



U.S. Department of Justice
Office of the Solicitor General

Washington, D.C. 20530

May 3, 2021

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: American Medical Ass'n, et al. v. Becerra, et al., No. 20-429
Becerra, et al. v. Mayor & City Council of Baltimore, No. 20-454
Oregon, et al. v. Becerra, et al., No. 20-539

Dear Mr. Harris:

On April 26, 2021, the Court issued an order directing the government to address whether it “intends to continue to enforce the challenged rule and regulations” at issue in these cases “outside the State of Maryland until the completion of notice and comment; and, if further litigation is brought against the challenged rule and regulations outside of Maryland, how the Government would intend to respond.” As explained below, the challenged rule and regulations are currently in effect everywhere in the Nation except in Maryland, and the Department of Health and Human Services (HHS) will accordingly continue to enforce the rule and regulations everywhere except in Maryland for as long as they remain operative. If further litigation is brought against the challenged rule and regulations outside Maryland, the government would either oppose the litigation on threshold grounds or seek to hold it in abeyance pending completion of the notice-and-comment rulemaking process. As the government has indicated in prior submissions, HHS expects to complete that process and issue any resulting final rule by early fall, so that it can take effect before the 2022 Title X funding announcement that will be issued in December 2021.

1. These cases involve challenges to a 2019 rule and accompanying regulations (2019 rule) issued by HHS following notice-and-comment procedures to implement Title X of the Public Health Service Act (Title X), 42 U.S.C. 300 *et seq.* See 84 Fed. Reg. 7714 (Mar. 4, 2019) (42 C.F.R. 59.1-59.19). As pertinent here, the 2019 rule prohibits projects receiving Title X funds from making abortion referrals and requires them to maintain physical and financial separation from abortion-related activities. 42 C.F.R. 59.14(a) and 59.15. The rule was challenged by state and local governments, along with private entities and individuals, in several jurisdictions. The Ninth Circuit upheld the validity of the rule in vacating preliminary injunctions against it, while the Fourth Circuit affirmed an injunction barring enforcement of the rule in Maryland. This Court granted petitions for writs of certiorari in both cases in February 2021.

Following the change in Administration, HHS began a review of the 2019 rule. In March 2021, the agency determined that it would commence a notice-and-comment rulemaking process proposing to replace the 2019 rule with a rule that is substantively similar to the rule that was in place from 2000 to 2019. On April 15, 2021, HHS published a proposed rule reflecting that approach. See 86 Fed. Reg. 19,812. The proposed rule does not include the provisions at issue in these cases. Given that HHS proposes to replace the 2019 rule and expects to finalize any new rule by early fall—before this Court would decide these cases—the government and the challengers to the 2019 rule jointly stipulated to dismiss the cases under Rule 46.1. Two sets of entities that support the 2019 rule, a coalition of States and a group of private medical associations, have moved to intervene to continue the litigation in this Court.

HHS is currently enforcing the 2019 rule (except in Maryland) and will do so for as long as it remains in effect. Because the 2019 rule was issued following notice-and-comment procedures, it is a “substantive agency regulation[.]” that has the “force and effect of law.” *Chrysler Corp. v. Brown*, 441 U.S. 281, 295 (1979) (citation omitted). Although HHS has now proposed to rescind the 2019 rule, that rule will remain operative during the notice-and-comment proceedings until any new rule is finalized. See *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 101 (2015).

In this funding-condition context, enforcement has two central components. First, HHS requires grant recipients to certify that they will comply with all conditions imposed by relevant regulations—a requirement that includes compliance with the 2019 rule. As an illustration, attached to this letter is a March 26, 2021 award notice issued in connection with a “continuation” award to an existing Title X grantee.* The notice states that, “[i]n accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions of 42 CFR Part 59, Subpart A [which contains the 2019 rule] currently in effect or implemented during the period of the grant.” App., *infra*, 3a (Special Terms and Requirements ¶ 3); accord *ibid.* (“All applicants must comply with the requirements regarding the provision of family planning services that can be found in the statute (Title X of the Public Health Service Act, 42 U.S.C. § 300 et seq.) and the implementing regulations (42 C.F.R. Part 59, Subpart A).”) (Special Terms and Requirements ¶ 6). By cross-referencing the Code of Federal Regulations, the notice makes clear that the grantee must comply with all current, binding rules—including the provisions of the 2019 rule at issue in these cases. All current Title X recipients have agreed to certifications of this kind.

