Cost Allocation Plans.

### Plan Documentation

As provided in applicable cost principles, “All costs and other data used to distribute the costs in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to federal [or state] awards.” Thus, the cost allocation plan must be adequately documented. Documentation requirements are provided below, and include both general information that is required for all cost allocation plans, as well as, more specific information that is required to support allocated and billed costs.

#### General

The following types of information must accompany all cost allocation plans:

* An organization chart that is sufficiently detailed to show operations including the activities of the organization whether or not they are shown as benefiting from those functions being allocated;
* A copy of the organization’s financial statements for the period covered by the costs (such as a comprehensive annual financial report, where applicable), or a copy of the approved budget if the plan covers budgeted costs. The financial statements are required to support the allowable costs of each activity included in the plan; and
* A certification that the plan 1) was prepared in accordance with the applicable cost principles, 2) contains only allowable costs, and 3) was prepared in a manner that treated similar costs consistently among the various federal or state awards and between federal and other non-federal awards/activities. The certification is discussed further under Certification in this Section 11.1.

If the cost allocation plan is one that must be approved by a federal or state agency, documentation of the approval must also be maintained. Submission and approval requirements are discussed later in this section.

#### Allocated Costs

Certain information must be provided for every allocated cost as bulleted below. Allocated costs refer to those that are pooled and distributed to benefiting cost objectives on a reasonable basis. General accounting, personnel administration, and purchasing costs are commonly allocated.

Required documentation:

* brief description of the service;
* identification of the unit rendering the service;
* identification of the operating activities receiving the service;
* items of expense included in the cost of the service;
* method used to distribute the cost of the service to the benefited entity; and
* summary schedule showing the allocation of each service to the specific benefited entity.

#### Billed Costs

Certain information must be provided for every billed cost. Billed costs refer to those that are billed to organizations or programs on an individual fee-for-service or similar basis, such as computer services, transportation services, insurance, and fringe benefits. Billed costs are common with internal service funds, self-insurance funds, and fringe benefits. Required documentation for internal service and self-insurance funds, and fringe benefits follow.

Internal Service Funds:

For each internal service fund or similar activity with an operating budget of $5 million or more, the cost allocation plan must include:

* a brief description of each service;
* a balance sheet for each internal service fund based on individual account contained in the entity’s accounting system;
* a revenue/expense statement, with revenues broken out by source, such as regular billings, interest earned, etc.;
* a listing of all non-operating transfers (as defined by [Generally Accepted Accounting Principles (GAAP)](#generallyacceptedaccountingprinciples)) into and out of the fund;
* a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined;
* a schedule of current rates; and
* a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service as determined under the applicable cost principles, with an explanation of how variances will be handled.

The “revenues” in the required revenue/expense statement that is listed above consists of all revenues generated by the particular service, including unbilled and uncollected amounts. If some users were not billed at the full rate for that class of users, a schedule showing the full imputed revenues associated with these users must be provided. “Expenses” in the revenue/expense statement must be broken out by object cost categories, such as salaries, [supplies](#supplies), etc.

Self-Insurance Funds:

For each self-insurance fund, the cost allocation plan must include:

* the self-insurance fund’s balance sheet;
* a revenue/expense statement that includes a summary of billings and claims paid by entity;
* a listing of all non-operating transfers into and out of the fund;
* the type(s) of risk(s) covered by the fund, such as automobile liability, workers’ compensation, etc.;
* an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used);
* a description of the procedures used to charge or allocate fund contributions to benefited activities; and

Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

Fringe Benefits:

The cost allocation plan must include the following for fringe benefit costs that are billed costs:

* a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit;
* current fringe benefit policies; and
* procedures used to allocate the costs of the benefits to benefited activities.

In addition, for pension and post-retirement health insurance plans, the following information must be provided:

* the organization’s funding policies, such as legislative bills, trust agreements, or state-mandated contribution rules, if different from actuarially determined rates;
* the pension plan’s costs accrued for the year;
* the amount funded, and date(s) of funding;
* a copy of the current actuarial report (including the actuarial assumptions);
* the plan trustee’s report; and
* a schedule from the activity showing the value of the interest cost associated with late funding.

### Plan Certification

An authorized official of the organization must certify that the plan has been prepared in accordance with authorizing legislation and regulations, and state or other applicable requirements. Every cost allocation plan must include a certification. A sample certification follows:

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

* All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable costs in accordance with the requirements of 2 CFR Part 200 (OMB Uniform Guidance) and the federal to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.
* All costs included in this proposal are properly [allocable](#allocable) to federal or state awards on the basis of a beneficial or causal relationship between the expenses incurred and the awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as [indirect costs](#indirectcost) have not been claimed as [direct costs](#directcost). Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct:

Organization:

Signature:

Name of Official:

Title:

Date of Execution:

### Plan Submission and Approval

A local government that has been designated as a “major local government” is required to submit a cost allocation plan to its [cognizant agency for indirect cost](#cognizantagencyforindirectcosts) annually. (For this purpose, “major local government” has the meaning defined in Appendix V to 2 CFR Part 200.)

Other entities claiming central service costs must develop a plan in accordance with applicable requirements and related supporting documentation for audit. These entities are not required to submit their plans for federal approval unless specifically required by the cognizant agency for indirect costs. Where the entity only receives funds as a subrecipient, the [pass-through entity](#passthruentity) will be responsible for monitoring the entity’s plan.

### Entity Specific Consideration

Local Governments that Negotiate an Indirect Cost Rate with the Agency. As a State Single Audit Coordinating Agency, the Agency approves the indirect cost rates for certain local governments in Texas. When these entities use both a cost allocation plan and an indirect cost rate, the cost allocation plan is usually considered in the negotiation of the indirect cost rate. Although the Agency is responsible for negotiating the indirect cost rates of these entities, it is not required to and has not chosen to approve the cost allocation plan.

Reference:

OMB Uniform Guidance: Appendix V to 2 CFR Part 200

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## 11.2 Allocation Methodology

Policy:

The allocation methodology must be described in the cost allocation plan and be consistent with applicable cost principles and administrative requirements.

One of the required pieces of information that must be included with the cost allocation plan is the “method used to distribute the cost of the service to the benefited entity.” This information will include a description of the overall approach used, as well as, the cost pools (see [Section 11.3](#eleven_three) of this manual) and allocation (distribution) bases (see [Section 11.4](#eleven_four) of this manual) used by the [Grantee](#grantee). Whatever methodology is used, it must:

* result in an equitable distribution of indirect costs;
* correspond to the costs being allocated;
* be efficient to use;
* be consistently applied over time;
* be consistent with [Generally Accepted Accounting Principles (GAAP)](#generallyacceptedaccountingprinciples);
* be consistent with applicable cost principles and administrative requirements;
* be accepted by each entity’s independent auditor to satisfy the audit testing required under the Single Audit Act;
* be supported by actual cost data; and
* be consistent with the overall program design and services approach.

Chapter I-3 of the U.S. Department of Labor One-Stop Comprehensive Financial Management Technical Assistance Guide (One-Stop TAG) describes four examples of allocation methodologies. These methodologies are summarized below, but additional detail is available through the link provided under Reference at the end of this Section.

* Aggregate: all [indirect costs](#indirectcost) that will be allocated using a cost allocation plan are totaled. A single allocation base is chosen and applied to the total costs.
* Activity Basis: the costs associated with a particular function or activity are pooled. An allocation (distribution) base is developed for each pool and applied to the respective pools. The resulting distribution of costs reflect each cost objective’s share of that activity or function.
* Item of Cost Basis: each item of cost is allocated to the benefiting cost objective(s) using a separate allocation (distribution) base, such as, for example, rental costs allocated on square footage basis or telecommunications costs allocated on a number of units used basis.
* Combination Basis: costs are allocated using a combination of the above bases, for example, allocating some costs on an activity basis and others on an individual item of cost basis.

Reference:

U.S. Department of Labor One-Stop Comprehensive Financial Management Technical Assistance Guide, Part I, Chapter I-3 (pp. 4-5)

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## 11.3 Cost Pools

Policy:

Cost pools shall only contain costs that are consistently treated as indirect (or are shared) costs and which jointly benefit two or more of the same programs or other cost objectives to the same degree.

A [cost pool](#costpool) can be used in the allocation of [indirect costs](#indirectcost). Only actual costs may be allocated for purposes of expenditure reporting (budgeted costs may only be used for purposes of developing the budget). The costs accumulated in a cost pool must benefit the same programs to the same degree so that the distribution base used to allocate the pool will result in an equitable distribution of costs relative to the benefits received.

The U.S. Department of Labor Employment and Training Administration’s One-Stop Comprehensive Financial Management Technical Assistance Guide (One-Stop TAG) lists some examples of cost pools that an organization might establish. Those pools are listed below and described in Chapter II-8 of the One-Stop TAG. Examples of cost pools include, but are not limited to:

* administrative cost pools
* indirect cost pools
* intake cost pools
* supplies expense pools

For administrative and indirect cost pools, in some cases, laws may limit the amount of administrative or indirect cost allowed. Under the cost principles for [allocable costs](#allocable), amounts not recoverable (whether as indirect or administrative costs, or otherwise) under one [federal award](#federalaward) or [state award](#stateaward) may not be shifted to another federal or state award unless specifically authorized by federal or state legislation or regulation.

Reference:

OMB Uniform Guidance: 2 CFR § 200.405(c)

TxGMS: “Allocable Costs”

U.S. Department of Labor One-Stop Comprehensive Financial Management Technical Assistance Guide, Part II, Chapter II-8

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## 11.4 Allocation (Distribution) Base

Policy:

Cost pools must be allocated to benefiting cost objectives using an allowable basis that results in an equitable distribution of costs relative to benefits derived.

There is no single best base to use to allocate [indirect costs](#indirectcost). The base will vary with organizational structure, type of cost being allocated, program design and the relationship between the base and the allocated costs. Guidelines for selecting an appropriate base(es) are provided below. Examples of allowable and unallowable bases are also provided later in this section.

### Guidelines

The following guidelines are taken from the U.S. Department of Labor Employment and Training Administration’s One Stop Comprehensive Financial Management Technical Assistance Guide (One-Stop TAG). An acceptable base meets these criteria.

* Minimal distortion: The base should distribute costs in a fair and equitable manner without distorting the results. This requires that the base be as causally related as possible to the types of costs being allocated so that benefit can be measured as accurately as possible.
* General Acceptability: The base should be generally accepted and in conformance with [Generally Accepted Accounting Principles](#generallyacceptedaccountingprinciples). For example, it should be consistently applied over time. The base should also be drawn from the same period during which the costs to be allocated have been incurred.
* Represents Actual Cost or Effort Expended: The base should be a measure of actual cost or actual effort expended. It should not be based solely on a plan, budget, job description, or other estimates of planned activity.
* Timely Management Control: The base should be within management’s ability to control on a timely basis. The base should produce reliable and fairly predictable results. If the base is erratic and unpredictable, beyond management’s ability to control, or not timely, it is likely to produce unacceptable results.
* Consistency with Variations in Funding: The base must be able to accommodate and withstand changes in funding during the year and from year to year. If the base includes factors that are affected by variations in funding, it will produce distorted results.
* Materiality of Costs Involved: The time and expense spent in developing the base should not be greater than justified by the materiality of the costs to be allocated. In other words, the grantee should not spend more on obtaining the information needed to allocate pooled costs than the dollars in the pool warrant. The base should be sufficiently detailed to provide the most equitable and accurate allocation possible. At the same time, the base should be simple enough to be efficient while still attaining a fair distribution of costs.
* Practicality and Cost of Using the Base—The base should be as efficient as possible in terms of the cost or effort in developing it. Thus, wherever possible, a database that already exists in the financial or participant record keeping and reporting systems should be used rather than create a separate database to be used only for allocating costs.

### Possible Allocation Bases

The following bases have been suggested in guidance provided by the One-Stop TAG and the U.S. Department of Health and Human Services (DHHS) Assistant Secretary for Management and Budget (ASMB) guide, ASMB C-10. (ASMB C-10 is the implementation guide for OMB Circular A-87.) These are suggestions only. A base that is listed below should not be used if it will result in an inequitable cost distribution or would be inconsistent with other requirements and guidance provided in this chapter.

| **Cost or Activity** | **Sample Allocation Base(s)** |
| --- | --- |
| Accounting | Number of transactions; direct labor hours; allowable survey methods |
| Auditing | Direct audit hours; expenditures audited |
| Budgeting | Direct labor hours |
| Consumable supplies | Total direct costs; direct labor hours |
| Counselor | Direct labor hours; number of participants counseled |
| Data processing | System usage; direct labor hours |
| Disbursing service | Number of checks issued; direct labor hours |
| Fidelity bond | Number of bonded employees |
| Freight | Number of items shipped; cost of goods |
| Health services | Number of employees |
| Intake | Number of eligible participants; current period enrollments |
| Legal services | Direct hours |
| Motor pool costs | Miles driven; days used |
| Office machines and equipment maintenance | Direct machine hours; direct labor hours |
| Office space | Square feet of space occupied; staff salary distribution |
| Payroll services | Number of employees |
| Personnel services | Number of employees |
| Postage | Direct usage; acceptable survey methods |
| Printing/reproduction | Direct labor hours; job basis; pages printed |
| Procurement service | Number of transactions processed; direct hours of purchasing agent’s time |
| Retirement system administration | Payroll; number of employees contributing |
| Telephone | Number of instruments; staff salary distribution |
| Travel | Mileage; actual expenses; direct labor hours |
| Utilities | Square feet of space occupied; staff salary distribution |

### Unacceptable Allocation Bases

Unacceptable allocation bases are generally those that do not meet the general guidelines discussed in this section. Unacceptable bases are those that:

* distort the final results;
* do not represent actual effort or cost expended;
* are not used consistently over time and with variations in funding; or
* do not have an integral relationship to the types of costs being allocated.

Examples of unacceptable allocation bases include, but are not limited to, the use of:

* relative funds available to allocate unassigned [direct costs](#directcost);
* job descriptions to allocate staff costs;
* fixed or predetermined number of staff hours assigned to an activity to allocate staff costs;
* planned participant levels to allocate participant-related costs; and
* results from prior periods to allocate current period costs (because they do not measure actual activity or cost).

Reference:

OMB Uniform Guidance: 2 CFR § 200.1 (definition of indirect costs)

ASMB C-10, Section 4.6.2

U.S. Department of Labor One-Stop Comprehensive Financial Management Technical Assistance Guide, Chapter II-8

TxGMS: Appendix 2 (definition of indirect costs)

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## 11.5 Adjustments

Policy:

Adjustments to allocated and billed services under a negotiated agreement must be performed in accordance with applicable requirements.

The requirements for conducting carry forward adjustments of allocated central services costs, and adjustments of billed central services costs are discussed in this section.

Note: The content that follows is based on Appendix V to 2 CFR Part 200 State/Local Governmentwide Central Service Cost Allocation Plans.

### Carry-forward Adjustments of Allocated Central Service Costs

Allocated central service costs are usually negotiated and approved for a future fiscal year on a “fixed with carry-forward” basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This “carry-forward” procedure applies to all services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

### Adjustments of Billed Central Services

Billing rates used to charge federal awards must be based on the estimated costs of providing the services, including an estimate of the [allocable](#allocable) service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the services will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods:

* a cash refund including earned or imputed interest, if applicable, chargeable in accordance with applicable federal [cognizant agency for indirect costs](#cognizantagencyforindirectcosts) regulations to the federal government for the federal share of the adjustment;
* credits to the amounts charged to the individual programs;
* adjustments to future billing rates; or
* adjustment to allocated central service costs.

Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service share exceeds $500,000.

Reference:

OMB Uniform Guidance: Appendix V to 2 CFR Part 200

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## 11.6 [Reserved]

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# Chapter 12 Indirect Cost Rates

Depending on organization and function, an entity may use a cost allocation plan, indirect cost rate, or both to identify and assign indirect costs to benefiting cost objectives. This chapter compiles the applicable federal, state and agency requirements that apply to indirect cost rates. In the event of conflict between these standards and federal statute or regulation, federal statute or regulation will apply. The chapter is organized as follows:

[12](#twelve_one)[.1 Simplified Method](#twelve_one)

[12.2 Multiple Rate Method](#twelve_two)

[1](#twelve_three)[2.3 Direct Allocation Method](#twelve_three)

[12.4 Special Indirect Cost Rates](#twelve_four)

[1](#twelve_five)[2.](#twelve_five)[5 Negotiation](#twelve_five)

[1](#twelve_six)[2.](#twelve_six)[6 Documentation](#twelve_six)

[12.7 Refunds](#twelve_seven)

Requirements pertaining to cost allocation plans are addressed in [Chapter 11](#eleven_toc) of this manual while underlying cost principles for the general allowability and treatment of costs are discussed in [Chapter 8](#eight_toc) of this manual.

Record retention and access requirements that apply to cost allocation plans are provided in [Appendix K](#app_k) to this manual. All financial and programmatic records, supporting documents, statistical records, and other records pertaining to an award of federal or state funds must be retained and made available to authorized entities or their representatives in accordance with applicable administrative requirements.

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## 12.1 Simplified Method

Policy:

The simplified method is appropriate when an entity has only one major function, where its level of federal funding is relatively small, or where all of its major functions benefit from its indirect costs to approximately the same degree.

When using an indirect cost rate, an organization’s indirect costs are generally distributed using one of three basic methods:

* the simplified method, which is discussed in this section,
* the multiple rate method ([Section 12.2](#twelve_two)), or
* the direct allocation method ([Section 12.3](#twelve_three)).

Under the simplified method, [indirect costs](#indirectcost) are distributed to individual awards by applying the same single indirect cost rate to an equitable [distribution base](#base) for each award.

The general guidelines for calculating the indirect cost rate under the simplified method follows.

1. Identify the organization’s total costs regardless of the source of funds.
2. Classify the total costs for the [base period](#baseperiod) as direct or indirect costs. Exclude the following direct costs and indirect costs from the classification:
3. Direct costs—exclude [flow-through funds](#flowthrufunds) and [capital expenditures](#capitalexpenditure). Identify and exclude unallowable costs.
4. Indirect costs—exclude unallowable costs, capital expenditures, and any indirect costs that were directly reimbursed through a federal or state award. Compute and add to the pool any cost allocation plan allocations.
5. Pool indirect costs and select an equitable distribution base.

Once the distribution base is selected, any unallowable costs that are the same type as those included in the distribution base, but were excluded from direct costs, should be included in the distribution base if they generate overhead or benefit from indirect costs. For example, if direct salaries and wages for an unallowable activity were excluded from direct costs and the distribution base for allocating indirect costs is direct salaries and wages, the unallowable direct salaries and wages costs should be included in the distribution base. However, if the distribution base is one that does not include direct salaries and wages, then unallowable direct salaries and wages should not be included in the base. While the unallowable costs should be included in the distribution base for purposes of calculating the indirect cost rate, neither the unallowable cost nor the indirect cost associated with it may be recovered and/or reimbursed.

1. Divide the total allowable indirect costs (net of [applicable credits](#applicablecredits)) by the distribution base to arrive at the overall indirect cost rate (expressed as a percentage).
2. Apply the indirect cost rate to the distribution base for each award to identify the portion of indirect costs that are [allocable](#allocable) to it. The same distribution base is used for each award.

A Sample Indirect Cost Rate Proposal using the Simplified Method is shown in Illustration 6-1 of [ASMB C-10](https://rates.psc.gov/fms/dca/asmb%20c-10.pdf), which is the implementation guide for Office of Management and Budget (OMB) Circular A-87 that was issued by the Assistant Secretary for Management and Budget (ASMB) for the U.S. Department of Health and Human Services.

For detailed information about indirect cost rate plans refer to Appendices III, IV and VII to 2 CFR Part 200 (Uniform Guidance).

Reference:

OMB Uniform Guidance: Appendices III, IV and VII to 2 CFR Part 200

ASMB C-10, Section 6.2.3

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## 12.2 Multiple Rate Method

Policy:

The multiple rate method is appropriate when an entity has several major functions that benefit from its indirect costs in varying degrees.

When using an indirect cost rate, an organization’s indirect costs are generally distributed using one of three basic methods:

* the simplified method ([Section 12.1](#twelve_one) of this manual),
* the multiple rate method which is discussed in this section, or
* the direct allocation method ([Section 12.3](#twelve_three) of this manual).

Under the multiple rate method, each award is assigned to one of the organization’s [major functions](#majorfunction). A separate indirect cost rate is developed for each function and applied to all awards within that function.

General guidelines for calculating the indirect cost rates under the multiple rate method follow.

1. Identify the organization’s total costs regardless of funding source.
2. Classify total costs for the [base period](#baseperiod) as direct or indirect costs. Exclude the following [direct costs](#directcost) and [indirect costs](#indirectcost) from the classification:
3. Direct costs—exclude [flow-through funds](#flowthrufunds), [capital expenditures](#capitalexpenditure), and unallowable direct costs..
4. Indirect costs—exclude unallowable costs, capital expenditures, and any indirect costs that were directly reimbursed through a federal or state award. Compute and add any cost allocation plan allocations.
5. Pool indirect costs into separate [cost groupings](#costgrouping) ([cost pools](#costpool)). Each cost grouping should consist of a pool of costs that are similar in terms of the major functions that they benefit, and that are measurable by the same [distribution base](#base). The number and type of these cost groupings should be kept within practical limits.
6. Select an equitable distribution base for each cost grouping, taking actual conditions into account. Consideration should be given to whether the base is best suited for assigning costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason (where neither benefit nor cause and effect relationship can be determined).

Once the distribution base is selected, any unallowable costs that are the same type as those included in the distribution base, but were excluded from direct costs should be included in the distribution base if they generate overhead or benefit from indirect costs. For example, if direct salaries and wages for an unallowable activity were excluded from direct costs and the distribution base for allocating indirect costs is direct salaries and wages, the unallowable direct salaries and wages costs should be included in the distribution base. However, if the distribution base is one that does not include direct salaries and wages, the unallowable direct salaries and wages would not be included in the base.

While the unallowable costs should be included in the distribution base for purposes of calculating the indirect cost rate, neither the unallowable cost nor the indirect cost associated with it may be recovered and/or reimbursed.

1. Identify the organization’s major functions, and create a separate indirect cost pool for each function. Allocate the cost groupings to each function using the selected distribution bases. Aggregate the allocated indirect costs for each function in their respective indirect cost pool.
2. Identify an equitable distribution base that will be used to distribute the functions’ indirect cost pools to the respective awards within each function.
3. Establish a separate indirect cost rate for each major function by dividing the indirect costs in each indirect cost pool by the distribution base. The rate must be expressed as a percentage of the respective distribution base.
4. Apply the indirect cost rate established for each function to all awards within that function.

A Sample Indirect Cost Rate Proposal using the Multiple Rate Method is shown in Illustration 6-3 of ASMB C-10, which is the implementation guide for OMB Circular A-87 that was issued by the Assistant Secretary for Management and Budget (ASMB) for the U.S. Department of Health and Human Services.

For detailed information about indirect cost rate plans refer to Appendices III, IV and VII to 2 CFR Part 200 (Uniform Guidance).

Reference:

OMB Uniform Guidance: Appendices III, IV and VII to 2 CFR Part 200

ASMB C-10, Section 6.2.4

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## 12.3 Direct Allocation Method

Policy:

The direct allocation method is appropriate for use by non-profit organizations provided that each indirect cost is prorated using a base that accurately measures the benefits provided to each award or other activity.

When using an indirect cost rate, an organization’s indirect costs are generally distributed using one of three basic methods:

* the simplified method ([Section 12.1](#twelve_one) of this manual),
* the multiple rate method ([Section 12.2](#twelve_two) of this manual), or
* the direct allocation method, which is discussed in this section.

Under the direct allocation method, organizations generally separate costs into three categories: (i) general administration and general expenses, (ii) fundraising, or (iii) other direct functions (including projects performed under federal awards). Only general administration and general expenses are treated as [indirect costs](#indirectcost) and are distributed in the same manner used for the simplified method ([Section 12.1](#twelve_one) of this manual). All other costs are charged directly to the benefiting cost objective. Any joint costs are individually prorated to the benefiting cost objectives using bases that: accurately measure the benefits provided to each award; are established in accordance with reasonable criteria; and are supported by current data.

For detailed information about indirect cost rate plans refer to Appendices III, IV and VII to 2 CFR Part 200 (Uniform Guidance).

Reference:

OMB Uniform Guidance: Appendix IV to 2 CFR Part 200

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## 12.4 Special Indirect Cost Rates

Policy:

It is appropriate to make provisions for a separate indirect cost rate that is only applicable to a specific award when that particular award is carried out in an environment that appears to generate a significantly different level of indirect costs.

This section provides information about special indirect cost rates and restricted rates.

### Special Indirect Cost Rates

A special indirect cost rate should be established when additional factors exist that substantially affect the distribution of [indirect costs](#indirectcost) to an award.

Such factors include:

* physical location of the work;
* the level of administrative support required;
* the nature of the facilities or other resources employed;
* the organizational arrangements used; or
* any combination thereof.

When these factors exist, a separate indirect cost pool and indirect cost rate should be established and used for the affected award provided that:

* the special rate differs significantly from the rate that would have been developed under the simplified or multiple rate methods; and
* the award to which the rate applies is material in amount.

When a special indirect cost rate is developed, that rate is only used to distribute costs to the particular award to which it relates. The rates developed under the simplified, multiple rate, or direct allocation methods are used to allocate indirect costs to all other awards.

### Restricted Indirect Cost Rates

A restricted rate is a special rate needed when federal or state statutes restrict the reimbursement of certain indirect costs. It is developed using the same methods as are used for developing non-restricted rates, except that the prohibited costs are eliminated from the indirect cost pool. Like other rates, a restricted rate should be developed during the course of the regular allocation process.

Reference:

OMB Uniform Guidance: Appendices III, IV and VII to 2 CFR Part 200

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## 12. 5 Negotiated Rates and De Minimis Rates

Policy:

Grantees desiring to claim indirect costs under TWC grant awards must use a negotiated indirect cost rate, or, if applicable and the entity qualifies, the de minimis rate described in the Uniform Guidance and Texas Grant Management Standards, as applicable.

The [Uniform Guidance](#uniformguidance) and [Texas Grant Management Standards (TxGMS)](#txgms) provide several options for establishing an indirect cost rate. In general:

* Both describe use of formally negotiated rates, such as a rate negotiated with a federal [cognizant agency for indirect costs](#cognizantagencyforindirectcosts) for a rate that applies across all the entities federal awards, or a rate that a Texas local government negotiates with its [state single audit coordinating agency](#ssaca). For rates negotiated with a federal cognizant agency for indirect costs, such rates would be established in accordance with the requirements in Appendices III, IV and VII to 2 CFR Part 200 (Uniform Guidance).
* If an entity does not have a formally negotiated rate, the entity could request to negotiate a rate for that grant award with the respective [pass-through entity](#passthruentity).
* As a third alternative, an entity that does not have a formally negotiated rate may adopt a ten percent (10%) de minimis rate, subject to the conditions set forth in the Uniform Guidance and TxGMS, as applicable. Differences exist between the Uniform Guidance and TxGMS as to the eligibility and requirements for use of the de minimis rate.

When an entity has any of these indirect cost rates, the pass-through entity for the grant award is required to identify that rate in the grant award document.

If an entity does not have a formally negotiated indirect cost rate, does not negotiate a rate with the pass-through entity for the grant award, and has not opted to adopt the de minimis rate, that entity would continue to charge all allocable costs to the grant award as direct costs. It would not be eligible to apply an indirect cost rate to the grant award.

For more information refer to the cited references at the end of this section.

Reference:

OMB Uniform Guidance: 2 CFR §§ 200.414 and 200.332, and Appendices III, IV and VII to 2 CFR Part 200

TxGMS: “Indirect Costs” and “Requirements for Pass-Through Entities”

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## 12.6 Documentation

Policy:

For negotiated indirect cost rates, adequate documentation, including the indirect cost rate proposal, subsidiary worksheets, and other relevant data must be maintained and made available upon request.

For negotiated indirect cost rates, documentation and certification must be submitted to the entity’s federal [cognizant agency for indirect costs](#cognizantagencyforindirectcosts), [State Single Audit Coordinating Agency](#ssaca) (SSACA), or [pass-through entity](#passthruentity), as applicable, in support of the [Grantee’s](#grantee) indirect cost proposal. A Grantee that qualifies for and adopts the de minimis rate described in Section 12.5 of this manual is not required to provide documentation to support that rate, except for evidence of its organization’s adoption of that rate.

For negotiated rates, examples of required documentation include the following.

* The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data required by the following bullet. Allocated costs will be supported by the summary table included in the approved cost allocation plan. The summary table is not required if the cost allocation plan for the same fiscal year has been approved by the cognizant agency that is negotiating the indirect cost rate, and is available to the funding agency.
* A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the federal cognizant agency in a subsequent proposal.
* The approximate amount of direct base costs incurred under federal awards. These costs should be broken out between direct salaries and wages and other [direct costs](#directcost).
* A chart showing the organizational structure of the entity during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency.

Each indirect cost rate proposal for a negotiated rate must be accompanied by a signed certification of indirect costs.

A sample certification follows:

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

* All costs included in this proposal [identify date] to establish billing or final indirect cost rates for [identify period covered by rate] are allowable costs in accordance with the requirements of the federal award(s) to which they apply, and 2 CFR Part 200 (Uniform Guidance). Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.
* All costs included in this proposal are properly [allocable](#allocable) to federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the federal government will be notified of any accounting changes that would affect the rate.

I declare that the foregoing is true and correct:

Entity Name:

Signature:

Printed Name of Official:

Title:

Date of Execution:

Reference:

OMB Uniform Guidance: Appendices III, IV and VII to 2 CFR Part 200

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## 12.7 Refunds

Policy:

Unallowable and over recovered indirect costs must be refunded or returned to the Agency through an indirect cost rate adjustment.

Regardless of the type of rate that was negotiated, a refund (including interest chargeable in accordance with applicable federal agency regulations) may be due to the [Agency](#agency) if the [indirect costs](#indirectcost) are found to include unallowable costs or if there was an over recovery of indirect costs that cannot be carried forward. Costs may be found unallowable for the following:

* as specified by law or regulation;
* as identified in [Uniform Guidance](#uniformguidance) and [Texas Grant Management Standards (TxGMS)](#txgms), as applicable;
* by the terms and conditions of awards; or
* because they are clearly not [allocable](#allocable) to the award(s).

Reference:

OMB Uniform Guidance: 2 CFR §§ 200.345 and 200.410, and Appendices III-VII to 2 CFR Part 200

TxGMS: “Post-Closeout Adjustments and Continuing Responsibilities” and “Collection of Unallowable Costs”

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# Chapter 13 Property

Each [Grantee](#grantee) must develop and maintain a property accounting system that accounts for all property in accordance with established property standards. This chapter compiles the applicable federal, state and agency requirements governing the acquisition, management and disposition of property acquired by a Grantee using funds administered by the [Agency](#agency). In the event of conflict between these standards and federal statute or regulations, the federal statute or regulation will apply. This chapter is organized as follows:

[1](#thirteen_one)[3](#thirteen_one)[.](#thirteen_one)[1 Vesting of Title](#thirteen_one)

[13.1a Property Trust Relationship](#thirteen_one_a)

[13.2 Property Control Officer](#thirteen_two)

[1](#thirteen_three)[3.](#thirteen_three)[3 Acquisition and Use of Real Property](#thirteen_three)

[13.4 Disposition of Real Property](#thirteen_four)

[13.5 Acquisition and Use of Equipment](#thirteen_five)

[13.](#thirteen_six)[6 Property Records for Equipment](#thirteen_six)

[13.7 Physical Inventory](#thirteen_seven) of Real Property & Equipment

[1](#thirteen_eight)[3.8 Adequate Safeguards for Equipment](#thirteen_eight)

[13.9 Equipment Maintenance](#thirteen_nine)

[1](#thirteen_ten)[3](#thirteen_ten)[.](#thirteen_ten)[10 Sales Procedures for Equipment](#thirteen_ten)

[1](#thirteen_eleven)[3](#thirteen_eleven)[.](#thirteen_eleven)[11 Disposition of Equipment ($5,000 or Less)](#thirteen_eleven)

[1](#thirteen_twelve)[3.](#thirteen_twelve)[12 Disposition of Equipment ( $5,000 or More)](#thirteen_twelve)

[1](#thirteen_thirteen)[3.](#thirteen_thirteen)[13 Supplies](#thirteen_thirteen)

[13.14 Intangible Property](#thirteen_fourteen)

[13.15 Federally-Owned Property](#thirteen_fifteen)

[1](#thirteen_sixteen)[3](#thirteen_sixteen)[.](#thirteen_sixteen)[16 State-Owned Property](#thirteen_sixteen)

[13.](#thirteen_seventeen)[1](#thirteen_seventeen)[7 Leases](#thirteen_seventeen)

[1](#thirteen_eighteen)[3.](#thirteen_eighteen)[18 Property Insurance](#thirteen_eighteen)

In addition to the property management and disposition requirements in this chapter, Grantees must comply with appropriate procurement and record retention standards discussed in this manual. Prior approval requirements for the acquisition and disposition of property can be found in Sections [13.3](#thirteen_three), [1](#thirteen_four)[3.4](#thirteen_four), [13.5](#thirteen_five) and [13.12](#thirteen_twelve) of this manual. Prior approval requirements for certain leases are provided in [Section 13.17](#thirteen_seventeen) of this manual.

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[Link to Policy Statements](#app_c)

## 13.1 Vesting of Title

Policy:

Title to property will vest in the Grantee that acquired the property, subject to the Grantee’s compliance with applicable property requirements.

Title to property acquired by a [Grantee](#grantee) under a grant award will vest in the Grantee as long as the Grantee uses the property for the authorized purpose, and complies with the applicable acquisition, management, and disposition requirements. This applies to:

* [real property](#realproperty) acquired or improved with grant funds;
* [equipment](#equipment) acquired with grant funds;
* [supplies](http://www.twc.state.tx.us/business/fmgc/fmgc_appa_glossary.doc#supplies) acquired with grant funds; and
* [intangible property](http://www.twc.state.tx.us/business/fmgc/fmgc_appa_glossary.doc#intangibleproperty) acquired with grant funds.

Note: Pursuant to the Agency Board Agreement, [Boards](#board) must require that [subgrants](#subgrant) include provisions that grant the Board the right and discretion, at the end of all subgrants, to require a subrecipient that acquires equipment or supplies under that subgrant to transfer title of such property to the Board (or another entity designated by the Board) for use in authorized activities of a continuing Board-administered program.

Reference:

OMB Uniform Guidance: 2 CFR §§ 200.311(a) (real property), 200.313(a) (equipment), 200.314(a) (supplies), 200.315(a) (intangible property)

TxGMS: “Real Property”, “Equipment”, “Supplies”, “Intangible Property”

Agency Board Agreement Section 14.3 (October 2022) (subgrant transfers)

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## 13.1a Property Trust Relationship

**Policy:**

**Grantees that use TWC grant funds to purchase real property, equipment, and intangible property must hold such property in trust for the beneficiaries of the project or program under which the property was acquired or improved.**

The [Uniform Guidance](#uniformguidance) and [Texas Grant Management Standards (TxGMS)](#txgms) require that [real property](#realproperty), [equipment](#equipment), and [intangible property](#intangibleproperty) that are acquired or improved with a [federal award](#federalaward) or [state award](#stateaward), respectively, must be held in trust by the [Grantee](#grantee) as trustee for the beneficiaries of the project or program under which the property was acquired or improved.

The [federal awarding agency](#federalawardingagency) (for [federal awards](#federalaward)) or [state awarding agency](#stateawardingagency) (for [state awards](#stateaward)) may require the Grantee to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a federal or state grant award (respectively) and that use and disposition conditions apply to the property.

For state awards, TxGMS adds, “Absent statutory authority and specific terms and conditions in the state award, property acquired under the state award is state property.”

Reference:

OMB Uniform Guidance: 2 CFR § 200.316

TxGMS: “Property Trust Relationship”

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## 13.2 Property Control Officer

Policy:

A property control officer must be designated when specifically required by grant, program or administrative requirement. It is recommended to all other Grantees.

[Boards](#board), and other [Grantees](#contractor) that are specifically required by a grant, program or administrative requirement, must designate a Property Control Officer. Other Grantees are also encouraged, but not required, to designate a Property Control Officer.

For Boards, the Agency Board Agreement requires that the Property Control Officer:

* be responsible for the inventory and control of all [real property](#realproperty) and non-expendable [personal property](#personalproperty) purchased in whole or in part with funds received under any TWC grant and in the custody of the Board, its subrecipients, contractors, or subcontractors;
* conduct an annual physical inventory of such property and reconcile the inventory with the accounting records; and
* coordinate with the [Agency](#agency) to conduct an annual physical inventory of any Agency loaned state property in the Board’s possession, in accordance with the Agency Board Agreement and Agency instructions.

In addition, the Property Control Officer is generally the individual that an organization assigns responsibility for maintaining property records and for corresponding with the Agency regarding prior approval requirements for property acquisition and disposition. The Property Control Officer generally oversees the conduct of physical inventories and any investigation of missing property.

Reference:

Agency Board Agreement Sections 14.6 and 14.7 (October 2022)

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## 13.3 Acquisition and Use of Real Property

Policy:

Real property shall only be acquired when allowable, and with the prior written approval of the Agency. If acquired, real property must be used for the originally authorized purpose as long as needed.

This Section summarizes requirements for acquisition and use of [real property](#realproperty) purchased in whole or part with TWC grant funds.

### Prior Approval to Acquire Real Property

Note: The acquisition of real property is expressly prohibited or otherwise unallowable under most [TWC grant awards](#twcgrantaward). If a particular TWC grant award provides for such use, the following would apply unless specified otherwise by those award terms.

Pursuant to the prior approval requirements covered in [Section 8.3.22 Equipment, Buildings, and Other Capital Expenditures](#eight_3_22), in this manual, prior written approval must be obtained from the [Agency](#agency) before purchasing real property. Prior written approval must be requested by completing Form 7100 and submitting it by mail or fax to the Agency’s designated grant manager. Approval is valid for 90 days after issuance of the concurrence letter from the Agency. No later than 30 days after final acquisition of the property, Form 7200 must be submitted to the Agency. Forms 7100 and 7200 are provided on the Agency’s website.

Forms 7100 and 7200 are required regardless of the unit [acquisition cost](#acquisitioncost) (UAC) or fair market value (FMV) of the real property, and must be submitted to the Agency even if the property that is being acquired is [replacement property](#replacementprop). [Grantees'](#grantee) subgrantees (subrecipients) must submit forms through Grantees.

Depending on the fund source, the Agency may be required to obtain approval from a [federal awarding agency](#federalawardingagency) or state pass-through entity before the Agency can approve the request.

### Use of Real Property

Once acquired, real property must be used for the originally authorized purpose as long as it is needed for that purpose, and neither it nor its interests may be disposed of or encumbered during that time. When no longer needed for the originally authorized purpose, real property must be disposed of in accordance with the requirements in [Section 13.4 Disposition of Real Property](#thirteen_four), in this manual.

### Program Specific Considerations

#### Workforce Innovation and Opportunity Act (WIOA) Title I

WIOA title I funds must not be spent on construction, purchase of facilities or buildings, or other [capital expenditures](#capitalexpenditure) for improvements to land or buildings, except with prior written approval of authorized personnel from the U.S. Department of Labor. Use Form 7100 to submit such requests to TWC. If TWC concurs with the request, TWC will request the required federal approval.

#### Child Care and Development Funds (CCDF)

CCDF grant funds must not be used for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility. Refer to the CCDF regulations at 45 CFR § 98.56(b) for additional information.

#### Apprenticeship

Apprenticeship funds issued under Chapter 133, Texas Education Code may not be used to acquire real property. The costs of remodeling buildings or facilities are unallowable uses of these Apprenticeship funds.

Reference:

Child Care and Development Block Grant Act § 658F(b) (42 U.S.C. 9858d(b)

CCDF Regulations: 45 CFR § 98.56(b)

WIOA Regulations: 20 CFR § 683.235

OMB Uniform Guidance: 2 CFR § 200.311(b)

TxGMS: “Real Property”

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## 13.4 Disposition of Real Property

Policy:

When no longer needed, real property must be disposed of in accordance with written instructions that have been requested from and provided by the Agency.

This Section summarizes requirements for disposition of [real property](#realproperty) that was purchased in whole or part with TWC grant funds.

### Prior Approval to Dispose of Real Property

Real property may only be disposed of after it is no longer needed for an authorized purpose, and the required prior approval has been obtained.

Prior written approval must be obtained from the [Ag](#agency)[ency](#agency) before disposing of real property. Prior written approval must be requested by completing Form 7300 and submitting it by mail or fax to the [Agency’s](#agency) designated grant manager. The [Grantee](#grantee) must dispose of real property that is no longer needed in accordance with the written instructions issued by the Agency. No later than 30 days after final disposition, Form 7400 must be submitted to the Agency’s designated grant manager. Forms 7300 and 7400 are provided on the Agency’s website.

Forms 7300 and 7400 are required regardless of the unit [acquisition cost](#acquisitioncost) (UAC) or fair market value (FMV) of the real property, and must be submitted to the Agency even if the property will be used to acquire [replacement property](#replacementprop). Grantees’ [subgrantees (subrecipients)](#subgrantee) must submit forms through Grantees.

Depending on the fund source, the Agency may be required to obtain approval from a [federal awarding agency](#federalawardingagency) or state pass-through entity before the Agency can provide instructions for the disposition of real property.

### Disposition Instructions for Real Property

The Agency will generally instruct the Grantee to dispose of the property in one of three ways: retain title, sell, or transfer title.

#### Retain Title

The Grantee retains title and compensates the funding source for its [equity share](#equityshare) of the property’s current FMV. If the property will be retained and used to acquire replacement property under the same program, the net proceeds from the disposition may be used to offset the cost of the replacement property.

#### Sell

The Grantee sells the property and compensates the funding source for its equity share in the property’s [net sale proceeds](#netsalesproceeds). If sold, the Grantee must have sales procedures that provide for competition to the extent practicable and for obtaining the highest possible return.

#### Transfer Title

The Grantee transfers title to the awarding agency, or to a third party that is either designated or approved by the awarding agency. The Grantee is entitled to be compensated for its equity share (if any) in the property’s current FMV.

Reference:

OMB Uniform Guidance: 2 CFR § 200.311(c)

TxGMS: “Real Property”

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## 13.5 Acquisition and Use of Equipment

Policy:

Equipment shall only be acquired with the prior approval of the Agency. Equipment acquired with federal or state funds must be used for an authorized purpose as long as needed, in accordance with applicable administrative requirements.

This Section summarizes requirements for acquisition and use of [equipment](#equipment) purchased in whole or part with TWC grant funds.

### Prior Approval to Acquire Equipment

Pursuant to the prior approval requirements covered in [Section 8.3.22 Equipment, Buildings, and Other Capital Expenditures](#eight_3_22), in this manual, prior written approval must be obtained from the [Agency](#agency) before purchasing equipment. Prior written approval must be requested by completing Form 7100 and submitting it by mail or fax to the [Agency’s](#agency) designated grant manager. Approval is valid for 90 days after issuance of the concurrence letter from the Agency. No later than 30 days after completing the final acquisition of the approved property Form 7200 must be submitted to the Agency. Forms 7100 and 7200 are provided on the Agency’s website.

Forms 7100 and 7200 are required for all equipment purchases, and must be submitted to the Agency even if the property that is being acquired is [replacement property](#replacementprop). [Grantees'](#grantee) [subgrantees (subrecipients)](#subgrantee) must submit forms through Grantees.

Depending on the fund source, the Agency may be required to obtain approval from a [federal awarding agency](#federalawardingagency) or state pass-through entity before the Agency can approve the purchase request.

### Use of Equipment

Requirements for equipment use follow. Differences exist depending on whether the equipment was acquired under a [federal award](#federalaward) or [state award](#stateaward).

#### Government Interest

The federal or state government has an interest in equipment that was acquired with federal or state funds, respectively.

As long as the federal or state government retains an interest, equipment that was purchased using federal or state grant funds may not be used to provide services for a fee that is less than private companies normally charge for equivalent services unless specifically authorized by federal statute (for federal awards), or prior written approval is obtained from the state awarding agency (for state awards).

The federal or state government will retain an interest in the property until such time as it expressly releases its respective interest or the property is properly disposed as described in [Section 13.11 Disposition of Equipment ($5,000 or Less)](#thirteen_eleven) and [Section 13.12 Disposition of Equipment ($5,000 or More)](#thirteen_twelve), in this manual.

#### Use for the Originally Authorized Purpose

Once acquired, equipment must be used by the Grantee in the program or project for which it was acquired as long as needed, whether or not the program or project continues to be supported by the grant award. The equipment may not be encumbered for any other use without prior approval from the federal awarding agency (for federal awards) or state awarding agency (for state awards). Submit such requests, if any, to the TWC grant manager.

#### Available for Use by Other Federal/State Programs/Shared Use

For federal awards, during the time that the equipment is used in the federal program or project for which it was acquired, the Grantee must also make the equipment available for use on other projects or programs currently or previously supported by the federal government as long as:

* Such use by other programs will not interfere with using the equipment for the work on the projects or programs for which it was originally acquired;
* First preference for other use is given to programs or projects that are supported by the same federal awarding agency that funded the equipment acquisition; and
* Second preference is given to programs or projects under federal awards from other federal awarding agencies.

For state awards, prior written approval by the state awarding agency is required if the Grantee desires to use the equipment for activities in support of other grant programs.

#### Use for Other Federal/State Programs

For federal awards, when the equipment is no longer needed for the original program or project, it may be used in other activities that are either currently or were previously supported by a federal awarding agency in the following order of priority:

* Activities under a federal award from the federal awarding agency which funded the original program or project; then
* Activities under federal awards from other federal awarding agencies. This includes consolidated equipment for [information technology systems](#informationtechnologysystems).

For state awards, prior written approval by the state awarding agency is required if the Grantee desires to use the equipment for activities in support of other grant programs.

#### Use by Non-Federal/Non-State Programs

For federal awards, the [Uniform Guidance](#uniformguidance) specifies that use for non-federally funded programs or projects is also permissible, and that user fees should be considered if appropriate. Such user fees would be [program income](#programincome). For more information about program income refer to [Chapter 5](#five_toc) Program Income, in this manual.

For state awards, the [Texas Grant Management Standards (TxGMS)](#txgms) is silent on use for non-state funded programs or projects. Contact the TWC grant manager. The grant manager will coordinate within the Agency as need to determine if such use would be prohibited or can be authorized under the specific circumstances and funding involved.

Reference:

OMB Uniform Guidance: 2 CFR § 200.313(c)

TxGMS: “Equipment”

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## 13.6 Property Records for Equipment

Policy:

Property records that meet or exceed the minimum standards established by applicable administrative requirements must be maintained for all equipment that was acquired in whole or in part with federal or state funds until such time as transfer, replacement or disposal occurs.

Property records for [equipment](#equipment) must meet the minimum standards below.

Each [Grantee](#grantee) should assign responsibility for maintaining current and accurate property records to a specific individual, such as a Property Control Officer. [Section 13.2 Property Control Officer](#thirteen_two), in this manual, provides additional information about the duties of the Property Control Officer.

The [Uniform Guidance](#uniformguidance) and [Texas Grant Management Standards (TxGMS)](#txgms) require that property records be maintained for equipment and that those property records include all the following data elements:

* A description of the property,
* A serial number or other identification number (Note 1),
* The source of funding for the property (for [federal awards](#federalaward), this must include the [Federal Award Identification Number (FAIN)](#fain)),
* Who holds title,
* The [acquisition date](#acquisitiondate) and [acquisition cost](#acquisitioncost) of the property,
* For federal awards, the percentage of federal participation in the project costs for the federal award under which the property was acquired,
* For [state awards](#stateaward), the percentage of state participate in the project costs for the state award under which the property was acquired,
* The location, use and condition of the property (Note 2), and
* Any ultimate disposition data including the date of disposal and sale price of the property (Note 3).