Second, HHS enforces conditions on Title X grants—including those in the 2019 rule—through a variety of compliance and oversight mechanisms. Each grant recipient must submit an annual report demonstrating its compliance, which is reviewed and validated by the agency. See App., *infra*, 22a (Reporting Requirements ¶ 2); Office of Population Affairs, HHS, *Title X Family Planning Annual Report: 2019 National Summary* (Sept. 2020), <https://opa.hhs.gov/sites/default/files/2020-09/title-x-fpar-2019-national-summary.pdf>. Grant recipients are also subject to the Single Audit Act of 1984, 31 U.S.C. 7501 *et seq.*, which requires recipients of federal awards in excess of \$300,000 to obtain an annual audit of their operations, which HHS then reviews. See App., *infra*, 22a (Reporting Requirements ¶ 3). In addition, HHS makes site visits to monitor grant recipients’ compliance with their award agreements, including the conditions in the 2019 rule.

* The attachment contains minor redactions to protect privacy interests.

Such visits have been conducted virtually during the COVID-19 pandemic, most recently in March and April 2021. Finally, the HHS Office of the Inspector General independently monitors grant recipients' compliance with funding conditions, including those in the 2019 rule.

HHS will continue to enforce the 2019 rule through its typical enforcement mechanisms for as long as the rule remains in effect. In addition to several continuation awards issued in March, see, e.g., App., *infra*, 1a-24a, HHS anticipates that it will issue several additional continuation awards to existing Title X grantees later this year, likely in September. Those awards will likewise be conditioned on compliance with current federal regulations. Thus, if the 2019 rule is still in effect at the time the awards are issued, grant recipients will be bound to comply with that rule as long as it remains in effect. If HHS finalizes a new rule, all existing grant recipients would then become subject to that rule. HHS does not expect to issue grants to any new recipients until 2022.

2. The government's response to any further litigation against the 2019 rule would depend on the nature of the suits. The Ninth Circuit litigation involves a significant number of current or former Title X recipients—including more than 20 States and the Planned Parenthood Federation of America, which operates many family-planning clinics—and if one of those litigants were to bring further litigation, the government may be able to assert threshold defenses in response. Other potential suits might implicate standing issues or related jurisdictional defects, which could provide a basis for the government to move for dismissal.

If further litigation is brought that does not present any threshold obstacle, the government would likely seek to hold such litigation in abeyance pending completion of the rulemaking process. As noted, HHS does not expect to issue Title X grants to any new recipients until 2022, by which point HHS expects to have completed the current rulemaking process. Any justiciable suit against the 2019 rule in the coming months would thus likely be brought by a plaintiff that has been subject to the 2019 rule for a considerable period of time. No sound basis would exist to rapidly adjudicate such a claim given that the 2019 rule has been in place for nearly two years and the rulemaking process is expected to conclude by early fall, at which point there is a significant prospect that the 2019 rule will no longer be in force and any challenge to it will be moot.

Sincerely,

Elizabeth B. Prelogar
Acting Solicitor General

cc: See Attached Service List

20-0429

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20-0454

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MAYOR AND CITY COUNCIL OF BALTIMORE

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20-0539

OREGON, ET AL.

XAVIER BECERRA, SEC. OF HEALTH & HUMAN
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Award# 5 FPHPA0064-03-00

FAIN# FPHPA0064

Federal Award Date: 03/26/2021

Recipient Information

1. Recipient Name

[REDACTED]

[No Phone Record]

2. Congressional District of Recipient

04

3. Payment System Identifier (ID)

[REDACTED]

4. Employer Identification Number (EIN)

[REDACTED]

5. Data Universal Numbering System (DUNS)

[REDACTED]

6. Recipient's Unique Entity Identifier

7. Project Director or Principal Investigator

[REDACTED]

8. Authorized Official

[REDACTED]

Federal Agency Information

OASH Office of Grants Management

9. Awarding Agency Contact Information

[REDACTED]

10. Program Official Contact Information

[REDACTED]

Federal Award Information

11. Award Number

5 FPHPA0064-03-00

12. Unique Federal Award Identification Number (FAIN)

FPHPA0064

13. Statutory Authority

P.L. 91-572 PHS Act Sec. 1001 as Amended, 42 CFR 59

14. Federal Award Project Title

[REDACTED]