Refer to [Appendix K](#app_k), in this manual, for record retention requirements for property.

Note 1: If the Grantee uses a method such as tagging, TWC advises that the tag number should be readily visible and difficult to remove without considerable or intentional means, and it should not be re-used, even if a property item has been deleted from the inventory.

Note 2: When including the location, use, and condition of the property in the property records, TWC advises that:

* Location refers to the physical location of the property;
* Use refers to whether or not the item of property is being actively used for an authorized purpose; and
* Condition refers to the condition of the property, such as, [excellent](#excellentcondition), [good](#goodcondition), [fair](#faircondition) or [p](#poorcondition)[oor](#poorcondition).

Note 3: In addition to the date of disposal and sale price of the property, other examples of relevant disposition data may include the date of transfer, date of replacement or disposal of the property, trade-in value, and current per unit fair market value, as applicable.

Reference:

OMB Uniform Guidance: 2 CFR § 200.313(d)(1)

TxGMS: “Equipment”

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## 13.7 Physical Inventory of Real Property & Equipment

Policy:

An annual physical inventory must be conducted and reconciled with property records for equipment that was purchased in whole or in part with federal or state funds. Boards must also include real property when conducting the annual inventory.

A physical inventory of [equipment](#equipment) that was purchased in whole or part with federal or state grant funds must be taken and the results must be reconciled with the property records. TWC requires that this occur annually.

TWC advises that in order to maintain sufficient internal control over property, the individual assigned to conduct the inventory should have no responsibilities for entering or reporting of the property. For this reason, the Property Control Officer should ensure that the required inventory is performed, but should generally not be the individual that conducts the physical inventory. Controls are further improved when a team of two or more individuals conducts the physical inventory.

[Grantees](#contractor) may also conduct interim inventories. TWC advises that Grantees may use sampling techniques, such as statistical or dollar sampling when conducting interim inventories, but are discouraged from using such techniques when conducting the required annual inventory.

The Agency Board Agreement requires [Boards](#board) to include [real property](#realproperty) when conducting the required annual physical inventory.

Reference:

OMB Uniform Guidance: 2 CFR § 200.313(d)(2)

TxGMS: “Equipment”

Agency Board Agreement Section 14.6 (October 2022)

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## 13.8 Adequate Safeguards for Equipment

Policy:

Adequate controls must be implemented to safeguard equipment that was purchased in whole or in part with federal or state funds until such time as disposition occurs.

A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of [equipment](#equipment). Any loss, damage, or theft must be investigated.

[Grantees](#grantee) must take all reasonable precautions to ensure that all property acquired under a TWC grant award is properly maintained, accounted for, and protected from damage, loss, unreasonable deterioration, and theft. Grantees are advised to consider the following and any additional controls necessary to safeguard the property:

* Maintain adequate and current property records that allow the Grantee to locate any property in its possession at all times, whether the property is located on-site or off-site;
* Provide a secure building and coordinate between the security function and the Property Control Officer, especially regarding security violations or changes affecting [personal property](#personalproperty); and
* Have a written policy for checking out property that requires employees to sign for property in their possession.

Grantees are not required to notify the [Agency](#agency) when property acquired under a grant with the Agency is lost, damaged or stolen; however, the Grantee must conduct and fully document an investigation. When appropriate, law enforcement authorities should be notified, a police report should be obtained and maintained for Grantee records, and the Grantee’s insurance provider should be notified. For more information about property insurance, refer to [Section 13.18 Property Insurance](#thirteen_eighteen), in this manual.

If the federal or state government owns the property, the appropriate government personnel should be notified and the appropriate procedures to report and investigate the property must be taken.

Reference:

OMB Uniform Guidance: 2 CFR § 200.313(d)(3)

TxGMS: “Equipment”

Agency Board Agreement Section 14.2 (October 2022)

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## 13.9 Equipment Maintenance

Adequate maintenance procedures must be developed to keep equipment that was purchased in whole or in part with federal or state funds in good condition until disposition occurs.

[Grantees](#contractor) must develop adequate maintenance procedures to keep [equipment](#equipment) in good condition. It is recommended that Grantees follow manufacturer’s recommended maintenance schedules.

Reference:

OMB Uniform Guidance: 2 CFR § 200.313(d)(4)

TxGMS: “Equipment”

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## 13.10 Sales Procedures for Equipment

Proper sales procedures must be developed when the sale of equipment that was purchased in full or in part with federal or state funds is authorized or required.

[Grantees](#grantee) who are authorized or required to dispose of [equipment](#equipment) by selling it must establish sales procedures that ensure the highest possible return on the property*.*

Reference:

OMB Uniform Guidance: 2 CFR § 200.313(d)(5)

TxGMS: “Equipment”

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## 13.11 Disposition of Equipment ($5,000 or Less)

When no longer needed, equipment that was purchased using TWC grant funds and that has a current per unit fair market value of $5,000 or less (for federal awards) or less than $5,000 (for state awards) may be retained, sold, or otherwise disposed of without further compensation to the funding source, unless otherwise required by the award terms.

Note: The following applies to the specified [equipment](#equipment) unless required otherwise by the terms and conditions of the [TWC grant award](#twcgrantaward). For example, if the terms and conditions of a [federal award](#federalaward) that TWC receives require the state to request disposition instructions from the [federal awarding agency](#federalawardingagency) for such equipment, TWC would include a corresponding prior approval requirement in the related TWC grant awards.

For federal awards, when original equipment or [replacement equipment](#replacementprop) with a current per unit fair market value (FMV) of $5,000 or less is no longer needed for the original project or program and is also not needed for any other authorized activities, the equipment may be retained, sold, or otherwise disposed of with no further obligation to the federal awarding agency. Unless specified otherwise, the [Grantee](#grantee) is not required to request prior written approval to dispose of such property from the [Agency](#agency); to notify the Agency when final disposition of such property is complete; or to compensate the funding source for its interest in such property.

For state awards, the same applies as for federal awards, except that it applies for equipment having a current per-unit FMV that is less than $5,000. Under TxGMS, an item of equipment having a current per unit FMV of $5,000 would be subject to the requirements described in [Section 13.12](#thirteen_twelve) of this manual.

Reference:

OMB Uniform Guidance: 2 CFR § 200.313(e)(1)

TxGMS: “Equipment”

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## 13.12 Disposition of Equipment ($5,000 or More)

When no longer needed, equipment that was purchased using TWC grant funds and that has a current per unit fair market value of more than $5,000 (for federal awards) or $5,000 or more (for state awards) must be disposed of in accordance with written instructions requested from and provided by the Agency.

A [Grantee](#grantee) must not dispose of the [equipment](#equipment) described in this Section unless it has obtained prior written TWC approval to do so. Depending on the fund source, TWC may need to obtain concurrence from a [federal awarding agency](#federalawardingagency) or pass-through state agency before approving a Grantee’s request.

### Prior Approval to Dispose of Equipment

For [federal awards](#federalaward), when original [equipment](#equipment) or [replacement equipment](#replacementprop) with a current per unit fair market value (FMV) in excess of $5,000 is no longer needed for the original project or program and is also not needed for an any other authorized activities, prior written approval to dispose of the property must be obtained from the [Agency](#agency). Prior written approval must be requested by completing Form 7300 and submitting it by mail or fax to the Agency’s designated grant manager. The property must be disposed of in accordance with the written instructions provided by the Agency in response to the Form 7300 request. No later than 30 days after final disposition, Form 7400 must be submitted to the Agency’s designated grant manager. Methods for determining per unit FMV must be documented, kept on file and made available to the Agency upon request. Forms 7300 and 7400 are provided on the Agency’s website.

For [state awards](#stateaward), the same applies as for federal awards, except that it applies for equipment having a current per-unit FMV of $5,000 or more. Additionally, the [Texas Grant Management Standards (TxGMS)](#txgms) requires a Grantee to obtain written disposition instructions for original or replacement property when the state award expires or terminates.

### Disposition Instructions for Equipment

The Agency will generally instruct the Grantee to dispose of the property in one of two ways: retain title or sell. However, a federal awarding agency or [state awarding agency](#stateawardingagency) may also reserve the right to transfer title to the government or an eligible third party.

#### Transfer Title

If instructed to transfer title to the government or an eligible third party, the Grantee must be paid an amount calculated by applying the percentage of its participation in the purchase (if any) to the current FMV of the property.

#### Retain Title

The Grantee keeps the property for other uses, and compensates TWC for the funding source’s [equity share](#equityshare) of the property’s current FMV. TWC will apply or otherwise remit the compensation to the appropriate fund source based on the funds that the Grantee used to acquire the equipment. If the property will be retained and used to acquire replacement property under the same program, it may be used as a trade-in for the replacement property, or the sale proceeds may be used to offset the cost of the replacement property.

#### Sell

The Grantee sells the property and compensates TWC for the funding source’s equity share in the property’s [net sale proceeds](#netsalesproceeds). TWC will apply or otherwise remit the compensation to the appropriate fund source based on the funds that the Grantee used to acquire the equipment. For federal awards, the federal awarding agency may permit the Grantee to deduct and retain from the federal share $500 or ten percent (10%) of the proceeds, whichever is less, for its selling and handling expenses.

Reference:

OMB Uniform Guidance: 2 CFR § 200.313(e)

TxGMS: “Equipment”

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## 13.13 Supplies

Policy:

Supplies purchased with federal or state funds may generally be acquired and disposed of without prior written approval from the Agency; however, any residual inventory of unused supplies at the end of an award must be disposed of as appropriate for the aggregate fair market value of the property.

This section provides information for the acquisition, use and disposition of [supplies](#supplies).

### Supply Acquisition

Individual grant awards may require a [Grantee](#grantee) to obtain prior approval to purchase and dispose of certain types of supplies, such as [computing devices](#computingdevice) that meet the definition of supplies. Otherwise, [Grantees](#contractor) are generally not required to obtain prior written approval to acquire or dispose of supplies.

### Supply Disposition

Unless specified otherwise, if there is a residual inventory of unused supplies having an aggregate FMV exceeding $5,000 upon [termination](#termination) of the award or completion of the project or program (and for [federal awards](#federalaward), the supplies are also not needed for any other federal award), the Grantee must either sell the supplies or retain them for use on other activities, but in either case, must compensate TWC for the government’s [equity share](#equityshare) in the FMV or [net sale proceeds](#netsalesproceeds) of the property.

### Fee for Use of Supplies

As long as the federal government (for federal awards) or state government (for [state awards](#stateaward)) retains an interest in the supplies, the Grantee must not use supplies acquired under a TWC grant award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute (for federal awards) or the Grantee obtains prior written approval from the [state awarding agency](#stateawardingagency) (for state awards).

Reference:

OMB Uniform Guidance: 2 CFR § 200.314

TxGMS: “Supplies”

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## 13.14 Intangible Property

Policy:

Intangible property that was acquired under a federally sponsored award must be made available to the federal sponsoring agency, and parties authorized by that agency.

In general, when a federal funding source is used to acquire [intangible property](#intangibleproperty), the [federal awarding agency](#federalawardingagency) has a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for its purposes, or for the purposes of any parties authorized by the agency. Additional information follows.

### Title and Use of Intangible Property

The [Uniform Guidance](#uniformguidance) and [Texas Grant Management Standards (TxGMS)](#txgms) establish that title to intangible property acquired under a [federal award](#federalaward) or [state award](#stateaward), respectively vests upon acquisition in the [Grantee](#grantee). The Grantee must use that property for the originally authorized purpose. Additionally, the Grantee must not encumber the property without approval of the federal awarding agency (for federal awards) or [state awarding agency](#stateawardingagency) (for state awards).

### Disposition of Intangible Property

As to disposition, the Uniform Guidance and TxGMS establish the following.

* For federal awards, when intangible property acquired under a federal award is no longer needed for the originally authorized purpose, Uniform Guidance establishes that disposition of the intangible property must occur in accordance with the provisions described in 2 CFR § 200.313(e), which are the disposition requirements for [equipment](#equipment) that was acquired with federal funds. Those provisions are also covered in [Section 13.11](#thirteen_eleven) and [Section 13.12](#thirteen_twelve), in this manual.
* For state awards, when intangible property acquired under a state award is no longer needed for the originally authorized purpose, or the state award expires or terminates, TxGMS establishes that the Grantee must obtain written disposition instructions from the state awarding agency. It also provides that absent statutory authority and specific terms and conditions in the state award, the Grantee will execute all papers and to perform such other property rights as necessary to transfer the intangible property to the state awarding agency.

### Selected Types of Intangible Property

Specific requirements for some types of intangible property are discussed below:

#### Copyrights

For federal awards, Uniform Guidance provides that Grantees have the right to copyright work that was developed or for which ownership was acquired under a federally award. For state awards, TxGMS provides that if expressly provided in the state award, the Grantee may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a state award.

As covered above, Uniform Guidance adds that the federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.

#### Patents and Inventions

For federal awards, Uniform Guidance states that the Grantee is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements.”

#### Data

For federal awards, Uniform Guidance provides that the federal government has the right to obtain, reproduce, publish, or otherwise use the data produced under a federal award. It also provides that the federal government has the right to authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.

#### Research Data

For federal awards, the Uniform Guidance state that in response to a Freedom of Information Act (FOIA) request for [research data](#researchdata) relating to [published research findings](#publishedresearchfindings) produced under a federal award that were used by the federal government in developing an agency action that has the force and effect of law, the federal awarding agency must request, and the Grantee must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the federal awarding agency obtains the research data solely in response to a FOIA request, the federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the federal agency and the Grantee. This fee is in addition to any fees the federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

Reference:

OMB Uniform Guidance: 2 CFR § 200.315

TxGMS: “Intangible Property”

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## 13.15 Federally-Owned Property

Policy:

Federally-owned property must be managed and disposed of in accordance with applicable administrative requirements.

If a [Grantee](#grantee) is provided with federally-owned property, title to the property remains vested in the federal government. The federally-owned property must be managed as required by the federal agency, and an annual inventory listing of federally-owned property must be submitted to the federal agency that provided the property. Upon completion of the [federal award](#federalaward) or when the property is no longer needed, the Grantee must report the property to the federal agency for further federal agency utilization. The federal awarding agency would then issue appropriate instructions to the Grantee.

If a [federal awarding agency](#federalawardingagency) vests title to federally-owned property in the Grantee without any further obligation to the federal government, the property is “[exempt property](#exemptprop).” This would occur via explicit terms and conditions of the federal award. The federal awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the federal award, title to exempt property acquired under the federal award remains with the federal government.

Reference:

OMB Uniform Guidance: 2 CFR § 200.312

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## 13.16 State-Owned Property

Policy:

State-owned property must be accounted for, managed, and disposed of in accordance with applicable state laws and rules.

State-owned property is property that was acquired by the state, or for which title has otherwise vested in the state. It does not include property purchased by [Grantees](#contractor) under a federal or state sponsored award, unless title to the property is subsequently transferred to the state.

In some instances, the [Agency](#agency) may loan state-owned property to a Grantee. In those instances, title to the state-owned property remains vested with the state government. If a Grantee possesses loaned state property, it must manage and account for the property in accordance with pertinent requirements published in the Texas Government Code and by the state Comptroller of Public Accounts. Unless directed otherwise, the entity must submit annual an inventory listing of all state-owned property in its custody to the state awarding agency, and upon completion of the award or when the property is no longer needed, the Grantee must report the property to the state awarding agency for further state agency utilization.

For [Boards](#board), the Agency includes related provisions in the Agency Board Agreement.

Reference:

TxGMS: “State-Owned Property”

Agency Board Agreement Section 14.7 (October 2022)

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## 13.17 Leases

Policy:

Costs for leased or rental property must conform to applicable cost principles for rental costs. Such property must be procured in accordance with applicable procurement requirements.

This section covers some general standards pertaining to leases, as well as prior approval and procurement considerations.

### General Rule for Leases

[Grantees](#grantee) may use federal or state funds to lease property to the extent that the lease is allowable in accordance with applicable cost principles and the terms and conditions of the grant award.

### Prior Approval for Certain Leases

Prior approval is required for the following types of leases if the property to be leased is a type that requires prior approval to purchase under a grant award, such as [real property](#realproperty) and [equipment](#equipment) described in [Section 8.3.22 Equipment, Buildings, and Other Capital Expenditures](#eight_3_22), in this manual:

* A lease that Governmental Accounting Standards Board (GASB) standards require to be accounted for as a financed purchase under [Generally Accepted Accounting Principles (GAAP)](#generallyacceptedaccountingprinciples); and
* A lease that Financial Accounting Standards Board (FASB) standards required to be accounted for as a finance lease under GAAP.

Use Form 7100 to request prior approval. Form 7100 is provided on the Agency’s website.

Note: A real estate leases that constitutes a financed lease (under GASB standards) or a financed purchase (under FASB standards) will generally not be approved for a grant award that does not allow funds to be used for acquisition of real property. Similarly, if the grant award does not permit purchases of equipment, an equipment lease that GAAP requires to be accounted for as a financed purchase (under GASB) or finance lease (under FASB), as applicable, would generally not be approved for that award.

### Other Cost Principles Considerations for Leases

Some conditions for the allowability of rental costs are that the rates must be [reasonable](#reasonable) in light of such factors as:

* rental costs of comparable property, if any;
* market conditions in the area;
* alternatives available; and
* the type, life expectancy, condition, and value of the property leased.

Additional conditions apply. For more information about the cost principles governing rental costs, refer to [Section 8.3.54 Rental Costs of Real Property and Equipment](#eight_3_54), in this manual.

### Lease Procurement

For information about applicable procurement standards for TWC grant awards, refer to the FMGC Supplement on Procurement in [Attachment D](#app_d) to this manual, including but not limited to Section J.6 Lease of Real Property & Related Broker Selection, in that attachment.

Reference:

OMB Uniform Guidance: 2 CFR § 200.465

Appendix 7 to TxGMS

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## 13.18 Property Insurance

Policy:

Sufficient property insurance must be maintained as required for property purchased under a federal or state award.

For all [Grantees](#grantee), the [Uniform Guidance](#uniformguidance) and [Texas Grant Management Standards (TxGMS)](#txgms) require that the Grantee must, at a minimum, provide the equivalent insurance coverage for [real property](#realproperty) and [equipment](#equipment) acquired or improved with federal or state grant funds as provided to property owned by the Grantee. Federally-owned property and state-owned property need not be insured unless required by the terms and conditions of the federal or state award. Refer also to [Section 13.15 Federally-Owned Property](#thirteen_fifteen) and [Section 13.16 State-Owned Property](#thirteen_sixteen), in this manual.

The Agency Board Agreement (ABA) contains additional provisions for grant awards that TWC issues to [Boards](#board). For example:

* The ABA requires non-governmental subrecipients, contractors, or subcontractors having property acquired under a TWC grant to acquire and maintain property insurance with coverage in an amount that is reasonably sufficient to replace any damaged, lost or stolen property, for as long as property is kept.
* Also in accordance with the ABA, the [Agency](#agency) may require Boards that are governmental entities, or their governmental subrecipients, contractors, or subcontractors, having property acquired under a TWC grant, to replace any damaged, lost or stolen property from sources other than federal or state funds, if no or inadequate property insurance was in effect.

In relation to property losses, the [Agency](#agency) encourages all [Grantees](http://www.twc.state.tx.us/business/fmgc/fmgc_appa_glossary.doc#contractor) to develop procedures that require staff to promptly report theft to the authorities and the Grantee’s insurance provider. Consistent with the procedures for [program income](#programincome), and the disposition of property, the funding source that was originally used to acquire property that has been stolen should be compensated for any insurance proceeds resulting from related insurance claims.

Individual grant awards may contain additional requirements. For example, certain grant awards issued by the Agency require Boards to ensure that commercially available insurance is in place to cover any property or casualty claims, damages, or losses (including [reasonable](#reasonable) attorney’s fees) resulting from the activities of the Board, its employees, subrecipients, contractors, subcontractors, agency or clients in any Agency facility in which the Board is co-located.

Reference:

OMB Uniform Guidance: 2 CFR § 200.310

TxGMS: “Insurance Coverage”

Agency Board Agreement Sections 14.4 and 14.5 (October 2022)

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# Chapter 14 Procurement

This Chapter has been replaced by [Appendix D](#app_d) to the FMGC—FMGC Supplement on Procurement which is incorporated herein for all purposes. Any requirement to comply with the FMGC includes compliance with the FMGC Supplement on Procurement.

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# Chapter 15 Contracts

Supreme Court decisions have upheld the validity of four essential components of a contract, as published by the American Law Institute. These four elements are: 1) [manifestation of mutual assent](#mutualassent), 2) [consideration](#consideration), 3) [legality of object](#legalityofobject), and 4) [capacity of the parties](#capacityofparties). Though not specifically required by federal regulations, each of these components must be present for the existence of a valid contract. The federal, state and agency requirements for contracts of federal or state funds are compiled in this chapter. In the event of conflict between these standards and federal statute or regulation, federal statute or regulation will apply. The chapter is organized as follows:

[15.1 Contract Types](#fifteen_one)

[15.2 Contract Elements](#fifteen_two)

[1](#fifteen_three)[5.](#fifteen_three)[3 Assurances](#fifteen_three)

[15.4 Board Contracting Guidelines](#fifteen_four)

Record retention and access requirements are provided in [Appendix K](#app_k) to this manual. All financial and programmatic records, supporting documents, statistical records, and other records pertaining to an award of federal or state funds must be retained and made available to authorized entities or their representatives in accordance with applicable administrative requirements.

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[Link to Policy Statements](#app_c)

## 15.1 Contract Types

The cost plus a percentage of cost and cost plus a percentage of construction methods shall not be used in contracting of federal or state funds. The type of contract used should coincide with 1) the degree and timing of responsibility assumed by the subcontractor for costs, and 2) the amount and nature of the profit incentive offered for achieving or exceeding specified standards or goals (if applicable).

[Grantees](#grantee) may choose from a wide variety of [contracts](#contract) to acquire goods and services. This section conforms to the Federal Acquisition Regulation in that it groups these contracts into two broad categories: [fixed price](#fixedpricecontract) and [cost reimbursement contracts](#costreimbursementcontract). Specific contract types within these categories range from [firm-fixed-price](#firmfixedpricecontract) to [cost-plus-fixed-fee contracts](#costplusfixedfeecontract). These two broad categories also include [incentive type contracts](#incentivecontract).

With the exception of fixed unit price performance based contracts and fixed unit price non-performance base contracts, this manual does not describe the specific types of contracts that fall within these two broad categories. Instead, it addresses general requirements applicable to these two categories of contracts.

### Cost Reimbursement Contracts

Under a cost reimbursement contract, the Grantee compensates its [contractor](#contractor) for performing at a certain [level of effort](#levelofeffort), regardless of the [level of output](#levelofoutput) achieved. Since compensation is made on a level of effort basis, payments are earned based on actual allowable costs incurred and reported by the contractor (up to a negotiated ceiling; i.e., budget). Compensating a contractor at cost does not provide an incentive for the contractor to control costs or to provide goods or services in the most effective manner. Thus, the Grantee, as the paying entity, bears the primary risk under this type of contract. Types of cost reimbursement contracts include: [cost contracts](#costcontract), [cost sharing contracts](#costsharingcontract), [cost-plus-incentive-fee contracts](#costplusincentivefeecontract), [cost-plus-award-fee contracts](#costplusawardfeecontract), and [cost-plus-fixed-fee contracts](#costplusfixedfeecontract).

The [Agency](#agency) requires that cost reimbursement agreements be used for arrangements between units of state and local governments, and arrangements between a Grantee and their administrative entity. A cost reimbursement agreement may also be used with other types of subgrantees (subrecipients). In general, a cost reimbursement agreement is used:

* when the work desired cannot be precisely detailed as to permit the expectation of a common understanding of results; or
* where it might be considered unwise to attempt to characterize or prescribe details of an outcome (such as research and development tasks or work experience programs).

The Agency requires that cost reimbursement agreements identify the number of participants covered by the agreement, if applicable; and include a line-item budget showing the planned costs by cost category. In satisfying the budget requirement, the resources (such as personnel, space, travel, etc.) needed to undertake the work are to be listed, priced, and allocated among applicable cost categories. The agreement may include the line item budget that was submitted in the selected proposal or bid by reference to that proposal or bid, if it was not changed by contract negotiations. However, if changes were negotiated from the budget that was in the proposal or bid, the budget should be revised to reflect the changes and should be included in the agreement.

Where cost reimbursement contracts are used, the contractor’s accounting system must be adequate for determining costs applicable to the contract. Monitoring performed by the Grantee during the contract period should provide reasonable assurance that efficient methods and effective cost controls are used by the contractor. A cost reimbursement contract is not suitable for the purchase of commercial items.

### Fixed Price

Under a fixed price contract, the price of the contract is not subject to change as a result of a difference between the contractor’s planned and actual costs. Responsibility for costs and the resulting profit or loss is the full responsibility of the contractor. Thus, a fixed price contract provides a built-in incentive for the contractor to control costs and to perform effectively under the award. A fixed price contract may be used in conjunction with an award-fee incentive and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost. A fixed price contract is suitable for the purchase of commercial items.

Two types of fixed price contracts that are commonly used in the provision of workforce related services are fixed unit price non-performance based contracts and fixed unit price performance based contracts. These types of contracts are described further below.

#### Fixed Unit Price Non-Performance Based Contracts.

These contracts are used when the output can be clearly defined, such as the completion of an educational or training course. Fixed unit price non-performance based contracts are typically used for tuition.

In contracts involving tuition, the provider of the service normally provides no guarantee of outcome. In a fixed unit price non-performance based contract, the training provider earns compensation for the training it provides, regardless of whether the participant fails tests, completes the course or semester, or is subsequently employed. Thus, the risk is primarily with the paying entity, in terms of receiving an ultimate benefit and achieving reasonable pricing.

The Agency requires that the following elements are present in fixed unit price non-performance based contracts:

* The contract must relate to the goals and target groups developed by the Grantee;
* The reasonableness of cost/price standards applied to the contract must be in terms of other contracts let, the local market, and contract specifications;
* A line item budget must be included if the price is not based on standard fees published in a catalog;
* if appropriate, the contract must include language on [program income](#programincome) which is sufficiently clear and procedurally adequate to communicate the entity’s responsibilities in relation to program income; and
* if the contract authorizes interim payments, cost data must establish that payments do not exceed the cost incurred to date.

Examples of services for which fixed unit price non-performance based contracts may be used include:

* individual referrals,
* purchases of merchandise, including training software packages,
* insurance services,
* equipment maintenance,
* leases, and
* assessment services.

#### Fixed Unit Price Performance Based Contracts

These contracts require the contractor to successfully meet measurable performance standards or provide specified deliverables. Unless there is satisfactory delivery of the predetermined outcome or result (such as performance of a deliverable), compensation is not earned. Thus, the risk is primarily with the contractor.

The Agency requires that the price valuation must be reasonable, and that the contract costs must be allocated across applicable cost categories when the Grantee bills or reports expenditures to the Agency. The Agency also requires that all services purchased under fixed unit price, performance based contracts, including education and/or training services, must require documentation of measurable achievements or completed deliverables before payments are made. The requirement for verification of delivery must be stated clearly and consistently within the contract’s other sections.

In addition to the requirements above, fixed unit price, performance based contracts for education and/or training services must also meet the following Agency requirements:

* The contract shall notprovide for earned payments simply on the basis of enrollment or the time the participant has remained in the training program, or without regard for demonstrated participant achievement;
* The contract must provide for tiered payments, payment points, or a method to reduce payment in cases where individuals do not complete the training but are placed successfully in an occupation specified, or complete the training but are placed below the specified wage level;
* If using payment points, they must be defined both by requirements for demonstrated participant achievement and by standard time requirements to achieve participant performance levels;
* The contract must describe curriculum components, curriculum length, specific skill acquisition standards referenced to payment points, and the tests/measures criteria by which participant achievement will be determined;
* The contract shall notprovide for payment of the full completion price without participants demonstrating contractually required achievement. Proxies, such as placement, shall not be used to justify completion payments short of full performance;
* Payment reductions allowed for less than full success (low wage, non-completion) must be reasonable in proportion to the value lost by the Grantee;
* The contract shall notallow placement payments based on an average of all participant wages; and
* The contract must provide for appropriate control of the selection of program participants to avoid contractor selection of trainees who already have the required skills.

The Agency also recommends that all fixed unit price, performance based contracts contain a description of the nature of the work and results to be obtained with sufficient precision to evaluate the contractor’s performance. The Agency also recommends that fixed unit price, performance based contracts for services including education and training services, contain standard benchmark payment terms which take into consideration the total length of the program and the costs projected to be incurred by the contractor to reach that benchmark point.

Reference:

OMB Uniform Guidance: 2 CFR § 200.324 (prohibition on use of cost plus a percentage of cost and percentage of construction cost methods of contracting)

TxGMS: “Contract Cost and Price”

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## 15.2 Contract Elements

All contracts must contain necessary elements to ensure that all parties understand the terms of the agreement.

Agreements must satisfy the legal requirements that create contractual relationships: 1) [manifestation of mutual assent](#mutualassent), 2) [consideration](#consideration), 3) [legality of object](#legalityofobject), and 4) [capacity of the parties](#capacityofparties). All [subcontracted](#subcontractor) services must be secured by a written contract. Larger contracts containing multiple sections should include a table of contents to ensure nothing is omitted. The [Agency](#agency) requires that contract instruments contain the structural elements described below, as appropriate. In addition, the Agency recommends that all [[Grantees](#contractor)](http://www.twc.state.tx.us/business/fmgc/fmgc_appa_glossary.doc#contractor) and subgrantees (subrecipients) implement a contract review process and procedures to ensure that all contracts include required provisions and assurances.

### Signature or Cover Page

All contracts, including modifications, must be written and properly signed by authorized representatives of the contracting parties. At a minimum, the signature or cover page must include the following elements:

* a purpose statement;
* names, titles and addresses of the responsible parties to the contract;
* beginning and ending dates for the contract;
* type of contract (i.e. cost reimbursement or fixed unit price);
* total obligated dollar amount of the contract;
* funding source(s);
* federal ID number; and
* signatures and date blocks, including typed names and titles.

### Definition of Key Terms

This section must define terms, conditions, acronyms and terminology used throughout the contract. These terms may be general or specific to the funding agency or award.

### Statement of Work or Deliverables

Each contract must contain an adequate narrative description of the quantity and quality of work to be performed or goods to be received under the contract. This clause may refer to a negotiated statement of work or deliverables, based on the selected proposal or bid. At a minimum, the statement of work or deliverables must contain the following, as applicable:

* a specific description of services or goods to be provided, the dates the contracted work is to begin and end, start and ending date of merchandise delivery, start-up and closeout dates;
* key elements of service package (services only), for example, assessment, case management, counseling, placement, frequency of client contact, follow-up, etc;
* length of service activities (services only), for example, curriculum must include subject areas and number of hours/weeks of attendance, and defined number and dates of each training/education cycle;
* expected outcome(s) (services only) and description of how the outcome will be measured and documented;
* list of barriers (training and education services only) to be addressed, participant selection criteria, and methods of removing barriers, if applicable;
* expenditure schedule;
* requirement to maintain records of participant information; and
* performance standardsdefining the minimum levels of performance according to the type of contract. Such minimum performance levels must be quantifiable and stated in unambiguous terms.

### Payment Provisions

This section must outline when and how payments will be made to the subcontractor based on satisfactory program implementation or delivery of items/goods. These provisions must include, at a minimum, the:

* maximum amount payable;
* methods of payment and/or payment schedule;
* definition of the types of payments and invoicing procedures, such as format and due dates according to the type of contract;
* provisions for advancing of funds, if relevant; and
* liquidation of advances and recovery in the event of nonperformance.

### Compliance with Laws and Regulations

The contract must include clauses or statements that require compliance with applicable laws and regulations. Note, such clauses or statements alone are not sufficient to protect the Grantee in a legal dispute. The contract should outline the conditions and manner under which the contract may be terminated and the basis for settlement (see also [Chapter 21](#twentyone_toc) of this manual). The following provisions must be included in all contracts as applicable.

#### Termination for Default

Gives both parties the right to terminate the contract for either party’s failure to perform its obligations under the contract. For example, if the contractor does not perform the services required, the Grantee may terminate; or if the Grantee does not pay the contractor, the contractor may terminate. This provision must be included in all contracts in excess of $10,000.

As both situations represent breaches of contract, this section must describe the administrative, contractual, or legal remedies available to the parties, including possible sanctions and penalties as may be appropriate (see also [Chapter 21](#twentyone_toc) of this manual).

#### Termination for Convenience

Allows the Grantee or contractor to terminate the contract unilaterally without becoming liable for breach. It sets forth the procedures to be followed by the contractor upon receipt of the notice of termination and provides a right of appeal to an administrative board or other cure process. Inclusion of any appeal or cure process does not prevent a unilateral termination settlement by the contracting authority if the parties cannot negotiate a settlement pursuant to the dispute process (see also [Chapter 21](#twentyone_toc) of this manual). This provision must be included in all contracts in excess of $10,000.

#### Change/Modifications

The Agency requires this provision, which describes the methods and circumstances required for contract modifications. At a minimum, this clause should describe a process for changing the contract in the event of funding increases or reductions.

#### Access to Records

Requires the Grantee or contractor to provide access to records in accordance with applicable administrative requirements (see [Appendix K](#app_k) to this manual).

Grantees and subgrantees (subrecipients) must ensure that all information collected, assembled or maintained by the applicant relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, Vernon’s 1994, unless expressly prohibited by law.

#### Record Retention

Requires compliance with applicable record retention requirements. See [Appendix K](#app_k) to this manual for more information on record retention. This provision must be included in all contracts.

#### Provision Against Assignment

The Agency requires a provision against assignment to ensure that the contractor will not assign its interest in the contract to another party without prior written approval from the Grantee. Prior to granting written approval, the Grantee is responsible for performing an analysis to evaluate the contractor’s ability to perform successfully under the terms and conditions of the contract. Approval for assignment shall not be given if the Grantee determines that the contractor is unable to perform successfully under the terms and conditions of the contract.

#### Program Income

The Agency requires a provision requiring that [program income](#programincome) earned from publicly funded programs will be reported and used in accordance with the contract, and federal and state laws and regulations.

#### Disputes/Claims

The Agency requires a provision that describes how disputes and/or claims between the Grantee and the contractor may be resolved. Applicable state and local requirements should also be included in this element (see also [Chapter 21](#_Chapter_21_Enforcement,) to this manual).

#### Duplicate Funding

The Agency requires this provision which requires the contractor to allocate costs among benefited funding sources, and prohibits the contractor from charging the contract for costs that are charged to other funding sources. The contractor should inform the Grantee if it receives funds that affect the cost or performance of work. The Grantee may want to insert a clause that would give them the right to renegotiate the contract relative to changed costs.

#### Subcontracting

The Agency requires this provision to define the circumstances, if any, under which the contractor may subcontract program activities, services, or responsibilities. If subcontracting is permitted, the clause should, at a minimum, require prior written approval from the Grantee.

#### Conflict of Interest

The Agency requires a provision that no employee, officer or agency of the contractor shall participate in the award, or administration of a contract supported by public funds if a conflict of interest or apparent conflict of interest would be involved. The statement should also require the contractor to notify the Grantee when any potential or actual conflict of interest situation exists. Refer to D. Standards of Conduct and Conflicts of Interest in the FMGC Supplement on Procurement, in [Appendix D](#app_d) to this Manual, for more information about conflicts of interest.

#### Reporting

Details the appropriate reporting requirements, such as proper format and due dates.

#### Patent, Copyrights and Rights in Data

Allows the Grantee to retain the entire right, title and interest to each invention developed under the project, except that the federal and/or state government shall be granted a “nonexclusive, nontransferable, irrevocable, paid-up license” to use the invention. Property requirements are discussed further in [Chapter 13](#thirteen_toc) of this manual. This clause should be included in all award agreements.

#### Debarment and Suspension Certification

Requires contractors to certify that they are not debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs and contracts.

#### Drug-Free Workplace Certification

The Drug-Free Workplace Act (Public Law 100-690, Subtitle D codified at 41 U.S.C §§ 701-707) requires Grantees to certify that they will provide a drug-free workplace as a precondition of receiving an award. Agency policies require the completion of this certification for all contracts exceeding the small purchase threshold. Although not required, Grantees are encouraged to develop local policies requiring Drug-Free Certification for various categories of contractors.

#### Anti-Lobbying

Requires compliance with the requirements of certification and disclosure imposed by the appropriate regulations. This clause prohibits the contractor from using public funds to attempt to influence a politician to favor or oppose any federal, state or local legislation or appropriation. Uniform Guidance specifically requires a provision for compliance with the Byrd Anti-Lobbying Amendment (13 U.S.C. 1352).

#### Audit Rights and Requirements

The Agency requires this provision on the basis of state statute and Agency policies, which gives the Grantee, the Agency, and others with statutory audit rights reasonable access to examine documents pertaining to contract performance during normal business hours. If state (non-federal) funds are contracted, the statement in Texas Government Code § 2261.203 must be included.

#### Equal Employment Opportunity

Requires compliance with Executive Order (EO) 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by EO 11375 of October 13, 1967, and as supplemented in U.S. Department of Labor regulations (41 CFR Part 60).

#### Copeland Anti-Kickback Act

Requires compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in U.S. Department of Labor regulations (29 CFR Part 3). This provision must be included in contracts in excess of $2,000.

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## 15.3 Assurances

Policy:

The contracting entity must ensure that all applicable assurances are included and that the legal instrument is consistent with the standards in this section.

Federal and state laws require a number of assurances from applicants for federal [pass-through](#flowthrufunds) or other state-appropriated funds. The following assurances will not all be required for any one contract or grant; however, all applicable assurances must be included in grants and contracts either in their entirety or by reference.

#### Contract Work Hours and Safety Standards Act

The provision requires compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by U.S. Department of Labor Regulations at 29 CFR Part 5. The Contract Work Hours and Safety Standards Act requires contractors to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

#### Davis-Bacon Act

Must be included in all construction contracts that exceed $2,000 when required by federal grant program legislation. The provision requires compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by U.S. Department of Labor regulations at 29 CFR Part 5. The Davis-Bacon Act requires contractors to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors are required to pay wages not less than once a week. The contractor must include a copy of the current prevailing wage determination issued by the U.S. Department of Labor in each solicitation and the award of a contract must be conditioned upon the acceptance of the wage determination. The contractor must report all suspected or reported violations to the Agency, and the Agency must report the violation to the federal awarding agency.

#### Child Support

Requires compliance with Section 231.006, Texas Family Code, which prohibits payments to a person who is in arrears on child support payments.

#### Child Abuse

Texas Family Code § 261.101 requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Family and Protective Services. Grantees shall also ensure that all program personnel are properly trained and aware of this requirement.

#### Nondiscrimination

Federal statutes relating to nondiscrimination include but are not limited to:

* Title VI of the Civil Rights Act of 1964 (Public Law 88-352) which prohibits discrimination on the basis of race, color or national origin;
* Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
* Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990;
* the Age Discrimination Act of 1974, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age;
* the Drug Abuse Office and Treatment Act of 1972 (Public Law 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
* the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Public Law 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
* Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
* Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
* any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
* the requirements of any other nondiscrimination statute(s) which may apply.

#### Minimum Wage and Maximum Hours

Grantees must comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable*.*

#### Nepotism

Grantees must comply with Texas Government Code, Chapter 573, which requires that no officer, employee, or member of the applicant’s governing body or of the applicant’s Grantee shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.

#### Open Meetings

Requires compliance with the Texas Government Code, Chapter 551, which requires all regular, special or called meeting of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

#### Contract Administration System

When incorporated into a contract, standard assurances contained in the application package become terms or conditions for receipt of grant funds. Grantees must maintain an appropriate contract administration system to ensure that all terms, conditions, and specifications are met.

#### Hatch Political Activity Act (5 U.S.C. 7321-29)

Limits the political activity of employees whose principal employment activities are funded in whole or in part with federal funds.

#### Environmental Standards

Requires compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act 42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). The contractor will notify the federal grantor agency of the receipt of any communication from the Director of the Environmental Protection Agency (EPA) Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA (EO 11738). This provision must be included in all contracts in excess of $150,000.

#### Flood Disaster Protection Act of 1973 (Public Law 93-234)

Grantees must comply with the flood insurance purchase requirements of Section102(a) of the Flood Disaster Protection Act of 1973. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the U.S. Department of Housing and Urban Development as an area having special flood hazards.

#### Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq)

Prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

#### Pro-Children Act of 1994 (Public Law 103-277)

Prohibits smoking within any portion of any indoor facility used for the provision of services for children as defined by the Pro-Children Act of 1994.

#### HIV/AIDS Work Place Guidelines

Grantees must adopt and implement applicable provisions of the model HIV/AIDS work place guidelines of the Texas Department of Health as required by the Texas Health and Safety Code, Ann., Sec. 85.001, et seq.

#### Tax Laws

Contractors will comply with all federal tax laws and are solely responsible for filing all required state and federal tax forms.

#### Laws and Regulations

Contractors will comply with all applicable requirements of federal and state laws, executive orders, regulations and policies.

#### Energy Policy and Conservation Act

Requires compliance with mandatory standards and policies relating to efficiency which are contained in the state energy plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

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## 15.4 Board Contracting Guidelines

Boards’ contracting procedures must be consistent and ensure compliance with provisions for the integrity of the workforce system in Agency rules at 40 TAC § 802.21.

[Boards](#board) shall ensure that contracts and grant awards with [workforce service providers](#workforceservicecontractor) comply with [Agency](#agency) rules at 40 TAC § 802.21, which are enacted to implement Texas Government Code, Sections 2308.264 and 2308.267. The purpose of such rule guidelines is to establish standards of conduct and disclosure requirements for Boards' contracted service providers, and methods of ensuring fiscal accountability, including assurances that Boards do not perform direct delivery of services.

Reference:

40 TAC § 802.21

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# Chapter 16 Allocation, Deobligation and Reallocation

This chapter is currently under construction.

Provisions for TWC’s allocation, deobligation, and reallocation of funds are set forth in:

* Texas Workforce Commission Allocation and Funding Rules: 40 TAC Chapter 800, Subchapter B
* The Agency Board Agreement (for [Boards](#board))
* Grant award provisions

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# Chapter 17 Financial Reporting

This chapter is currently under construction.

This topic pertains to Grantees’ submission of grant expenditure reports to TWC. Reporting rules and requirements for TWC Grantees are set forth in:

* Texas Workforce Commission Allocation and Funding Rules: 40 TAC Chapter 800, Subchapter B
* Adult Education and Literacy (AEL) Letter 01-23, issued February 14, 2023, and entitled “Cash Draw and Expenditure Reporting System Instructions for AEL Grant Awards” and any subsequent issuances
* WD Letter 04-15 Change 2, issued December 4, 2015, and entitled “Cash Draw and Expenditure Reporting System Instructions—Update” and any subsequent issuances
* Other Agency issuances as needed
* The Agency Board Agreement (for [Boards](#board))
* Grant award provisions
* The training modules in TWC’s online Cash Draw and Expenditure Reporting system

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# Chapter 18 Grant Financial Closeout

This chapter is currently under construction.

This topic pertains to Grantees’ submission of grant financial closeout packages to TWC. Grant financial closeout requirements are set forth in:

* Texas Workforce Commission Allocation and Funding Rules: 40 TAC Chapter 800, Subchapter B
* Adult Education and Literacy (AEL) Letter 01-23, issued February 14, 2023, and entitled “Cash Draw and Expenditure Reporting System Instructions for AEL Grant Awards” and any subsequent issuances
* WD Letter 44-05, issued August 9, 2005, and entitled “Texas Workforce Commission Online Contract Closeout Process”
* Other Agency issuances as needed
* The Agency Board Agreement (for [Boards](#board))
* Grant award provisions
* The training modules in TWC’s online Cash Draw and Expenditure Reporting system

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# Chapter 19 Monitoring

This chapter compiles the applicable federal, state and agency requirements for monitoring funds administered by the [Agency](#agency). In accordance with 40 TAC § 802.62, monitoring activities should ensure that programs achieve intended results, resources are efficiently and effectively used for authorized purposes, and resources are protected from waste, fraud, and abuse. In the event of conflict between these standards and federal statute or regulations, federal statute or regulation will apply. The chapter is organized as follows:

[1](#ninteen_one)[9.1 General](#ninteen_one)

[19.2 Risk Assessment](#ninteen_two)

[1](#ninteen_three)[9](#ninteen_three)[.3 Monitoring Plan](#ninteen_three)

[19](#ninteen_four)[.](#ninteen_four)[4 Monitoring Controls](#ninteen_four)

[19.5 Reporting and Resolution](#ninteen_five)

Note that these requirements are applicable to the [Grantees](#grantee) (and Grantees’ [subgrantees (subrecipients)](file:///\\DATAX103P\RDATA\FMGC\UPDATES%20(07_01_05+)\2014%20Web%20Redesign\fmgc_appa_glossary.doc#subcontractor)) monitoring functions. They do not describe the Agency’s monitoring function or its resolution procedures.

Record retention and access requirements are provided in [Appendix K](#app_k) to this manual. All financial and programmatic records, supporting documents, statistical records, and other records pertaining to an award of federal or state funds must be retained and made available to authorized entities or their representatives in accordance with applicable administrative requirements.

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[Link to Policy Statements](#app_c)

## 19.1 General Monitoring Requirements

Programs, functions or activities supported by federal and/or state funds administered by the Agency must be monitored on a regular basis to assure compliance with applicable federal and/or state requirements.

This section covers general monitoring requirements, as well as some related entity-specific and program-specific requirements.

### General Requirements for Monitoring

[[Grantees](#grantee)](file:///\\DATAX103P\RDATA\FMGC\UPDATES%20(07_01_05+)\2014%20Web%20Redesign\fmgc_appa_glossary.doc#contractor) that receive federal and/or state funds administered by the [Agency](#agency) must conduct regular fiscal and program monitoring of their activities and those of their [subgrantees (subrecipients)](#subcontractor). The monitoring must cover all programs, functions, or activities supported by federal and/or state funds administered by the Agency, and be sufficient to accomplish the following objectives:

* determine that expenditures have been charged to the cost categories and within the cost limitations specified in the applicable laws and regulations;
* determine whether or not there is compliance with provisions of applicable laws and regulations, contract provisions, uniform administrative requirements for grants and agreements as promulgated in the circulars or rules of the Office of Management and Budget, and official directives including:
  + U.S. Department of Labor Training and Employment Guidance Letters (TEGLs),
  + U.S. Department of Labor Training and Employment Informational Notices (TEINs),
  + U.S. Department of Health and Human Services Guidance Letters, and
  + Texas Workforce Commission Workforce Development Letters; and
* provide technical assistance as necessary and appropriate.

Monitoring must include the development and implementation of a risk assessment tool ([Section 19.2](#ninteen_two) of this manual), monitoring plan ([Section 19.3](#ninteen_three) of this manual), monitoring program (as part of its monitoring controls) ([Section 19.4](#ninteen_four) of this manual), and reporting and resolution process ([Section 19.5](#ninteen_five) of this manual). Written policies and procedures that describe and support the monitoring process must be developed and implemented.

### Entity Specific Considerations for Boards

The Agency Board Agreement (ABA) requires [Boards](#board) to develop and maintain a subrecipient monitoring system acceptable to the Agency to monitor any subgrant or contract it awards from TWC grants covered by the ABA. The ABA also requires that complete records of all monitoring performed by the Board shall be maintained and made available to the Agency in accordance with the record retention and access provisions in Section 20 of the ABA.