15. Assistance Listing Number

93.217

16. Assistance Listing Program Title

Family Planning Services

17. Award Action Type

Non-Competing Continuation

18. Is the Award R&D?

No

Summary Federal Award Financial Information

19. Budget Period Start Date	04/01/2021	- End Date	03/31/2022
20. Total Amount of Federal Funds Obligated by this Action	\$7,250,000.00		
20a. Direct Cost Amount	\$20,714,490.00		
20b. Indirect Cost Amount	\$0.00		
21. Authorized Carryover	\$0.00		
22. Offset	\$0.00		
23. Total Amount of Federal Funds Obligated this budget period	\$0.00		
24. Total Approved Cost Sharing or Matching, where applicable	\$13,464,490.00		
25. Total Federal and Non-Federal Approved this Budget Period	\$20,714,490.00		
26. Project Period Start Date	04/01/2019	- End Date	03/31/2022
27. Total Amount of the Federal Award including Approved Cost Sharing or Matching this Project Period	\$35,374,490.00		

28. Authorized Treatment of Program Income

OTHER (See REMARKS)

29. Grants Management Officer - Signature

[REDACTED]

30. Remarks

This action authorizes continuation award of \$7,250,000 in new FY2021 funds.

Unless specifically removed, all prior terms, conditions, and requirements under this grant remain in effect.



DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE

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Notice of Award

Award# 5 FHPA0064-03-00
FAIN# FHPA0064
Federal Award Date: 03/26/2021

<p>Recipient Information</p> <p>Recipient Name [REDACTED] [REDACTED] [REDACTED] [No Phone Record]</p> <p>Congressional District of Recipient 04</p> <p>Payment Account Number and Type [REDACTED]</p> <p>Employer Identification Number (EIN) Data [REDACTED]</p> <p>Universal Numbering System (DUNS) [REDACTED]</p> <p>Recipient's Unique Entity Identifier Not Available</p>
<p>31. Assistance Type Project Grant</p> <p>32. Type of Award Service</p>

33. Approved Budget (Excludes Direct Assistance)	
I. Financial Assistance from the Federal Awarding Agency Only	
II. Total project costs including grant funds and all other financial participation	
a. Salaries and Wages	\$571,700.00
b. Fringe Benefits	\$224,613.00
c. Total Personnel Costs	\$796,313.00
d. Equipment	\$7,425.00
e. Supplies	\$15,778.00
f. Travel	\$19,932.00
g. Construction	\$461,811.00
h. Other	\$0.00
i. Contractual	\$19,413,231.00
j. TOTAL DIRECT COSTS	\$20,714,490.00
k. INDIRECT COSTS	\$0.00
l. TOTAL APPROVED BUDGET	\$20,714,490.00
m. Federal Share	\$7,250,000.00
n. Non-Federal Share	\$13,464,490.00

34. Accounting Classification Codes					
FY-ACCOUNT NO.	DOCUMENT NO.	ADMINISTRATIVE CODE	OBJECT CLASS	AMT ACTION FINANCIAL ASSISTANCE	APPROPRIATION
0-3984521	FHPA6-A	FPH70	41-45	\$0.00	75-20-0359
1-3984521	FHPA6-A	FPH70	41-45	\$7,250,000.00	75-21-0359



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Award# 5 FHPA0064-03-00

FAIN# FHPA0064

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35. Terms And Conditions

Federal Financial Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
04/01/2019	06/30/2019	Quarterly	07/30/2019
07/01/2019	09/30/2019	Quarterly	10/30/2019
07/01/2019	09/30/2019	Quarterly	10/30/2019
10/01/2019	12/31/2019	Quarterly	01/30/2020
01/01/2020	03/31/2020	Quarterly	04/30/2020
04/01/2020	06/30/2020	Quarterly	07/30/2020
07/01/2020	09/30/2020	Quarterly	10/30/2020
10/01/2020	12/31/2020	Quarterly	01/30/2021
01/01/2021	03/31/2021	Quarterly	04/30/2021
04/01/2021	06/30/2021	Quarterly	07/30/2021
07/01/2021	09/30/2021	Quarterly	10/30/2021
10/01/2021	12/31/2021	Quarterly	01/30/2022
01/01/2022	03/31/2022	Final	06/29/2022