In addition, and in accordance with Texas Government Code § 2308.303, a Board must monitor and evaluate the effectiveness of the following to help ensure that performance is consistent with state and local goals and objectives:

* career development centers;
* contractors that provide workforce training and services; and
* vocational and technical education programs operated by local education agencies and institutions of higher education.

Complete records of all monitoring must be maintained and made available to the Agency during the contract performance periods and retained in accordance with the retention requirements in [Appendix K](#app_k) of this manual.

### Program Specific Considerations

The Workforce Innovation and Opportunity Act (WIOA) regulations also address monitoring responsibilities for entities that receive WIOA Title I and Wagner-Peyser Act grant funds.

As required by WIOA Regulations at 20 CFR §§ 683.400 and 683.410, all entities that meet the definition of a recipient or [subrecipient](#subgrantee) of WIOA Title I funds, “must conduct regular oversight and monitoring of its WIOA and Wagner-Peyser Act programs and those of its subrecipients and contractors as required under Title I of WIOA and the Wagner-Peyser Act as well as under 2 CFR part 200…and Department exceptions at 2 CFR part 2900.”

Additionally, the regulations require that the monitoring accomplish the following:

* Determine that expenditures have been made against the proper cost categories and within the cost limitations specified in WIOA and the regulations in 20 CFR Part 683;
* Determine whether there is compliance with other provisions of WIOA and the WIOA regulations and other applicable laws and regulations;
* Assure compliance with [2 CFR Part 200](https://www.ecfr.gov/current/title-2/part-200); and
* Determine compliance with the nondiscrimination, disability, and equal opportunity requirements of sec. 188 of WIOA, including the Assistive Technology Act of 1998 ([29 U.S.C. 3003](https://www.govinfo.gov/link/uscode/29/3003)).

Grantees have local flexibility in defining “regular” when determining what constitutes “regular oversight and monitoring.” However, the monitoring must occur no less than annually, and it must be sufficient to accomplish the three monitoring objectives in this section of this manual.

Reference:

WIOA Regulations: 20 CFR § 683.400(c)(1) and 683.410(a)

OMB Uniform Guidance: 2 CFR §§ 200.329 and 200.332(d)

Government Code § 2308.303

TxGMS: “Monitoring and Reporting Program Performance” and “Sub-Grantee Monitoring and Management”

40 TAC § 802.82

Agency Board Agreement Section 19.2 (October 2022)

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## 19.2 Risk Assessment Tool

A risk assessment tool must be developed and used in accordance with the requirements of Commission rule.

The [Uniform Guidance](#uniformguidance) and [Texas Grant Management Standards (TxGMS)](#txgms) require that [Grantees](#grantee) evaluate each [subgrantee’s (subrecipient’s)](#subgrantee) risk of noncompliance with applicable requirements for purposes of determining the appropriate subrecipient monitoring. For more information, refer to Risk Assessment in [Section 20.3 Oversight Responsibilities](#twenty_three), in this manual.

This section of the manual covers a risk assessment tool specific to the monitoring of the subgrantee. As described in TWC rules at 40 TAC § 802.82, the risk assessment tool must identify both high-risk subgrantees, and areas of high risk within an individual subgrantee’s operations. The Grantee is responsible for determining what constitutes high risk or an area of high risk.

Grantees must establish monitoring schedules and monitoring programs that best utilize monitoring resources based on the risk assessment tool’s outcomes. Grantees must quantify, as much as possible, and document areas of risk identified for assessment.

Reference:

OMB Uniform Guidance: 2 CFR § 200.332(b)

TxGMS: “Evaluation of Sub-Grantee’s Risk of Noncompliance”

40 TAC § 802.83

Last Update: October 1, 2023

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## 19.3 Monitoring Plan

A local-level monitoring plan must be developed using the results of the risk assessment. The plan must include the information required by Commission rule.

The monitoring plan must incorporate the following:

* a schedule or timetable for monitoring [Agency](#agency) funded activities, and [subgrantees (subrecipients)](#subcontractor) based upon risk assessment results;
* identification of the type of review planned for each subcontractor, such as on-site review, comparative financial analysis, desk review, staff analysis, or other type of appropriate review; and
* the estimated time budgeted to perform each review.

[[Grantees](#contractor)](file:///\\DATAX103P\RDATA\FMGC\UPDATES%20(07_01_05+)\2014%20Web%20Redesign\fmgc_appa_glossary.doc#contractor) may perform monitoring reviews either formally or informally, but must incorporate the risk assessment results in scheduling decisions.

Reference:

40 TAC § 802.84

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## 19.4 Monitoring Controls

Monitoring controls must be implemented to ensure that comprehensive and effective monitoring is achieved.

To ensure comprehensive and effective monitoring, [[[Grantees](#contractor)](#contractor)](file:///\\DATAX103P\RDATA\FMGC\UPDATES%20(07_01_05+)\2014%20Web%20Redesign\fmgc_appa_glossary.doc#contractor) and their [subgrantees (subrecipients)](#subcontractor) must:

* require periodic reports from their subgrantees (subrecipients) outlining monitoring reviews, noncompliance issues, and the status of corrective actions;
* ensure that a briefing regarding monitoring activities and findings is provided to the [Board](#board) or appropriate Board subcommittee at regularly scheduled meetings;
* require an annual evaluation of the monitoring function to determine its effectiveness, by a person or entity independent of the monitoring function; and
* develop a written monitoring procedure to be used in monitoring both program and fiscal operations.

Reference:

40 TAC § 802.85

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## 19.5 Reporting and Resolution

Monitoring reports must identify instances of noncompliance with federal and/or state requirements, and provide recommendations for corrective action and program quality enhancements.

Monitoring reports must identify instances of noncompliance with federal, state and [Agency](#agency) requirements, and provide recommendations for corrective action and program quality enhancements.

A [Grantee’s](#grantee) [subgrantee (subrecipient)](#subgrantee) must establish timelines for the completion of corrective action plans that are based on the severity of the deficiency. The Grantee and subgrantee must coordinate to ensure implementation of corrective actions. Each Grantee has local flexibility in establishing a resolution process for coordinating the implementation of the plans with the subgrantee, but may at its discretion, model such a process after the rules at 40 TAC § 802.65.

Monitoring reports must be provided to the governing board. Upon request, copies must be provided to the [Agency](#agency).

Reference:

OMB Uniform Guidance: 2 CFR § 200.332(d)

TxGMS: “Sub-Grantee Monitoring and Management”

40 TAC § 802.86

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# Chapter 20 Single Audit

This chapter compiles the applicable federal, state and agency audit requirements for entities that receive funds administered by the Agency. The chapter is organized as follows:

[2](#twenty_one)[0.1 General Audit Requirements](#twenty_one)

[2](#twenty_two)[0.2 Reporting Package](#twenty_two)

[20.3 Oversight Responsibilities](#twenty_three)

[2](#twenty_four)[0.](#twenty_four)[4 Management Decision](#twenty_four)

Record retention and access requirements are provided in [Appendix K](#app_k) to this manual. All financial and programmatic records, supporting documents, statistical records, and other records pertaining to an award of federal or state funds must be retained and made available to authorized entities or their representatives in accordance with applicable administrative requirements.

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[Link to Policy Statements](#app_c)

## 20.1 General Audit Requirements

Policy:

Grantees must adhere to applicable audit requirements for the grant award, as set forth in the Uniform Guidance and Texas Grant Management Standards (as applicable), program regulations, and other grant requirements.

This section highlights selected audit requirements. Refer to the cited references at the end of this section and any applicable program or grant requirements for the complete requirements.

### Audits Required by Uniform Guidance and TxGMS

Unless specified otherwise:

* [Grantees](#grantee) of federal TWC grant awards must follow the audit requirements in 2 CFR Part 200, Subpart F of the [Uniform Guidance](#uniformguidance); and
* Grantees of state TWC grant awards must follow the audit requirements in the Texas Grant Management Standards ([TxGMS](#txgms)).

Unless otherwise required, for-profit/commercial entities are not subject to the audit requirements in Uniform Guidance and TxGMS (see Program Specific Considerations in this Section 20.1). In those cases, grants and [subgrants](#subgrant) with for-profit/commercial entities must establish audit requirements. The requirements may include but are not limited to pre- and post- audits, and monitoring.

### Audit Frequency

For audits required under the Uniform Guidance or TxGMS, a Grantee that meets the established expenditure threshold during its fiscal year must have the required audit conducted for that year. As of the date of this writing, the Uniform Guidance requires an audit for a Grantee that expends $750,000 or more in [federal awards](#federalaward) during the Grantee’s fiscal year. Similarly, TxGMS requires an audit for a Grantee that expends $750,000 or more in [state awards](#stateaward) during the Grantee’s fiscal year.

### Basis for Expenditure Determination

For audits required under the Uniform Guidance, the basis for determining federal awards expended is described in 2 CFR § 200.502. TxGMS is silent on the basis for determining state awards expended.

### Single or Program Specific Audit

For audits of federal awards that are performed under Uniform Guidance:

* An auditee that meets the expenditure threshold for audit of federal awards during that entity’s fiscal year must have a single audit conducted in accordance with 2 CFR § 200.514 of the Uniform Guidance, except when it qualifies for and elects to instead have a program-specific audit conducted in accordance with 2 CFR § 200.501(c).
* The option for a program-specific audit provides that when an auditee expends federal awards under only one federal program (excluding [Research and Development (R&D)](#researchanddevelopment)) and the federal program’s statutes, regulations, or the terms and conditions of the federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with 2 CFR § 200.507 of the Uniform Guidance.

For audits of state awards that are performed under TxGMS:

* An auditee that meets the expenditure threshold for audit of state awards during that entity’s fiscal year must have either a financial audit or program-specific audit conducted for that year in accordance with the provisions of this section. The state awarding agency may also require an independent audit to be conducted based factors other than monetary threshold.
* The option for a program-specific audit provides that when an auditee expends state awards under only one state program, excluding Research and Development and the state program’s statutes, rules, or the terms and conditions of the state award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with this section. A program-specific audit may not be elected for R&D unless all of the state awards expended were received from the same state agency or the state awarding agency approves in advance a program-specific audit.
* Instead of a financial audit or program-specific audit, a state awarding agency, at its discretion, may accept a single audit of the entity prepared in compliance with the Uniform Guidance if the state awarding agency determines that the federal single audit sufficiently addresses internal controls and other grant requirements as they relate to the particular state award.

### Vendor and Subrecipient Determination

For entities that are subject to audit under the Uniform Guidance and/or TxGMS, the audit requirements apply to entities that meet the definition of “[subrecipient](#subgrantee)”. Refer to Appendix K in this manual to determine whether an entity meets the definition of a “subrecipient” (versus a “[contractor](#contractor)” (vendor). Unless specified otherwise, contractors are not subject to the audit requirements in the Uniform Guidance or TxGMS.

### Relation to Other Audit Requirements

If an awarding entity or other authority requires additional audits, the Uniform Guidance requires that the additional audit work “must” build upon the work performed by other auditors. This includes audit documentation, sampling, and testing already performed by other auditors. Under TxGMS, the additional audit work “should” build upon the work performed by the other auditors. For federal awards, the Uniform Guidance adds that funding for the additional work must be arranged by the entity requesting the additional audit.

### Audit Costs

Unless prohibited by law, the cost of audits made in accordance with the provisions of the Uniform Guidance and TxGMS are allowable charges to federal and/or state awards, respectively.

Refer also to the cost principles covered in [Section 8.3.6 Audit and Related Services](#eight_3_6), in this manual.

### Program Specific Consideration

Workforce Innovation and Opportunity Act (WIOA). Recipients and subrecipients of WIOA Title I and Wagner-Peyser Act funds that are commercial or for-profit entities must adhere to the audit requirements contained in 2 CFR part 200, Subpart F of the Uniform Guidance.

### Entity Specific Consideration for Boards

When a [Board](#board) serves as the fiscal agent for one or more of its contracted service providers, the audit of the service provider may not be included in the audit of the Board. The contracted service provider must have a separate audit performed.

Reference:

WIOA Regulations: 20 CFR § 683.210(a)

OMB Uniform Guidance: 2 CFR Part 200, Subpart F

Texas Government Code § 2105.007

TxGMS: “Audits”

Last Update: October 1, 2023

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## 20.2 Reporting Package

Policy:

Grantees must adhere to applicable audit reporting requirements.

The reporting package for an audit performed under the Uniform Guidance or TxGMS must be submitted within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period. The reporting package for audits performed under the Uniform Guidance must be submitted to the [Federal Audit Clearinghouse](#federalauditclearinghouse). The reporting package for an audit performed under TxGMS is submitted to the state awarding agency.

The reporting package must include:

* Financial statements
* Schedule of Expenditure of Federal Awards and/or Schedule of Expenditure of State Awards, as applicable
* Summary schedule of prior audit findings
* Auditor’s report
* Corrective action plan

For detailed descriptions and more information refer to the Uniform Guidance and/or TxGMS, as applicable.

Reference:

OMB Uniform Guidance: 2 CFR Part 200, Subpart F

TxGMS: “Audit”

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## 20.3 Oversight Responsibilities

Policy:

Pass-through entities have oversight responsibilities for subgrants that they issue under TWC grant awards.

A [pass-through entity](#passthruentity) has the responsibilities covered in this section for the [subgrants](#subgrant) that it makes under a [federal award](#federalaward) or [state award](#stateaward) from TWC ([TWC grant awards](#twcgrantaward)).

### Subgrant Identification

A pass-through entity must ensure that every subgrant that it issues under a TWC grant award is clearly identified to the [subgrantee (subrecipient)](#subgrant) as being a subgrant.

Note: For information about the difference between a subgrant to a subgrantee and a [contract](#contract) to a [contractor (vendor)](#contractor), refer to [Appendix J Subrecipient and Contractor (Vendor) Determinations](#app_j), in this manual.

### Federal Award/State Award Identification

Pass-through entities must include the following information in the subgrant at the time of subaward. If any of these data elements change, include the changes in a subsequent modification to the subgrant. When some of this information is not available, the pass-through entity must provide the best information available to describe the federal award or state award.

The required information includes:

* The subgrantee’s name and the subgrantee’s [Unique Entity Identifier (UEI)](#uniqueentityidentifier) as follows:
  + For federal awards, the Uniform Guidance requires that the subgrantee name, as identified in the subgrant, must match the name of that subgrantee’s Unique Entity Identifier as established for federal award purposes (which is established in the federal System for Award Management (SAM))
  + For state awards, if the entity is registered in the Dun & Bradstreet Data Universal Numbering System (DUNS), TxGMS requires that the subgrantee name, as identified in the subgrant, must match the name of that entity’s DUNS number
* Award identification number as follows:
  + For federal awards, this refers to the [Federal Award Identification Number (FAIN)](#fain)
  + For state awards, this refers to a state award identification number (such as the unique grant identification number assigned by TWC for the TWC grant award); TxGMS also specifies to include the funding opportunity number assigned by the state awarding agency (such as the number assigned to a Request for Applications opportunity), if any, or the number assigned to the funding notice that the pass-through entity issued, if any
* The [Federal award date](#federalwarddate) (for federal awards) or the state award date (for state awards)
* Subgrant [period of performance](#periodofperformance), start and end date
* Subgrant [budget period](#budgetperiod), start and end date
* Amount obligated by the action as follows:
  + For federal awards, the Amount of Federal Funds Obligated by this Action by the pass-through entity to the subgrantee
  + For state awards, the Amount of State Funds Obligated by this Action by the pass-through entity to the subgrantee
* Total amount of funds obligated as follows:
  + For federal awards, the Total Amount of Federal Funds Obligated by the pass-through entity to the subgrantee, including the current [financial obligation](#financialobligation)
  + For state awards, the Total Amount of State Funds Obligated by the pass-through entity to the subgrantee, including the current financial obligation
* Total amount of funds committed as follows:
  + For federal awards, the Total Amount of Federal Funds Committed by the pass-through entity to the subgrantee
  + For state awards, the Total Amount of Funds Committed by the pass-through entity to the subgrantee
* Total Approved Cost Sharing or Matching as follows:
  + For state awards covered by TxGMS, TxGMS requires inclusion of the Total Approved Cost Sharing or Matching, where applicable
  + For federal award, the Uniform Guidance does not expressly list this as a required data element for a subgrant (a pass-through entity could consider including it when relevant to the specific federal award)
* Project description as follows:
  + For federal awards, the [federal award project description](#federalawardprojectdescription), as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)
  + For state awards, a project description sufficient to comply with statutory requirements, if any
* Awarding agency information as follows:
  + For federal awards, the name of the [federal awarding agency](#federalawardingagency), name of the pass-through entity, and contact information for the awarding official of the pass-through entity
  + For state awards, the name of the pass-through entity and contact information for the awarding official of the pass-through entity
* For state awards, TWC recommends including the state program name and number (if a number is used)(to help facilitate identification of questioned costs, if any, by program name as required under “Audit Finding Detail and Clarity” in TxGMS);
* For federal awards, the [Assistance Listings Program Title](#assistancelistingsprogramtitle) and [Assistance Listings Number](#assistancelistingsnumber) (the Uniform Guidance also requires that the pass-through entity must identify the dollar amount made available under each federal award and the Assistance Listings Number at the time of disbursement);
* Identification of whether the award is for [Research and Development (R&D)](#researchanddevelopment); and
* Indirect cost rate for the subgrant (including if the de minimis rate is charged), if any.

### Requirements Imposed on the Subgrantee

Subgrants must include information that informs subgrantees of

* All requirements imposed on them by the pass-through entity so that the federal or state award is used in accordance with applicable federal statutes and regulations (for federal awards), state laws and rules (for state awards), and the terms and conditions of the federal or state award; and
* Any additional requirements imposed by the pass-through entity in order for the pass-through entity to meet its own responsibilities under the award, including identification of any required financial and performance reports.

The subgrant must also include appropriate conditions concerning closeout of the subgrant.

### Risk Assessment

Pass through entities must evaluate each subgrantee’s risk of noncompliance with applicable federal statutes and regulations (for federal awards), state laws and rules (for state awards), and the terms and conditions of the subgrant for purposes of determining the appropriate monitoring under Monitoring Responsibilities, in this section. The risk assessment may include consideration of such factors as:

* The subgrantee’s prior experience with the same or similar subgrants;
* The results of previous audits including whether or not the subgrantee receives a Single Audit in accordance with the Uniform Guidance, and the extent to which the same or similar subgrant has been audited (for state awards) or audited as a major program (for federal awards);
* Whether the subgrantee has new personnel or new or substantially changed systems; and
* The extent and results of federal awarding agency monitoring (if the subgrantee also receives federal awards directly from a federal awarding agency) or the extent and results of state awarding agency monitoring (if the subgrantee also receives state awards directly from a state awarding agency).

Refer to [Section 19.2 Risk Assessment Tool](#ninteen_two), in this manual, for more information about the risk assessment as it pertains to monitoring of the subgrant.

### Monitoring Responsibilities

Pass-through entities must monitor the activities of the subgrantees as necessary to ensure that subgrant performance goals are achieved, and that the subgrant is used for authorized purposes in compliance with federal statutes and regulations (for federal awards), state laws and rules (for state awards), and the terms and conditions of the subgrant. Pass-through entity monitoring of the subgrantee must include reviewing financial and performance reports required by the pass-through entity. It must also include the following actions, which are discussed under Management Decision & Corrective action, in this section 20.3:

* Following-up and ensuring that the subgrantee takes timely and appropriate action on all deficiencies pertaining to the subgrant;
* Issuing a [management decision](#managementdecision) for applicable audit findings pertaining to the subgrant; and
* Resolving audit findings specifically related to the subgrant.

Depending on the pass-through entity’s assessment of risk posed by the subgrantee, as described under Risk Assessment, in this section, the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

* Providing subgrantees with training and technical assistance on program-related matters;
* Performing on-site reviews of the subgrantee’s program operations; and
* Arranging for audit services (specifically, for federal awards, arranging for agreed-upon procedures engagements as described in 2 CFR § 200.425).

### Verification of Audit

Pass-through entities must verify that every subgrantee that meets the expenditure threshold for audit as set forth in the Uniform Guidance and TxGMS, as applicable, is audited as required by the Uniform Guidance and TxGMS, as applicable.

### Management Decision & Corrective Action

In addition to the other responsibilities listed under Monitoring Responsibilities, in this section, pass-through entity monitoring of the subgrantee must include the following:

* Issuing a management decision for applicable audit findings pertaining to the subgrant provided to the subgrantee by the pass-through entity. The pass-through entity must issue the management decision within six months of the date specified by the Uniform Guidance or TxGMS, as applicable.
* Following-up and ensuring that the subgrantee takes appropriate and timely action on all deficiencies pertaining to the subgrant provided to the subgrantee from the pass-through entity, as detected through audits, on-site reviews, and written confirmation from the subgrantee.

Refer also to [Section 20.4 Management Decision, Corrective Action & Collections](#twenty_four), in this manual.

For audits of federal awards, the pass-through entity is responsible for resolving audit findings specifically related to the subgrant. The pass-through entity is not responsible for resolving crosscutting findings. If a subgrantee has a current Single Audit report posted in the [Federal Audit Clearinghouse](#federalauditclearinghouse) and has not otherwise been excluded from receipt of federal funding (such as if it has been debarred or suspended), the pass-through entity may rely on the subgrantee’s [cognizant audit agency](#cognizantagencyforaudit) or cognizant [oversight agency [for audit]](#oversightagencyforaudit) to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with 2 CFR § 200.513(a)(3)(vii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subgrants that conform to federal awarding agency and award-specific requirements, to manage risk through ongoing monitoring of the subgrant, and to monitor the status of the findings that are specifically related to the subgrant.

### Adjustments of Pass-Through Entity Records

Pass-through entities must consider whether the results of the subgrantee’s (subrecipient’s) audits, on-site reviews, or other monitoring indication conditions that necessitate adjustments to the pass-through entity’s own records.

### Access to Records

Subgrants must include require each subgrantee (subrecipient) to permit the pass-through entity and auditors to have access to the subgrantee’s records and financial statements as necessary for the pass-through entity to comply with the Uniform Guidance and TxGMS, as applicable, including the pass-through entity’s oversight responsibilities.

### Enforcement Action

Pass-through entities must consider taking enforcement action against noncompliant subgrantees as described under Remedies in [Section 21.1 Enforcement, Appeals and Termination](#twentyone_one), in this manual, and in program regulations.

### Sanction Policy

Each entity with oversight responsibility may establish a sanction policy that includes the option to impose sanctions on an audited entity for the failure to resolve administrative issues, audit findings, or questioned costs within specified timeframes. Each entity has local flexibility in establishing a sanction policy. For reference, the Agency’s sanction policy is established by rule at [40 TAC Chapter 802, Subchapter G](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=20&ch=802&sch=G&rl=Y).

Reference:

OMB Uniform Guidance: 2 CFR § 200.332

TxGMS: “Responsibilities for Pass-Through Entities”

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## 20.4 Management Decision, Corrective Action & Collections

Policy:

Auditees must promptly follow up and take corrective action on audit findings. Within six months of the date specified by the Uniform Guidance and Texas Grant Management Standards, as applicable, a Management Decision must be issued to the audited entity. The pass-through entity must take prompt collection action for any amounts owed by the auditee.

This section highlights selected [Uniform Guidance](#uniformguidance) and [Texas Grant Management Standards (TxGMS)](#txgms) requirements pertaining to [corrective action](#correctiveaction) and [management decisions](#managementdecision). It also includes information about stand-in costs. Refer to the cited references at the end of this section for the complete requirements.

### Corrective Action and Management Decision

The auditee must promptly follow up and take corrective action on audit findings. While the auditee takes corrective action, the [pass-through entity](#passthruentity) must conduct a desk review of the report and may request additional information or documentation.

Upon completion of the desk review, a Management Decision must be issued. For audits prepared under the Uniform Guidance, the management decision must be issued to the auditee within six months of the date that the [Federal Audit Clearinghouse](#federalauditclearinghouse) accepted the report. For audits prepared under TxGMS, the management decision must be issued to the auditee within six months of receiving the report from the auditee. The Management Decision must include the reference numbers the auditor assigned to each audit finding and clearly state:

* whether each audit finding is sustained;
* the reasons for the decision; and
* a requirement to repay disallowed costs, make financial adjustments, or take other action.

If corrective action has not been completed as of the issue date of the Management Decision letter, a timetable for follow-up should be given. The Management Decision letter should describe an appeal process available to the audited entity.

Grantees with oversight responsibilities should develop local procedures for the prompt collection of debts. Cash is the preferred method of recovery; however, debt may also be settled by withholding amounts due or use of stand-in costs. Stand-in costs are discussed below under Other Special Considerations.

### Stand-in Costs

Stand-in costs are non-federal, non-state costs that may be substituted for disallowed grant costs when certain conditions are met. In order to be considered by TWC for stand-in costs, the proposed stand-in costs must meet the following criteria:

* must have been allowable costs incurred under the grant, but not charged to the federal program (or any other program administered by the Agency);
* must have been included within the scope of the audit;
* must have been accounted for in the auditee’s financial system;
* may include cash match (expenditures of the organization used as match) that exceeds match requirements under the grant;
* must come from the same year as the costs that were proposed to be replaced; and
* must not cause costs to exceed administrative or other cost limitations.

Stand-in costs do not include in-kind match; uncompensated overtime; unbilled premises costs associated with fully depreciated publicly owned buildings; allocated costs derived from an improper allocation methodology; or discounts, refunds or rebates.

Reference:

One-Stop Comprehensive Financial Management Technical Assistance Guide, Part II, Chapter II-12 (relating to stand-in costs)

OMB Uniform Guidance: 2 CFR Part 200, Subpart F

TxGMS: “Audit”

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# Chapter 21 Enforcement, Appeals, and Termination

This chapter compiles the applicable federal, state and agency requirements for the enforcement, sanction, and termination of awards made by [Grantees](#grantee) to [subgrantees (subrecipients)](#subgrantee) using funds administered by the [Agency](#agency). The chapter is organized as follows:

[21.1 Enforcement](#twentyone_one)

[21.2 Appeals](#twentyone_two)

[21.3 Termination](#twentyone_three)

In the event of conflict between these standards and federal statute or regulations, the federal statute or regulations will apply.

Record retention and access requirements are provided in [Appendix K](#app_k) to this manual. All financial and programmatic records, supporting documents, statistical records, and other records pertaining to an award of federal or state funds must be retained and made available to authorized entities or their representatives in accordance with applicable administrative requirements.

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## 21.1 Enforcement

Policy:

A Grantee’s enforcement policies must not conflict with federal or state requirements.

Each [Grantee](#grantee) has discretion in developing its own enforcement policies to the extent that such policies do not conflict with federal and/or state provisions as provided below, in this chapter, or as otherwise required. In addition, Grantees may, but are not required to, use the [Agency](#agency)’s sanction policy codified at 40 TAC Chapter 802, Subchapter G, as a model.

### Remedies

Enforcement may be accomplished by taking one or more of the following remedies, or by imposing other sanctions, as appropriate in the circumstances:

* temporarily withhold cash payments pending correction of the deficiency by the [subgrantee (subrecipient)](#subgrantee) or more severe enforcement action by the Grantee;
* disallow (deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
* wholly or partly suspend or terminate the subgrant;
* initiate suspension or debarment proceedings as authorized under 2 CFR Part 180 (for [federal awards](#federalaward));
* withhold further awards for the project or program; or
* take other remedies that may be legally available.

### Costs Incurred During Suspension or After Termination

Unless expressly authorized in the notice of suspension or [termination](#termination), or subsequently, costs to the subgrantee resulting from [financial obligations](#financialobligation) incurred by that entity during a suspension or after terminated of the subgrant are unallowable. However, costs during suspension or after termination are allowable if all the following criteria are true:

* The costs result from financial obligations that were properly incurred by the subgrantee before the effective date of the suspension or termination, or not in anticipation of it; and
* The costs would be allowable if the [subgrant](#subgrant) was not suspended or expired normally at the end of the [period of performance](#periodofperformance) in which the termination takes effect.

See also, [Section 8.3.62 Termination Costs](#_8.3.62_Termination_Costs), in this manual, regarding the allowability of termination costs.

Reference:

OMB Uniform Guidance: 2 CFR §§ 200.339 and 200.343

TxGMS: “Remedies for Noncompliance” and “Effects of Suspension and Termination”

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## 21.2 Appeals

Policy:

The Grantee must provide the subgrantee (subrecipient), against which enforcement action is being taken, with an opportunity for a hearing, appeal, or other administrative proceeding as entitled by statute or regulation applicable to the action involved.

The [Uniform Guidance](#uniformguidance) and [Texas Grant Management Standards (TxGMS)](#txgms) require that upon taking any remedy for non-compliance, the [Grantee](#grantee) must provide the [subgrantee (subrecipient)](#subgrantee) an opportunity to object and provide information and documentation challenging the suspension or [termination](#termination) action, in accordance with written processes and procedures published by the Grantee. The requirements also provide that the Grantee must comply with any requirements for hearings, appeals or other administrative proceedings to which the subgrantee is entitled under any statute or regulation applicable to the action involved.

Each [Grantee](#grantee) has discretion in developing its own appeals policies to the extent that such policies do not conflict with federal and/or state provisions as provided in this chapter, or as otherwise required. In addition, Grantees may use the [Agency](#agency)’s appeal policy codified at 40 TAC § 802.142, as a model.

Reference:

OMB Uniform Guidance: 2 CFR § 200.342

TxGMS: “Opportunities to Object, Hearings, and Appeals”

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## 21.3 Termination

Policy:

If the Grantee or subgrantee (subrecipient) elects to terminate an award, closeout and other settlement requirements must be considered in the termination of the award.

This Section addresses reasons for termination, termination notice, and related closeout and continuing responsibilities.

### Termination Reasons

The [Uniform Guidance](#uniformguidance) and [Texas Grant Management Standards (TxGMS)](#txgms) provide that a [subgrant](#subgrant) may be [terminated](#termination) in whole or part as follows:

* By the [Grantee](#grantee), if the [subgrantee (subrecipient)](#subgrantee) fails to comply with the terms and conditions of the subgrant;
* By the Grantee, to the greatest extent authorized by law, if a subgrant no longer effectuates the program goals or agency priorities (Uniform Guidance);
* By the Grantee, with the consent of the subgrantee, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
* By the subgrantee, upon sending the Grantee written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated (however, if the Grantee determines in the case of partial termination that the reduced or modified portion of the subgrant will not accomplish the purposes for which the federal or state award was made, the Grantee may terminate the subgrant in its entirety); or
* By the Grantee pursuant to termination provisions included in the subgrant (Uniform Guidance); or for cause or convenience (TxGMS).

### Closeout & Continuing Responsibilities

When a subgrant is terminated or partially terminated, both the Grantee and the subgrantee remain responsible for compliance with the requirements for closeout of the subgrant, post-closeout adjustments, and the responsibilities that continue under the grant. For [federal awards](#federalaward), refer to 2 CFR §§ 200.344 and 200.345 in the Uniform Guidance. For [state awards](#stateaward), refer to “Closeouts”, “Post-Closeout Adjustments,” and “Continuing Responsibilities” in TxGMS.

### Notice of Termination

Uniform Guidance and TxGMS also include requirements pertaining to notifications of termination. If the subgrant is being terminated by the Grantee the Grantee must provide the subgrantee a notice of termination.

Reference:

OMB Uniform Guidance: 2 CFR §§ 200.340 and 200.341

TxGMS: “Termination” and “Notification of Termination Requirement”

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Appendix A: Glossary

# Appendix A Glossary

NOTE: The following definitions clarify the meaning and usages of various terms used in the Financial Manual for Grants and Contracts and are applicable and binding for that purpose. Unless a specific legal authority is cited, they are not intended to be definitions for legal or general use.

## Acquisition Cost

The cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for [equipment](#equipment) means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it was acquired. Acquisition cost for software includes those development costs capitalized in accordance with [Generally Accepted Accounting Principles (GAAP)](#generallyacceptedaccountingprinciples). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the Grantee’s regular accounting practices.

## Acquisition Date

The date that final acquisition is complete and title vests in the [Grantee](#grantee); or the date federal or state property transfers title to the Grantee. When used in terms of maintaining the master property list, it may also be used to refer to the date the Grantee receives loaned property from the federal or state government.

## Advertising Costs

As used in [Section 8.3.2 Advertising and Public Relations Costs](#eight_3_2), in this manual, the [Uniform Guidance](#uniformguidance) and [TxGMS](#txgms) define advertising costs to mean the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

## Agency (TWC)

Refers to the staff and departments of the Texas Workforce Commission.

## Allocable

A cost is allocable to a particular grant award or other [cost objective](#costobjective) if the goods or services involved are chargeable or assignable to that grant award or cost objective in accordance with the relative benefits received. This standard is met if the cost is incurred specifically for the grant award; benefits both the grant award and other work of the [Grantee](#grantee) and can be distributed in proportions that may be approximated using reasonable methods; and is necessary to the overall operation of the Grantee and is assignable in part to the grant award in accordance with the cost principles in the [Uniform Guidance](#uniformguidance) or [TxGMS](#txgms), as applicable. This applies whether the cost is a [direct cost](#directcost) or [indirect cost](#indirectcost).

Where a cost or activity benefits multiple activities or programs, it must be allocated in accordance with the relative benefits received by each activity or program. Unless specifically advised by the head of the awarding agency, a cost or activity may not be charged to a [federal award](#federalaward) or [state award](#stateaward), to which the cost is not allocable, to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the awards, or for other reasons, regardless of whether the cost would otherwise be allowable under those awards.

However, where a cost or activity is allocable to and allowable under two or more programs in accordance with the existing program agreements, a single cost objective may be established, and funded with a combination of funds made available under those programs. Find an example at ASMB C-10, Question 2-16, the Implementation Guide for Office of Management and Budget Circular A-87, issued by the Assistant Secretary of Management and Budget (ASMB) for the U.S. Department of Health and Human Services.

## Applicable Credits

Those receipts or reduction of expenditure type transactions that offset or reduce expense items [allocable](#allocable) to the award as [direct costs](#directcost) or [indirect costs](#indirectcost). Examples of such transactions are:

* purchase discounts,
* rebates or allowances,
* recoveries or indemnities on losses,
* insurance refunds or rebates, and
* adjustments of overpayments or erroneous charges.

To the extent that such credits accruing to or received by the [Grantee](#grantee) relate to allowable costs, they must be credited to the [federal award](#federalaward) or [state award](#stateaward) either as a cost reduction or cash refund, as appropriate.

In some instances, the amounts received from the state or federal government to finance activities or service operations of the Grantee should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to federal or state awards.

## Assistance Listings

The publicly available listing of federal assistance programs that is managed and administered by the General Services Administration. It is available through the System for Award Management website (SAM.gov). Sometimes abbreviated as AL. Formerly known as the Catalog of Federal Domestic Assistance (CFDA). Relates to [federal awards](#federalaward) only. (Not [state awards](#stateaward).) Refer also to the definitions of [Assistance Listings Number](#assistancelistingsnumber) and [Assistance Listings Program Title](#assistancelistingsprogramtitle).

## Assistance Listings Number

A unique number assigned to identify a Federal Assistance Listings. Sometimes abbreviated as ALN. Formerly known as the Catalog of Federal Domestic Assistance (CFDA) Number. Refer also to the definitions of [Assistance Listings](#assistancelistings) and [Assistance Listings Program Title](#assistancelistingsprogramtitle).

## Assistance Listings Program Title

The program title that corresponds to the Federal Assistance Listings Number. Formerly known as the Catalog of Federal Domestic Assistance (CFDA) program title. Refer also to the definitions of [Assistance Listings](#assistancelistings) and [Assistance Listings Number](#assistancelistingsnumber).

## Bad Debts

As used in [Section 8.3.8 Bad Debts](#eight_3_8), in this manual, debts which have been determined to be uncollectible.

## Base Period

The period in which indirect costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization’s fiscal year but, in any event, shall be so select as to avoid inequities in the allocation of the costs.

## Board

Refers to a Local Workforce Development Board created under Texas Government Code, Chapter 2308.

## Budget Period

The time interval from the start date of a funded portion of a grant award to the end date of that funded portion during which [Grantees](#grantee) are authorized to expend the funds awarded.

## Capacity of the Parties

The parties to a contract must have contractual capacity. Certain persons such as adjudicated incompetents have no legal capacity to a contract, while others, such as minors, incompetent persons, and intoxicated persons, have limited capacity to a contract. All others have full contraction capacity.

## Capital Assets

Capital assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with [Generally Accepted Accounting Principles (GAAP)](#generallyacceptedaccountingprinciples).

Capital assets include:

* Land, buildings (facilities), [equipment](#equipment), and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and
* Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

For purposes of the [Uniform Guidance](#uniformguidance), capital assets do not include intangible right-to-use assets (per the Governmental Accounting Standards Board (GASB)) and right-to-use operating lease assets (per the Financial Accounting Standards Board (FASB)). For example, assets capitalized that recognize a lessee’s right to control the use of property and/or equipment for a period of time under a lease contract. Refer also to [Section 8.3.54 Rental Costs of Real Property and Equipment](#eight_3_54), in this manual.

## Capital Expenditure

Expenditures to acquire [capital assets](#capitalassets) or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to [capital assets](#capitalassets) that materially increase their value or useful life.

## Claim

For purposes of requirements that apply under the [Uniform Guidance](#uniformguidance), it has the meaning prescribed in the definitions at 2 CFR § 200.1, as follows.

Depending on the context, either:

* A written demand or written assertion by one of the parties to a [federal award](#federalaward) seeking as a matter of right: the payment of money in a sum certain; the adjustment or interpretation of the terms and conditions of the federal award; or other relief arising under or relating to a federal award.
* A request for payment that is not in dispute when submitted.

## Cognizant Agency for Audit

The federal agency designated to carry out the responsibilities described in 2 CFR § 200.513(a) of the Uniform Guidance. The cognizant agency for audit is not necessarily the same as the federal [cognizant agency for indirect costs](#cognizantagencyforindirectcosts). A list of cognizant agencies for audit can be found on the Federal Audit Clearinghouse website.

## Cognizant Agency for Indirect Costs

With respect to [federal awards](#federalaward), it means the federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under the [Uniform Guidance](#uniformguidance) on behalf of all federal agencies. The cognizant agency for indirect costs is not necessarily the same as the [cognizant agency for audit](#cognizantagencyforaudit). For assignments of cognizant agencies see Appendices III through IV, and VII to 2 CFR Part 200 (Uniform Guidance).

## Computing Devices

Machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information. Refer also to the definitions of [supplies](#supplies) and [information technology systems](#informationtechnologysystems).

## Consideration

Each party to a contract must intentionally exchange a legal benefit or incur a legal detriment as an inducement to the other party to make a return or exchange.

## Contract

In the context of whether a particular agreement constitutes federal financial assistance (grant award) or a contract for the purchase of property and services from a contractor (vendor), contract refers to the latter. A legal instrument by which a [Grantee](#grantee) or [subgrantee (subrecipient)](#subgrantee) purchases property or services needed to carry out the project or program under a [federal award](#federalaward) or [state award](#stateaward).

## Contractor (Vendor)

An entity that receives a [contract](#contract).

## Corrective Action

As it pertains to audits performed under the [Uniform Guidance](#uniformguidance) and [TxGMS](#txgms), action taken by the auditee that corrects identified deficiencies; produces recommended improvements; or demonstrates that audit findings are either invalid or do not warrant auditee action.

## Cost Contract

A cost reimbursement contract in which there is no fee.

## Cost Groupings

Refers to the [intermediate cost pools](#intermediatecostobjective) that are allocated to the organization’s [major functions](#majorfunction) under the multiple rate method of developing and applying indirect cost rates.

## Cost Objective

A program, function, activity, award, organizational subdivision, contract, or work unit for which data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a [major function](#majorfunction) of the [Grantee](#grantee), a particular service or project, a [federal award](#federalaward) or [state award](#stateaward), or an [indirect cost](#indirectcost) activity. Also see [final cost objective](#finalcostobjective) and [intermediate cost objective](#intermediatecostobjective).

## Cost-Plus-Award-Fee Contract

A cost reimbursement contract that provides an incentive for excellence in contract performance.

## Cost-Plus-Fixed-Fee Contract

A type of cost reimbursement contract that assigns minimal responsibility for costs and for which a fixed fee is negotiated. The fee provides an incentive for a contractor to contract for efforts that might otherwise pose too great a risk to it to assume.

## Cost-Plus-Incentive-Fee Contract

A cost reimbursement contract that provides an incentive for the contractor to achieve lower costs.

## Cost Plus Percentage of Construction Contract

A contract in which the amount of profit paid is calculated as a percentage of construction cost, so that profit increases commensurate with increases in cost.

## Cost Plus Percentage of Cost Contract

A contract in which the amount of profit paid is calculated as a percentage of cost, so that profit increases commensurate with increases in cost.

## Cost Pool

[Intermediate cost objectives](#intermediatecostobjective) or temporary accounts used to temporarily aggregate costs that cannot be readily assigned to [final cost objectives](#finalcostobjective).

## Cost Reimbursement Contract

Agreements that provide reimbursement to the contractor for performing at a certain level of effort, regardless of the level of output achieved.

## Cost Sharing Contract

A cost reimbursement contract in which the contractor absorbs a portion of the costs in the expectation of substantial compensating benefits.

## Direct Costs

Costs that can be identified specifically with a particular [final cost objective](#finalcostobjective).

## Discovered Property

Property that is discovered during a physical inventory or at any other time, that the [Grantee](#grantee) was not aware that it possessed. The property was neither included in the property or accounting records.

## Distribution (Allocation) Base

The accumulated [direct costs](#directcost) (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute [indirect costs](#indirectcost) to individual awards. The direct cost base selected should result in each award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

## Educational Institution

See [Institutions of Higher Education](#institutionsofhighereducation).

## Equipment

Tangible [personal property](#personalproperty) (including [information technology systems](#informationtechnologysystems)) having a useful life of more than one year and a per unit [acquisition cost](#acquisitioncost) which equals or exceeds the lesser of (a) the capitalization level established by the [Grantee](#grantee) for financial statement purposes, or (b) $5,000. Refer also to the definitions of [capital assets](#capitalassets), [computing devices](#computingdevice), [general purpose equipment](#generalpurposeequipment), [information technology systems](#informationtechnologysystems), [special purpose equipment](#specialpurposeequipment), and [supplies](#supplies).

## Equity Share

Refers to the [federal awarding agency’s](#federalaward), state’s, or [Grantee’s](#grantee) share of participation in the value of property that is sold, transferred, or retained by a Grantee. It is calculated as the respective entity’s percentage of participation in the cost of the property multiplied by either the sales proceeds (if sold) or the current fair market value (if transferred or retained).

## Excellent Condition

Pertaining to the condition of [equipment](#equipment), refers to equipment that is in new or excellent condition.

## Exempt Property

Property that is acquired by a [Grantee](#grantee) under a [federal award](#federalaward) where the [federal awarding agency](#federalawardingagency) has chosen to vest title to the Grantee without responsibility to the federal government, based upon the explicit terms and conditions of the federal award. Refer also to [Section 13.15 Federally-Owned Property](#thirteen_fifteen), in this manual.

## F&A Costs

Refer to [“Facilities and Administration”](#facilities_and_administration) in these definitions.

## “Facilities” and “Administration” (F&A)

Two broad categories of [indirect costs](#indirectcost) used by [educational institutions](#educationalinstit) and [non-profit organizations](#nonprofit) when charging indirect costs to [federal awards](#federalaward). For this purpose:

* “Facilities” is defined as depreciation, interest on debt associated with certain buildings, equipment and capital improvements, and operation and maintenance expenses. (Educational institutions also include library expenses.)
* “Administration is defined as general and administration and general expenses and all other types of expenditures not included in the definition of “Facilities.” (Educational institutions also include departmental administration, sponsored projects administration and student administration and services.)

Also referred to as F&A costs.

## Fair Condition

Pertaining to the condition of [equipment](#equipment), it refers to equipment that is soiled or shopworn, rusted, deteriorated or damages, but that is still usable though the utility is slightly impaired; renovation or repair is expected in the near future; it may be used to describe new, used or reconditioned property.

## Federal Audit Clearinghouse (FAC)

The clearinghouse designated by the U.S. Office of Management and Budget as the repository of record where auditees for federal awards are required to transmit the information required by 2 CFR Part 200 Subpart F of the [Uniform Guidance](#uniformguidance).

## Federal Award

Depending on context, the federal financial assistance that a recipient receives directly from a [federal awarding agency](#federalawardingagency) or indirectly from a [pass-through entity](#passthruentity). Also refer to the definition of [state award](#stateaward).

Example: A grant award issued directly by the federal government, a grant award issued by the Texas Workforce Commission (TWC) that TWC finances with federal grant funds, or a subgrant that another pass-through entity issues under a federal award from TWC.

Federal financial assistance generally refers to assistance that the federal government provides. Federal assistance might sometimes also be referred to as federal aid, federal benefits, or federal funds. In this context, assistance generally refers to the transfer of money, property, services, or anything of value from the government to an entity for the primary reason of accomplishing a statutorily authorized public purpose, such as in the areas of education, health, or public welfare, among others.

## Federal Award Date

For [federal awards](#federalaward), the date that the federal award was signed by the authorized official of the [federal awarding agency](#federalawardingagency).

Note: For [TWC grant awards](#twcgrantaward) that TWC finances under a federal award, TWC includes the federal award date on Attachment D of the respective TWC grant award

## Federal Award Identification Number (FAIN)

For [federal awards](#federalaward), the unique identifier assigned by the [federal awarding agency](#federalawardingagency) to a federal award.

Note: For [TWC grant awards](#twcgrantaward) that TWC finances under a federal award, TWC includes the FAIN on Attachment D of the respective TWC grant award.

## Federal Awarding Agency

The federal agency that provides a federal award directly to an entity (recipient).

Note: For federal awards, TWC includes the name of the federal awarding agency on Attachment D of the respective TWC grant award.

## Federal Award Project Description

For federal awards, TWC includes the federal award project description on Attachment D of the respective TWC grant award.

## Final Cost Objective

A cost objective which has allocated to it both direct and indirect costs and, in the [Grantee’s](#grantee) accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a Grantee. Refer also to the definitions of [cost objective](#costobjective) and [intermediate cost objective](#intermediatecostobjective).

## Final Rate (Final Indirect Cost Rate)

An indirect rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment. Refer also to [Provisional Rate](#provisionalrate).

## Financial Obligation

When referring to a [Grantee’s](#grantee) or [subgrantee’s (subrecipient’s)](#subgrantee) use of funds under a [federal award](#federalaward) or [state award](#stateaward), it means orders placed for property and services, [contracts](#contract) and [subgrants](#subgrant) made, and similar transactions that require payment.

## Firm Fixed Price Contract

A type of fixed price contract that gives a contractor full responsibility for performance costs and resulting profit/loss.

## Fixed Price Contract

Method of contracting in which a specified price is paid for specified deliverables regardless of the contractors actual costs incurred.

## Fixed Rate (Fixed Indirect Cost Rate)

A fixed indirect cost rate may be negotiated when a predetermined indirect cost rate is not appropriate. A fixed rate has the same characteristics as a predetermined rate, except that it may be adjusted for over or under recovery of indirect costs. The adjustment is based on a comparison of the organization’s actual and estimated costs at the organization’s fiscal year-end, with the difference being carried forward to a future period (usually the organization’s next fiscal year). A fixed rate may not be retroactively adjusted.

## Flow-Through Funds (or Pass-Through Funds)

Grant funds that are issued in whole or part via a grant award to another organization to carry out all or part of a grant project or program.

## FMGC Supplement on Procurement

[Appendix D](#app_d) to the FMGC—FMGC Supplement on Procurement.

## General Purpose Equipment

[Equipment](#equipment), which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and [information technology systems](#informationtechnologysystems), air conditioning equipment, reproduction and printing equipment, and motor vehicles.

## Generally Accepted Accounting Principles (GAAP)

Has the meaning specified in accounting standards issued by the Governmental Accounting Standards Board (GASB) and the Financial Accounting Standards Boards (FASB).

## Good Condition

Pertaining to the condition of [equipment](#equipment), it refers to equipment that is slightly worn, but that is still usable and for which the utility is not impaired; it may be used to describe new, used or reconditioned property.

## Grantee

For the purposes of this manual, the entity that receives a [TWC grant award](#twcgrantaward) from the [Agency](#agency).

## Idle Capacity

Unused capacity of partially used facilities. For this purpose, “facilities” means land and buildings or any portion thereof, [equipment](#equipment) individually or collectively, or any other tangible [capital asset](#capitalassets), wherever located, and whether owned or leased by the organization.

Idle capacity is the difference between:

* That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and
* The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

Refer also to [Idle Facilities](#idlefacilities) and to [Section 8.3.29 Idle Facilities and Idle Capacity](#eight_3_29), in this manual.

## Idle Facilities

The completely unused facilities that are excess to the organization’s current needs. For this purpose, “facilities” means land and buildings or any portion thereof, [equipment](#equipment) individually or collectively, or any other tangible [capital asset](#capitalassets), wherever located, and whether owned or leased by the organization.

Refer also to [Idle Capacity](#idlecapacity) and to [Section 8.3.29 Idle Facilities and Idle Capacity](#eight_3_29), in this manual.

## Incentive Contracts

A fixed price or cost reimbursement contract that makes the contractor responsible for performance costs, but for which a negotiated profit or fee is tailored to the specific uncertainties associated with performance of the contract.

## Indirect Costs (F&A Costs)

Also referred to as [Facilities & Administration Costs](#facilities_and_administration) (F&A Costs). Costs incurred for a common or joint purpose benefiting more than one [cost objective](#costobjective), and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives services, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) [cost pools](#costpool) must be distributed to benefited cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

## Information Technology Systems

[A system comprised of the combination of] Computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. For example, on its own, a “computing device” does not necessarily constitute an information technology system. Refer also to the definitions of [computing devices](#computingdevice), [supplies](#supplies), and [equipment](#equipment).

## Institutions of Higher Education (IHEs)

Also referred to in this manual as Educational Institutions. For purposes of requirements that apply under the [Uniform Guidance](#uniformguidance), it has the meaning specified at 2 CFR § 200.1, which applies the definition at 20 U.S.C. 1001. For purposes of the “state travel regulations” described in [Chapter 9 Travel](#nine_toc), in this manual, “institutions of higher education” has the meaning applied by state law for those requirements; currently, Texas Education Code, § 61.003.

## Intangible Property

[Personal property](#personalproperty) having no physical existence such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

## Intermediate Cost Objective

A [cost objective](#costobjective) that is used to accumulate [indirect costs](#indirectcost) or service center costs that are subsequently allocated to one or more indirect [cost pools](#costpool) or [final cost objectives](#finalcostobjective). See also the definitions of [cost objective](#costobjective) and [final cost objective](#finalcostobjective).

## Internal Controls

Processes designed and implemented by [Grantees](#grantee) to provide reasonable assurance regarding the achievement of objectives in the following categories:

* Effectiveness and efficiency of operations;
* Reliability of reporting for internal and external use; and
* Compliance with applicable laws and regulations.

The Uniform Guidance adds that [federal awarding agencies](#federalawardingagency) are required to follow internal control compliance requirements in Office of Management and Budget Circular No. A-123, Management’s Responsibility for Enterprise Risk Management and Internal Control.

Refer also to [Chapter 2 Internal Controls](#two_toc), in this manual.

## Legality of Object

The purpose of a contract must not be criminal, or otherwise against public policy.

## Level of Effort

Under the terms of the contract, the contractor is to provide a specified level of effort or activity (for example, hours). Payment is based on the effort expended rather than on the results achieved.

## Level of Output

Refers to the results achieved as a result of a specified level of effort or activity.

## Major Functions

The determination of what constitutes an organization’s major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.

## Management Decision

The [federal awarding agency’s](#federalawardingagency) (for direct federal awards), [state awarding agency’s](#stateawardingagency) (for direct state awards), or [pass-through entity's](#passthruentity) written determination, provided to the auditee, of the adequacy of the auditee's proposed [corrective actions](#correctiveaction) to address the findings, based on its evaluation of the audit findings and proposed corrective actions. Refer to the [Uniform Guidance](#uniformguidance) and [TxGMS](#txgms), as applicable, for detailed requirements. Also refer to [Section 20.4 Management Decision, Corrective Action & Collections](#twenty_four), in this manual.

## Manifestation of Mutual Assent

The parties to a contract must manifest by words or conduct that they have agreed to enter into a contract. The usual method of showing mutual assent is by offer and acceptance.

## Modified Total Direct Costs (MTDC)

A distribution base for [indirect costs](#indirectcost) that consists of all direct salaries and wages, applicable fringe benefits, materials and [supplies](#supplies), services, travel, and up to the first $25,000 of each subgrants. [Equipment](#equipment), [capital expenditures](#capitalexpenditure), charges for patient care, rental costs, tuition remission, scholarships and fellowships, [participant support costs](#participantsupportcosts), and the portion of each subgrant in excess of $25,000 must be excluded from modified total direct costs. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the [cognizant agency for indirect costs](#cognizantagencyforindirectcosts).

## Net Sale Proceeds

Proceeds remaining from the sale of property after reasonable selling and administrative expenses have been deducted.

## Non-Profit Organization

Within the context of the [Uniform Guidance](#uniformguidance), the term means any corporation, trust, association, cooperation, or other organization, not including [institutions of higher education](#institutionsofhighereducation), that:

* Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
* Is not organized primarily for profit; and
* Uses net proceeds to maintain, improve, or expand the operations of the organization.

## Oversight Agency for Audit

For [federal awards](#federalaward), the [federal awarding agency](#federalawardingagency) that provides the predominant amount of funding directly (direct funding) (as listed on the Schedule of Expenditures of Federal awards described in 2 CFR § 200.510(b) of the [Uniform Guidance](#uniformguidance)) to an entity, unless the U.S. Office of Management and Budget designates a specific [cognizant agency for audit](#cognizantagencyforaudit). When the direct funding represents less than 25 percent of the total federal expenditures (as direct and subgrants) by the entity, then the federal agency with the predominant amount of total funding is the designated oversight agency for audit. When there is no direct funding, the [federal awarding agency](#federalawardingagency) which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in 2 CFR § 200.513(b) of the Uniform Guidance.

## Participant Support Costs

Direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

## Pass-through Entity

An entity that provides a [federal award](#federalaward) or [state award](#stateaward) to a [subgrantee (subrecipient)](#subgrantee) in the form of a [subgrant](#subgrant) to carry out part of a federal or state program.

Example: If a [Grantee](#grantee) issues a subgrant under a [TWC grant award](#twcgrantaward), the Grantee is a pass-through entity for purposes of the subgrant that it issued. If a subgrantee (subrecipient) that receives a subgrant from a Grantee uses part of that subgrant to issue a subgrant to another entity, the subgrantee is also a pass-through entity for the purpose of the subgrant that it issued, and so on.

## Period of Performance

The total estimated time interval between the start of an initial grant award and the planned end date, which may include one or more funded portions, or [budget periods](#budgetperiod). Identification of the period of performance in the grant award does not commit the awarding agency to fund the award beyond the currently approved budget period.

## Personal Property

Property of any kind except [real property](#realproperty). It may be:

* Tangible, having physical existence (such as [supplies](#supplies) and [equipment](#equipment)), or
* [Intangible](#intangibleproperty) having no physical existence (such as copyrights, patents, or securities).

## Personally Identifiable Information (PII)

Refer to the definition of [Protected Personally Identifiable Information](#protectedPII) in this manual.

## Poor Condition

Pertaining to the condition of [equipment](#equipment), it refers to equipment that is badly broken, soiled, mildewed, deteriorated, or damaged and for which utility is seriously impaired.

## Pre-award Costs

Costs incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary for efficient and timely performance of the scope of work. Refer also to [Section 8.3.46 Pre-award Costs](#eight_3_46), in this manual.

## Predetermined Rate (Predetermined Indirect Cost Rate)

A permanent indirect cost rate that is based on estimated future costs, and established in advance for a specified current or future period. Once established, it may not be adjusted. Predetermined rates are appropriate where there is reasonable assurance, based on past experience and a reliable projection of costs, that the rate is not likely to exceed a rate that would result if actual costs were determined.

## Program Income

Gross income earned by the [Grantee](#grantee) that is directly generated by a grant supported activity, or earned only as a result of the grant award during the [period of performance](#periodofperformance) except as provided in 2 CFR § 200.307(f) (for [federal awards](#federalaward)). Refer to [Chapter 5 Program Income](#five_toc), in this manual, for more information.

## Protected Personally Identifiable Information (Protected PII)

Refer also to WD Letter 02-18, “Handling and Protection of Personally Identifiable Information and Other [Sensitive Information](#sensitiveinformation),” and any other subsequent [Agency](#agency) issuances.

Also refer to Grant Compliance: Federal Awards and to Grant Compliance: State Awards in [Section 2.1 General Internal Control Requirements](#two_one), in this manual.

As defined in the [Uniform Guidance](#uniformguidance), Personally Identifiable Information (PII) and Protected PII have the following meanings:

* PII means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information considered to be PII is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.
* Protected PII means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to:
  + social security number,
  + passport number,
  + credit card numbers,
  + clearances,
  + bank numbers,
  + biometrics,
  + date and place of birth,
  + mother's maiden name,
  + criminal,
  + medical and
  + financial records, educational transcripts.

Protected PII does not include PII that is required by law to be disclosed.

## Provisional Rate (Provisional Indirect Cost Rate)

Provisional and final indirect cost rates are two stages of one approach that is used when neither a [predetermined indirect cost rate](#predeterminedrate) nor [fixed indirect cost rate](#fixedrate) are appropriate. A provisional rate is a temporary rate established for a future prospective period of time that is used until actual costs can be determined and a [final rate](#finalrate) is established. If the provisional rate is lower than the final rate, the underpayment is subject to the availability of funds. If the provisional rate was higher than the final rate, the overpayment must be credited or returned to the funding source.

## Public Relations Costs

As used in [Section 8.3.2](#eight_3_2) of this manual, the [Uniform Guidance](#uniformguidance) and [TxGMS](#txgms) define public relations costs to include community relations, and to mean those activities dedicated to maintaining the image of the [Grantee](#grantee) or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

## Published Research Findings

Relating to [Section 13.14 Intangible Property](#thirteen_fourteen), in this manual, and the research data covered in that Section, published research findings means when:

* Research findings are published in a peer-reviewed scientific or technical journal; or
* A federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. “Used by the Federal Government in developing an agency action that has the force and effect of law” is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

## Real Property

Land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and [equipment](#realproperty).

## Reasonable Cost

A cost, that in its nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness of a given cost, consideration shall be given to:

* whether the cost is of a type generally recognized as ordinary and necessary for the operation of the Grantee or the performance of the grant award.
* The restraints or requirements imposed by such factors as: sound business practices; arms-length bargaining; laws and regulations; and terms and conditions of the grant award.
* Market prices for comparable goods or services.
* Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the organization, its employees, the public at large, and the federal or state government.
* Significant deviations from the established practices of the Grantee which may unjustifiably increase the award’s cost.

## Replacement Property

Property acquired using the proceeds from the sale of existing property or by using existing property as a trade-in towards new property.

## Research and Development (R&D)

Means all research activities, both basic and applied, and all development activities that are performed under the grant award. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

For this purpose:

* “Research” is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied.
* “Development” is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

## Research Data

Relating to [Section 13.14 Intangible Property](#thirteen_fourteen), in this manual, and the research data covered in that Section, research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following:

* physical objects, such as laboratory samples;
* preliminary analyses;
* drafts of scientific papers;
* plans for future research;
* peer reviews;
* communications with colleagues.
* trade secrets;
* commercial information;
* materials necessary to be held confidential by a researcher until they are published;
* personnel, medical, and other information constituting an invasion of privacy; and
* other similar information which is protected by law.”

A research finding is considered to be published when, “published in a peer-reviewed scientific or technical journal; or a federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.” The agency is considered to have used data when it performs the latter of the two.

## Sensitive Information

Refer to WD Letter 02-18, “Handling and Protection of [Personally Identifiable Information](#personallyidentifiableinformationPII) and Other Sensitive Information,” and any other subsequent [Agency](#agency) issuances.

Also refer to Grant Compliance: Federal Awards and to Grant Compliance: State Awards in [Section 2.1 General Internal Control Requirements](#two_one), in this manual.

## Special Purpose Equipment

[Equipment](#equipment) which is used only for research, medical, scientific, or other technical activities. Examples include microscopes, x-ray machines, surgical instruments, and spectrometers.

## State Award

Depending on context, the state financial assistance that a recipient receives directly from a state awarding agency or indirectly from a [pass-through entity](#passthruentity). Also refer to the definition of [federal award](#federalaward).

Example: A grant award issued by the Texas Workforce Commission (TWC) that TWC finances with state grant funds, or a subgrant that a pass-through entity issues under that award.

State financial assistance generally refers to assistance that the state government provides with state money, such as state general revenue. State assistance might sometimes also be referred to as state aid, state benefits, or state funds. In this context, assistance generally refers to the transfer of money, property, services, or anything of value from the government to an entity for the primary reason of accomplishing a statutorily authorized public purpose such as in the areas of education, health, or public welfare, among others.

## State Awarding Agency

The Texas state agency that provides a [state award](#stateaward) directly to an entity. For purposes of state awards that TWC issues, TWC is the state awarding agency.

Note: If TWC received the funds in question from another entity (such as another state agency), then for purposes of providing prior approval that is delegated to the state awarding agency, TWC may be required by the entity from which it received the funds to obtain concurrence from that entity before approving the specified cost or action.

## State Single Audit Coordinating Agency (SSACA)

The state agency with state single audit oversight responsibility for an entity.

## Subcontractor

An entity that receives a subcontract from a [contractor (vendor)](#contractor) or from another subcontractor.

## Subgrant

An award provided by a [pass-through entity](#passthruentity) to a another entity to carry out part of a [federal award](#federalaward) or [state award](#stateaward) received by the [pass-through entity](#passthruentity). It does not include payments to a [contractor](#contractor) or payments to an individual that is a beneficiary of a federal or state program. Also sometimes referred to a subaward. An entity that receives a subgrant is a [subgrantee (subrecipient)](#subgrantee) of the pass-through entity that made the subgrant.

Example: A grant award that a [Grantee](#grantee) issues to a subgrantee (subrecipient) to carry out part of the [TWC grant award](#twcgrantaward) is a subgrant, as is any grant award arising under the subgrant that the Grantee made, and so on.

## Subgrantee (or Subrecipient)

An entity that expends [federal awards](#federalaward) and/or [state awards](#stateaward) received from a [pass-through entity](#passthruentity) to carry out part of a federal and/or state program, but does not include an individual that is a beneficiary of such a program. A subgrantee may also be a recipient of other [federal awards](#federalaward) directly from a [federal awarding agency](#federalawardingagency) or other [state awards](#stateaward) directly from a [state awarding agency](#stateawardingagency).

## Supplies

All tangible [personal property](#personalproperty) excluding [equipment](#equipment). A [computing device](#computingdevice) is a supply if the [acquisition cost](#acquisitioncost) is less than the lesser of the capitalization level established by the [Grantee](#grantee) for financial statement purposes or $5,000, regardless of the length of its useful life.

## Telecommunications Costs

The cost of using communication and telephony technologies such as mobile phones, land lines, and internet.

## Termination

The ending of a [federal award](#federalaward) or [state award](#stateaward), in whole or part at any time prior to the planned end of [period of performance](#periodofperformance). A lack of available funds is not a termination.

## Texas Grant Management Standards (TxGMS)

The Texas Grant Management Standards is a collection of administrative, cost, and audit requirements issued by the Texas Comptroller of Public Accounts pursuant to state law. It is available on the Texas Comptroller’s website. TxGMS replaced the state’s Uniform Grant Management Standards (UGMS).

## TWC Grant Award

A [federal award](#federalaward) and [state award](#stateaward) issued to a [Grantee](#grantee) by the Texas Workforce Commission.

## Uniform Guidance

The “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” issued by the U.S. Office of Management and Budget via the Federal Register and codified in Title 2, Part 200 of the federal Code of Federal Regulations (CFR) (2 CFR Part 200).

## Unique Entity Identifier (UEI)

Depending on the award, the UEI is established as follows:

* For [federal awards](#federalaward), the Unique Entity Identifier (UEI) assigned through the federal System for Award Management (SAM) at SAM.gov. The U.S. General Services Administration administers SAM.
* For [state awards](#stateaward) covered by [TxGMS](#txgms), TxGMS defines UEI as an entity’s unique Dun & Bradstreet Data Universal Numbering System (DUNS) number.

## Workforce Service Provider

An entity or individual under contract (including a grant award) with a local workforce development board ([Board](#board)) to operate:

* one or more Workforce Solutions Offices, or
* one or more programs (such as child care) or components of one or more programs (such as issuing checks for youth participating in summer employment or performing child care billing).

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Appendix B: [Reserved]

# **Appendix B Reserved**

This Appendix is reserved.

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Appendix C: Policy Statements

# Appendix C Policy Statements

## Chapter 1 Agency and Board Responsibilities

This chapter is currently under construction.

## Chapter 2 Internal Control

2.1 General Internal Control Requirements

In relation to TWC grant awards, effective control and accountability must be maintained for all funds, property, and other assets. Assets must be adequately safeguarded and used solely for authorized purposes. Internal controls must provide reasonable assurance of compliance with grant requirements, reliable reporting, and effective, efficient operations**.**

2.2 Components of Internal Control

Internal controls shall be designed, implemented and evaluated based on the ability of the controls to provide reasonable assurance for compliance with applicable requirements in a cost effective manner.

2.3 Fraud

Fraud, program abuse [including waste], possible illegal expenditures, unlawful activity, violations of law, Agency rules, or policies and procedures occurring under any grant or program contract awarded by the Agency are prohibited. Suspicion of such misuse must be reported to the Agency’s Office of Investigations no later than five business days from the date of discovery of such act.

## Chapter 3 Insurance

3.1 Fidelity Bonds

A fidelity bond, or other method to secure funds against loss must be in place, and submitted to the Agency as required by this Section.

3.2 Insurance

Insurance coverage must comply with applicable federal, state and agency requirements.

## Chapter 4 Cost Sharing and Matching

This chapter is currently under construction.

## Chapter 5 Program Income

5.1 General

Gross income earned by the Grantee that is directly generated by a grant supported activity, or earned only as a result of the grant award during the period of performance is program income, and shall be disbursed before requesting additional cash payments for the same award.

5.2 Uses

Program income must be accounted for and reported in a manner that is consistent with applicable administrative and program requirements.

## Chapter 6 Budget

6.1 Budget Development

Each Grantee must develop a budget that will enable it to comply with uniform administrative requirements to compare actual expenditures or outlays with budgeted amounts for each grant or subgrant.

6.2 Budget Submission Requirements

A budget shall be submitted to the Agency within prescribed timeframes and in the prescribed formats to satisfy federal or state law, or contractual requirements.

6.3 Comparisons and Projections

Actual expenditures or outlays must be compared with budgeted amounts for each grant or sub grant.

6.4 Budget Changes and Revisions

Written Agency approval must be obtained prior to making budget changes or revisions that meet applicable thresholds.

## Chapter 7 Cash Management

This chapter is currently under construction.

## Chapter 8 Cost Principles

8.1 General Allowability Criteria

In order to be allowable under a federal or state award, a cost must meet the general allowability criteria established by the Uniform Guidance, and/or the Texas Grant Management Standards, as applicable.

8.2 Treatment of Costs

Costs must be consistently treated as either a direct or indirect cost. A cost may not be allocated to a federal or state award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been charged to a federal or state award as a direct cost.

8.3 Selected Items of Cost

Determination of allowability for a particular item of cost, whether direct or indirect in nature, must be based on the general allowability criteria in Section 8.1 and treatment or standards for similar or related items of cost as established by the Uniform Guidance and/or the Texas Grant Management Standards, as applicable.

## Chapter 9 Travel

9.1 General Travel Requirements

Grantees must comply with applicable travel requirements when using TWC grant funds to pay travel expenses.

## Chapter 10 Personnel

10.1 Personnel Policies

Written personnel policies and procedures must be developed, maintained and distributed to each employee.

10.2 Personnel Compensation

Charges to TWC grant awards for salaries and wages must be based on records that accurately reflect the work performed. The records must meet the standards for documentation of personnel expenses as set forth in the Uniform Guidance and/or Texas Grant Management Standards, as applicable.

10.3 State Classification Salary System

Salary expenditures of a council of governments, regional planning commission, or similar regional planning agency; local workforce development board; or “community center” that receives funds from the Texas Workforce Commission must conform to state salary classification requirements.

## Chapter 11 Cost Allocation

11.1 Cost Allocation Plan

The cost allocation plan must be adequately documented and must include all costs that will be claimed as allocated costs under federal or state awards.

11.2 Allocation Methodology

The allocation methodology must be described in the cost allocation plan and be consistent with applicable cost principles and administrative requirements.

11.3 Cost Pools

Cost pools shall only contain costs that are consistently treated as indirect (or are shared) costs and which jointly benefit two or more of the same programs or other cost objectives to the same degree.

11.4 Allocation (Distribution) Bases

Cost pools must be allocated to benefiting cost objectives using an allowable basis that results in an equitable distribution of costs relative to benefits derived.

11.5 Adjustments

Adjustments to allocated and billed services under a negotiated agreement must be performed in accordance with applicable requirements.

11.6 [Reserved]

This section is reserved.

## Chapter 12 Indirect Cost Rates

12.1 Simplified Method

The simplified method is appropriate when an entity has only one major function, where its level of federal funding is relatively small, or where all its major functions benefit from its indirect costs to approximately the same degree.

12.2 Multiple Rate Method

The multiple rate method is appropriate when an entity has several major functions that benefit from its indirect costs in varying degrees.

12.3 Direct Allocation Method

The direct allocation method is appropriate for use by non-profit organizations provided that each indirect cost is prorated using a base that accurately measures the benefits provided to each award or other activity.

12.4 Special Indirect Cost Rates

It is appropriate to make provisions for a separate indirect cost rate that is only applicable to a specific award when that particular award is carried out in an environment that appears to generate a significantly different level of indirect costs.

12.5 Negotiated Rates and De Minimis Rates

Grantees desiring to claim indirect costs under TWC grant awards must use a negotiated indirect cost rate, or, if applicable and the entity qualifies, the de minimis rate described in Uniform Guidance and Texas Grant Management Standards, as applicable.

12.6 Documentation

For negotiated rates, adequate documentation, including the indirect cost rate proposal, subsidiary worksheets, and other relevant data must be maintained and made available upon request.

12.7 Refunds

Unallowable and over recovered indirect costs must be refunded or returned to the Agency through an indirect cost rate adjustment.

## Chapter 13 Property

13.1 Vesting of Title

Title to property will vest in the Grantee that acquired the property, subject to the Grantee’s compliance with applicable property requirements.

13.1a Property Trust Relationship

Grantees that use TWC grant funds to purchase real property, equipment, and intangible property must hold such property in trust for the beneficiaries of the project or program under which the property was acquired or improved.

13.2 Property Control Officer

A property control officer must be designated when specifically required by grant, program or administrative requirement. It is recommended to all other Grantees.

13.3 Acquisition and Use of Real Property

Real property shall only be acquired when allowable and with the prior written approval of the Agency. If acquired, real property must be used for the originally authorized purpose as long as needed.

13.4 Disposition of Real Property

When no longer needed, real property must be disposed of in accordance with written instructions that have been requested from and provided by the Agency.

13.5 Acquisition and Use of Equipment

Equipment shall only be acquired with the prior approval of the Agency. Equipment acquired with federal or state funds must be used for an authorized purpose as long as needed, in accordance with applicable administrative requirements.

13.6 Property Records for Equipment

Property records that meet or exceed the minimum standards established by applicable administrative requirements must be maintained for all equipment that was acquired in whole or in part with federal or state funds until such time as transfer, replacement or disposal occurs.

13.7 Physical Inventory of Real Property & Equipment

An annual physical inventory must be conducted and reconciled with property records for equipment that was purchased in whole or in part with federal or state funds. Boards must also include real property when conducting the annual inventory.

13.8 Adequate Safeguards for Equipment

Adequate controls must be implemented to safeguard equipment that was purchased in whole or in part with federal or state funds until such time as disposition occurs.

13.9 Equipment Maintenance

Adequate maintenance procedures must be developed to keep equipment that was purchased in whole or in part with federal or state funds in good condition until disposition occurs.

13.10 Sales Procedures for Equipment

Proper sales procedures must be developed when the sale of equipment that was purchased in full or in part with federal or state funds is authorized or required.

13.11 Disposition of Equipment ( $5,000 or Less)

When no longer needed, equipment that was purchased using TWC grant funds and that has a current per unit fair market value of $5,000 or less (for federal awards) or less than $5,000 (for state awards) may be retained, sold, or otherwise disposed of without further compensation to the funding source, unless otherwise required by the award terms.

13.12 Disposition of Equipment ($5,000 or More)

When no longer needed, equipment that was purchased using TWC grant funds and that has a current per unit fair market value of more than $5,000 (for federal awards) or $5,000 or more (for state award) must be disposed of in accordance with written instructions requested from and provided by the Agency.

13.13 Supplies

Supplies purchased with federal or state funds may generally be acquired and disposed of without prior written approval from the Agency; however, any residual inventory of unused supplies at the end of an award must be disposed of as appropriate for the aggregate fair market value of the property.

13.14 Intangible Property

Intangible property that was acquired under a federally sponsored award must be made available to the federal sponsoring agency, and parties authorized by that agency.

13.15 Federally-Owned Property

Federally-owned property must be managed and disposed of in accordance with applicable administrative requirements.

13.16 State-Owned Property

State-owned property must be accounted for, managed, and disposed of in accordance with applicable state laws and rules.

13.17 Leases

Costs for leased or rental property must conform to applicable cost principles for rental costs. Such property must be procured in accordance with applicable procurement requirements.

13.18 Property Insurance

Sufficient property insurance must be maintained as required for property purchased under a federal or state award.

## Chapter 14 Procurement

Refer to Policy Statements in the FMGC Supplement on Procurement in [Attachment D](#app_d) to this Manual.

## Chapter 15 Contracts

15.1 Contract Types

The cost plus a percentage of cost and cost plus a percentage of construction methods shall not be used in contracting of federal or state funds. The type of contract used should coincide with 1) the degree and timing of responsibility assumed by the subcontractor for costs, and 2) the amount and nature of the profit incentive offered for achieving or exceeding specified standards or goals (if applicable).

15.2 Contract Elements

All contracts must contain necessary elements to ensure that all parties understand the terms of the agreement.

15.3 Assurances

The contracting entity must ensure that all applicable assurances are included and that the legal instrument is consistent with the standards in this section.

15.4 Workforce System Integrity

Boards’ contracting procedures must be consistent and ensure compliance with provisions for the integrity of the workforce system in Commission in Agency Rules at 40 TAC, Chapter 801, Subchapter C.

## Chapter 16 Allocation, Deobligation and Reallocation

This chapter is currently under construction.

## Chapter 17 Financial Reporting

This chapter is currently under construction.

## Chapter 18 Contract Closeout

This chapter is currently under construction.

## Chapter 19 Monitoring

19.1 General Monitoring Requirements

Programs, functions or activities supported by federal and/or state funds administered by the Agency must be monitored on a regular basis to assure compliance with applicable federal and/or state requirements.

19.2 Risk Assessment Tool

A risk assessment tool must be developed and used in accordance with the requirements of Commission rule.

19.3 Monitoring Plan

A local-level monitoring plan must be developed using the results of the risk assessment. The plan must include the information required by Commission rule.

19.4 Monitoring Controls

Monitoring controls must be implemented to ensure that comprehensive and effective monitoring is achieved.

19.5 Reporting and Resolution

Monitoring reports must identify instances of noncompliance with federal and/or state requirements, and provide recommendations for corrective action and program quality enhancements.

## Chapter 20 Single Audit

20.1 General Audit Requirements

Grantees must adhere to applicable audit requirements for the grant award, as set forth in the Uniform Guidance and Texas Grant Management Standards (as applicable), program regulations, and other grant requirements.

20.2 Reporting Package

Grantees must adhere to applicable audit reporting requirements.

20.3 Oversight Responsibilities

Pass-through entities have oversight responsibilities for subgrants that they issue under TWC grant awards.

20.4 Management Decision, Corrective Actions & Collections

Auditees must promptly follow up and take corrective action on audit findings. Within six months of the date specified by the Uniform Guidance and Texas Grant Management Standards, as applicable, a Management Decision must be issued to the audited entity. The pass-through entity must take prompt collection action for any amounts owed by the auditee.

## Chapter 21 Enforcement, Appeals and Termination

21.1 Enforcement

A Grantee’s enforcement policies must not conflict with federal or state requirements.

21.2 Appeals

The Grantee must provide the subgrantee (subrecipient), against which enforcement action is being taken, with an opportunity for a hearing, appeal, or other administrative proceeding as entitled by statute or regulation applicable to the action involved.

21.3 Termination

If the Grantee or subgrantee (subrecipient) elect to terminate an award, closeout and other settlement requirements must be considered in the termination of the award.

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Appendix D: FMGC Supplement on Procurement

# Appendix D FMGC Supplement on Procurement

Open the FMGC Supplement on Procurement in [Word](https://twc.texas.gov/files/partners/financial_manual_grants_contracts_appd_supplement-doc.docx) or [PDF](https://twc.texas.gov/files/partners/financial_manual_grants_contracts_appd_supplement-pdf.pdf).

Last Update: August 31, 2020

Appendix E: Contacts

# Appendix E Reserved

This Appendix is reserved.

Last Update: October 1, 2023

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Appendix F: Reserved

# Appendix F Reserved

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Last Update: October 1, 2023

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Appendix G: Reserved

# Appendix G Reserved

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Appendix H: Reserved

# Appendix H Reserved

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Appendix I: Reserved

# Appendix I Reserved

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Last Update: October 1, 2023

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Appendix J: Subrecipient and Contractor (Vendor) Determinations

# Appendix J Subrecipient and Contractor (Vendor) Determinations

## Background

Accurate classification of an entity as either a subrecipient (subgrantee) or contractor (formerly referred to as a vendor) are important. Inaccurate determinations could cause problems for both parties. A subrecipient (subgrantee) has an assistance relationship to an awarding entity and dictates issuance of a subaward as the legal agreement between the awarding entity and the receiving entity. A contractor (vendor) has a procurement relationship and dictates issuance of a contract. A subaward is for the purpose of carrying out a portion of a federal or state award. A contract is for the purpose of obtaining goods and services for the awarding entity. Subawards and contracts have different purposes and fundamentally different legal requirements.

Subrecipient/contractor determinations are made using lists of characteristics in the U.S. Office of Management and Budget “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (Uniform Guidance) and the state’s Texas Grant Management Standards (TxGMS).

## Characteristics

The characteristics are indicators only. Accordingly, neither OMB nor TxGMS intend the characteristics to be used as a checklist, recognizing that factors other than those listed might also impact the determination. Therefore, each arrangement must be separately considered as a whole to determine whether its characteristics are more indicative of a subrecipient (subgrantee) or contractor (vendor) relationship.

The following guidance expands on the guidance provided by OMB and TxGMS by including examples that further describe each characteristic. As with the characteristics identified by OMB and TxGMS, the examples provided by TWC in this guidance are not intended for use as a checklist or to replace the need for professional judgment and separate consideration of each arrangement on its own merits.

### Subrecipient

Characteristics which support the classification of the receiving entity as a subrecipient include when that entity:

1. Determines who is eligible to receive what financial assistance. For example:
2. Organization determines whether a potential customer meets a program’s eligibility requirements for assistance under that program.
3. Has its performance measured against whether the objectives of the program were met. For example:
4. Awarding entity holds the organization responsible for meeting performance targets that are tied to program objectives.
5. Awarding entity holds the organization responsible for meeting expenditure targets to maximize the use of program funding.
6. Awarding entity requires organization to submit regular oral or written progress reports and/or explanations of variance relating to program objectives and/or fund maximization.
7. Awarding entity may sanction the organization if program objectives are not met.
8. Organization must submit a comprehensive closeout package at the end of the agreement.
9. Has responsibility for programmatic decision making. For example:
10. Organization has latitude to make decisions within terms of agreement.
11. Organization makes policy decisions governing how it carries out a program.
12. Organization makes operational decisions governing how it carries out a program.
13. Organization makes decisions regarding the appropriate assistance for a particular customer.
14. Has responsibility for adherence to applicable program requirements specified in the federal or state award. For example:
15. Awarding entity holds the organization responsible for compliance with applicable program statutes, regulations, rules, policies (including local policies) and guidance.
16. Organization receives technical assistance or training from the awarding entity relating to program requirements.
17. Awarding entity monitors the organization for compliance with applicable program requirements.
18. In accordance with its agreement, uses the funds to carry out a program for a public purpose specified in authorizing statutes, as opposed to providing goods or services for the benefit of the pass-through entity. For example:
19. Organization performs all or a portion of the scope of work or objectives of the award received by the awarding entity.
20. Organization’s role requires more than dealing, distributing or selling goods or services that support a program.
21. Awarding entity identifies the organization’s programmatic involvement as a separate scope of work and budget that must be approved by the awarding entity.

### Contractor (Vendor)

Characteristics indicative of a contractor relationship are when the entity:

1. Provides the goods and services within normal business operations. For example:
2. Organization exists for the purpose of providing a particular goods or services.
3. Organization receives little, if any, instruction from the awarding entity as to how the organization goes about producing the goods or services.
4. Organization generally receives payment after delivery of a particular good or service.
5. Organization invoices awarding entity in the organization’s normal way and is not required to submit a comprehensive closeout package at the end of the agreement.
6. Organization assumes the risk if cost of performance increases or requires more time than expected.
7. Organization has its performance measured against whether it meets specific contract deliverables, rather than a program’s performance outcomes.
8. Provides similar goods or services to many different purchasers. For example:
9. Organization provides similar goods or services to a number of entities in addition to the awarding entity.
10. Services provided are of a repetitive nature.
11. Goods provided are commonly available.
12. Normally operates in a competitive environment. For example:
13. Organization competes with other organizations to provide a similar good or service.
14. Provides goods and services that are ancillary to the operation of the program. For example:
15. Organization aids or supports the program in a subsidiary capacity.
16. Organization provides a good or service (in a manner that does not create a subrecipient relationship) which enables the awarding entity to carry out a program.
17. Organization provides a particular good or service that enables the awarding entity to operate, e.g. office supplies, janitorial services, equipment, staff development, printing, travel, etc.
18. Is not subject to compliance requirements of the program as a result of the agreement, though similar requirements may apply for other reasons. For example:
19. Organization is not responsible for compliance with applicable program statutes, regulations, rules, policies or guidance.
20. Awarding entity does not provide the organization with technical assistance or training with regard to program requirements.
21. Awarding entity does not monitor the organization for compliance with program requirements.

## Substance over Form

The substance of a relationship is more important than the form. “Substance” refers to the characteristics of the arrangement and whether those characteristics are more indicative of a subrecipient or contractor relationship. “Form” refers to the type of agreement use. Agreements with subrecipients may take a number of forms, such as subawards, subgrants, subcontracts and subagreements. The form is less important to the examination of a relationship than its substance. Similarly, labeling an organization as a subrecipient or contractor in an agreement does not automatically create one type of relationship or the other. The characteristics of the relationship must always be examined to determine whether the arrangement as a whole has qualities that are more indicative of a subrecipient or contractor relationship.

## Use of Judgment in Making Determination

Determinations about whether an organization is a subrecipient or contractor are not always straightforward. For example, no single factor will alone dictate the existence of one relationship or the other in all cases. However, Appendix E of the Department of Labor Employment and Training Administration’s *One-Stop Comprehensive Financial Management Technical Assistance Guide* does state that, “under no circumstances should a designation of vendor [contractor] be made for providers that have a financial or performance requirement related to eligibility or selection of participants.”

Similarly, an organization need not possess all of the subrecipient characteristics above in order to be a subrecipient, and may in fact possess some characteristics of both a contractor and subrecipient under the same agreement. Therefore, in each case, the determination of whether a particular entity is a subrecipient or contractor requires professional consideration of the preponderance of facts and evidence of a particular agreement against the definition and guidelines set forth by OMB and TxGMS.

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Appendix K: Record Retention and Access Requirements

# Appendix K Record Retention and Access Requirements

## General

The requirements in Appendix K of this manual apply to all records of [Grantees](#grantee) that are either 1) expressly required to be maintained by these requirements, program regulation or the grant agreement, or 2) that are otherwise reasonably considered as being pertinent to program regulations or the grant agreement.

## Record Substitutions

Copies made by microfilming, photocopying, or similar methods may be substituted for the original records in fulfilling these requirements.

## Record Retention

In general, financial records, supporting documents, statistical records and all other grantee records pertinent to the grant award must be retained for a period of three (3) years from the record retention starting date shown in [Table K-1](#Title_AppK_Table_RecordRetentionStart), below, except where a longer period is specified by the grant award. Two exceptions exist:

* If any litigation, claim, negotiation, audit or other action involving the records started before the expiration of the retention period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken, or until the end of the regular retention period, whichever is later.
* If an awarding agency has made special arrangements for a Grantee to transfer to the awarding agency any records that are continuously needed for joint use (to avoid duplicate recordkeeping), the retention requirement is not applicable to the Grantee to the extent that it transfers those files to the awarding agency.

A longer retention period will apply to a grant award or subgrant if the Grantee ([or subgrantee (subrecipient](#subgrantee)) is notified in writing by TWC, the [federal awarding agency](#federalawardingagency), [cognizant agency for audit](#cognizantagencyforaudit), [oversight agency for audit](#oversightagencyforaudit), [cognizant agency for indirect costs](#cognizantagencyforindirectcosts), or [pass-through entity](#passthruentity) has extended the retention period. Additionally, the terms and conditions of some TWC grant awards may require a longer retention period, such as if state law specifies a longer retention period that applies to the grant monies involved, or a longer period is needed to enable TWC to comply with the record retention requirements that apply to its grant records under state law.

Table K-1 Record Retention Start Date

| **Record Type** | **Start Date** |
| --- | --- |
| All financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees, which are pertinent to the grant award, except as otherwise indicated in this matrix. | Date grantee or subgrantee submits to the awarding agency its single or last audit report for that period. If an audit report has been waived, the retention period starts on the day the report would have been due. |
| Records for real property and equipment acquired with grant funds. | Date of final disposition. |
| Records for program income transactions after the period of performance (in cases where Grantees must report program income earned after the period of performance of the grant award ends). | End of the grantee’s fiscal year in which the program income is earned. |
| Indirect cost rate proposals, cost allocations 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). | If submitted to the federal government, state government, or pass-through entity for negotiation, the date the plan or proposal is submitted for negotiation.  If not required to be submitted to the federal government, state government, or pass-through entity for negotiation, theend of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation. |

## Access to Records

The terms and conditions of TWC grant awards, including the Agency Board Agreement, specify that the Grantee and its subrecipients, contractors, and subcontractors shall grant access and the right to examine, copy, or mechanically reproduce, books, papers, minutes, documents, automated data systems, and other records pertaining to TWC grant awards from Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., in the local time zone, excluding state or federal holidays. In the event of suspected fraud, malfeasance, or program abuse, Agency investigators may retain the original records and leave the mechanically reproduced copies in place of the original records.

This right lasts as long as the records are retained.

Such rights of access and examination are granted to the following entities and their authorized representatives, as applicable:

* Federal funding source, as applicable, including but not limited to the U.S. Department of Labor, the U.S. Department of Health and Human Services, the U.S. Department of Education, and the U.S. Department of Agriculture;
* Inspector General;
* Comptroller General of the United States;
* U.S. Government Accountability Office;
* Texas State Auditor’s Office;
* Office of the Attorney General of Texas;
* Texas Workforce Commission;
* Other state and federal agencies; and
* Any duly authorized representative of the above named agencies as deemed appropriate by the [Agency](#agency).

Unlike the parties above, public access to records is restricted. Grantees are not required to permit public access to their records unless required by federal, state, or local law.

Reference:

OMB Uniform Guidance: 2 CFR § 200.334 and 200.337

[Texas Government Code § 2262.003](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2262.htm)

TxGMS: “Records Retention and Access”

Agency Board Agreement Section 20 (October 2022)

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Appendix L: Changes

# Appendix L Changes

Archived materials are available to Agency employees and Local Workforce Development Boards on the Finance page of the Texas Workforce Commission Intranet. All other requests may be e-mailed to [Fiscal.TA@twc.texas.gov](mailto:Fiscal.TA@twc.texas.gov). (Please specify that you are requesting archived FMGC materials, and include the *date posted* and *affected sections* in your e-mail.)

| **Date Posted** | **Effective Date** | **Affected Sections** | **Description** |
| --- | --- | --- | --- |
| 10/16/07 | Immediate | §§14.5, 14.7, 14.8, 14.9 and 14.14; all sections; introduction. | * Update program and state agency names and responsibilities impacted by House Bills (HB) 2918 and 3560, 80th Texas Legislature, Regular Session in §§14.5, 14.7 and 14.8. * Remove discussion about Catalog Information Systems Vendor (CISV) program from §14.7. (The program was eliminated by HB 2918.) * Add discussion about TXMAS program to §14.7. * Updates Agency Board Agreement citation in §14.9 * Updated General Appropriations Act citation in §14.14. * Removed effective date from footer of each section for all chapters and appendices. * Added clarifying language to Introduction regarding the effective date, updates and changes. |
| 7/16/08 | Immediate | Appendix J | * Added draft guidance to supplement criteria for making subrecipient and vendor determinations. |
| 9/15/08 | Immediate | All | * Updated hyperlinks to the Uniform Grant Management Standards to connect to the new location on the Governor’s website. |
| 10/30/08 | Immediate | §§13.7, 13.8 15.2; Chapters 2,3,5,6,8,10-15, and 19-21; and Appendices A and K | * Corrected the citation 45 CFR §97.32(d)(2) to 45 CFR §92.32(d)(2) in §13.7. * Corrected the citation 45 CFR §97.32(d)(3) to 45 CFR §92.32(d)(3) in §13.8. * Replaced the citations 34 CFR 668 and 682 with 34 CFR Part 84 in Exhibit 15.2-1. * Repair hyperlinks to the Code of Federal Regulations, ASMB-C-10, and state statutes. |
| 1/27/09 | Immediate | §§2.1-2.2; 3.1-3.2; 5.1-5.2; 8.1-8.3; 10.2; 11.1 and 11.3-11.5; 12.1-12.7; 13.1, 13.3-13.15, and 13.17-13.18; 14.1-14.5, 14.9, 14.15, 14.18-14.19, and 14.21-14.23; 15.1-15.3; 19.1; 20.1-20.4; and 21.1-21.3. Appendices pages A-9, F-1, G-1, and K-2. | * Updated hyperlinks to OMB Circulars to connect to the new location on the White House website, as needed. |
| 3/01/13 | Immediate | Introduction | * Addressed subcontractor use of Fiscal-TA. * Updated list of covered programs. |
| 3/01/13 | Immediate | Chapter 14 | * Incorporated micro-purchase policies. * Removed prior approval requirements for noncompetitive procurements. * Updated the simplified acquisition threshold. * Other changes |
| 3/01/13 | Immediate | Appendix A | * Added or modified definitions of the following: * Aggregate cost * Bidders list * Micro-purchase * Noncompetitive procurement * Simplified acquisition threshold * Sole source procurement * Workforce service provider |
| 3/01/13 | Immediate | Appendix C | Updated Chapter 14 policy statements. |
| 3/01/13 | Immediate | Appendix D | * Removed Form 6200. * Added form fields to Forms 7100-7400. * Removed Signature Authorization Form. * Renumbered and revised House Bill 1 budget forms. |
| 3/01/13 | Immediate | Appendix E | Updated contact information. |
| 3/01/13 | Immediate | Appendix J | Removed “draft” from appendix to finalize publication. |
| 4/01/13 | Immediate | All Parts | * Applied electronic and information resources requirements, resulting in format changes. * Updated cited authorities, terminology, and program names. * Removed Project RIO from Section 3.1. * Removed information about liability insurance for licensed child care centers from Section 3.2. * Updated information about WIA waivers and Child Care transfers in Section 6.4. * Moved forms from Appendix D to the Agency website; updated links. * Revised index to reduce redundancies. * Other nonsubstantive changes. |
| 4/1/14 | Immediate | All Parts | Made updates to conform to TWC’s policy and plans regarding the accessibility of electronic and information resources. As a result, the manual was converted into a single file; forms that were previously provided in Appendix D of the FMGC were moved to TWC’s website; and minor changes were made to text to reflect the new location of forms and make nonsubstantive changes. |
| 12/18/19 | Immediate, except threshold increases; thresholds increase Jan 1, 2020, unless superseded by award terms. | Overview; Introduction; Chapter 14; Appendix A | * Edited Overview to refer TWC employees to TWC policies and procedures for TWC operations when conducting procurements, grant application solicitations, and other activities for TWC. * Edited Introduction to reflect applicability of the UG and to replace WIA with the Workforce Innovation and Opportunity Act. * Edited Chapter 14 and the Glossary to increase the micro-purchase threshold from $3,000 to $10,000. * Edited Chapter 14 and the Glossary to increase the simplified acquisition threshold from $150,000 to $250,000. |
| 8/31/2020 | Immediate. | Table of Contents; 8.2, 8.3.18; 12.1; 12.2; 13.7; Chapter 14; 15.2; Appendices, A, B, C, D, H-1 and H-2, I, and K. | * Updated Table of Contents * Added a note to Sections 8.2, 8.3.18, 12.1, 12.2, 13.7, the Glossary definitions of “capital lease” and “‘Facilities’ and ‘Administration,’” and Appendices H-1 and H-2 to reflect that “use allowances” are no longer a permissible alternative to depreciation. * Replaced Chapter 14: Procurement with the FMGC Supplement on Procurement. * Amended Section 15.2 by adding two cross-references to the FMGC Supplement on Procurement. * Removed 23 procurement-specific definitions from Appendix A: Glossary. Added FMGC Supplement on Procurement to the Glossary. * Updated page numbering in Appendix B: Index. * Updated the Chapter 14 content of Appendix C: Policy Statements. * Replaced Appendix D: Reserved, with the FMGC Supplement on Procurement * Amended I-8 in Appendix I: Internal Control Matrix by adding a cross-reference to the FMGC Supplement on Procurement. * Amended Appendix K: Record Retention and Access Requirements to reflect that some grant awards may require a retention period greater than three years. |
| 10/1/2023 | Immediate | All | A general refresh to make essential updates and a small number of other miscellaneous edits. Summary of changes:   * Updated source citations; made conforming content edits and associated readability edits. * Added content for Chapter 9 Travel. * Other selected content updates to align with current procedures (such as for Board budget reporting). * Replaced “contract” with “grant”, “contractor” with “grantee”, “subcontractor” with “subgrantee (subrecipient)”, and “subcontract” with “subgrant”, as appropriate. * Removed certain appendices (no longer needed): Appendix B: Index, Appendix E: Contacts, Appendix F: List of Applicable Cost Principles, Appendix G: List of Applicable Administrative Standards, Appendix H: Indirect Cost Rates, and Appendix I: Internal Control Matrix. * Other miscellaneous edits to remove superfluous detail; improve clarity of selected content; add or edit headings for improved use; align with current format standards; update email addresses and URLs; and minimize the number of external hyperlinks. |