SPECIAL TERMS AND REQUIREMENTS

- Prior Terms, Conditions, and Requirements.** Unless specifically removed, all prior terms, conditions, and requirements under this award remain in effect.
- Non-Federal Share.** Program income (fees, premiums, third-party reimbursements which the project may reasonably expect to receive), as well as state, local and other operational funding, will be used to finance the non-federal share of the scope of project as defined in the approved grant application and reflected in the approved budget. Program income and the level projected in the approved budget will be used to further program objectives. Box/Line 28 on this Notice of Award (NoA) indicates "Other". Program Income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award stays the same. Program Income in excess of any amounts specified must be added to the Federal funds awarded. They must be used for the purposes and conditions of this award for the duration of the Project period. 45 C.F.R. § 75.307 (e).
- Program Specific Regulation.** In accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions of 42 CFR Part 59, Subpart A currently in effect or implemented during the period of the grant.
- Notification/Reporting Requirements.** Notwithstanding any other provision of law, no provider under Title X of the Public Health Service Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest.
- Program Specific Certification.** In accepting this award, the grantee certifies that it encourages family participation in the decision of minors to seek family planning services and that it provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities.
- Program Priorities.** Title X Priorities include all of the legal requirements covered within the Title X statute, regulations, and legislative mandates. All applicants must comply with the requirements regarding the provision of family planning services that can be found in the statute (Title X of the Public Health Service Act, 42 U.S.C. § 300 et seq.) and the implementing regulations (42 C.F.R. Part 59, Subpart A). In addition, sterilization of clients as part of the Title X program must be consistent



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with 42 C.F.R. Part 50, Subpart B (“Sterilization of Persons in Federally Assisted Family Planning Projects”).

7. **Program Key Issues.** Title X Key Issues represent overarching goals for the Title X program. These are determined based on priorities set by the Office of the Assistant Secretary of Health (OASH) and the Office of the Secretary (OS) of the Department of Health and Human Services (HHS). Grantees are expected to address the key issues as stated in the original Notice of Award for this grant.
8. **Notice of Change in Service Sites.** In order to maintain an accurate record of current Title X service sites, grantees are required to provide notice to the Office of Population Affairs (OPA) of any deletions, additions, or changes to the name, location, street address and email, services provided on-site, and contact information for Title X grantees and service sites. This database will also be used to verify eligibility for 340B program registration and recertification. You must enter your changes to the Title X database within 30 days from the official approval of the change at <https://opa-fpclinicdb.hhs.gov/> This does not replace the prior approval requirement under HHS grants policy for changes in project scope, including clinic closures.
9. **340B Program Participation.** If you or your sub-recipient(s) enrolls in the 340B Program, you must comply with all 340B Program requirements. You may be subject to audit at any time regarding 340B Program compliance. 340B Program requirements are available at <https://www.hrsa.gov/opa/program-requirements/index.html>.
10. **FPAR reporting.** All grantees are expected to collect and report data on an annual basis using the Family Planning Annual Report. Grantees must collect all FPAR data and report to OPA on an annual basis (OMB# No. 0990-0221, expires 01/31/2023).
11. **Evaluation Cooperation.** The grantee must cooperate with OPA program evaluations.
12. **Grantee Meeting.** The next Title X National Grantee Meeting will occur virtually in the summer of 2021. Each grantee is encouraged to register three attendees for the meeting. You may register additional attendees subject to any limitations of the hosting platform. This meeting is for individuals from the grantee organization only.
13. **Lobbying Restrictions.** In addition to the longstanding prohibitions on lobbying described in the Funding Opportunity Announcement (PA-FPH-19-001), the 2019 Title X Final Rule at 42 C.F.R. § 59.16 prohibits activities that encourage, promote, or advocate for abortion as a method of family planning. This regulation specifically prohibits the use of Title X funds for a variety of lobbying and advocacy activities, including:
 - (a) A Title X project may not encourage, promote or advocate abortion as a method of family planning. This restriction prohibits actions in the funded project that assist women to obtain abortions for family planning purposes or to increase the availability or accessibility of abortion for family planning purposes.
 - (b) Prohibited actions include the use of Title X project funds for the following:
 - (i) Lobbying for the passage of legislation to increase in any way the availability of abortion as a method of family planning;
 - (ii) Providing speakers or educators who promote the use of abortion as a method of family planning;
 - (iii) Attending events or conferences during which the grantee or subrecipient engages in lobbying;



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(iv) Paying dues to any group that, as a more than insignificant part of its activities, advocates abortion as a method of family planning and does not separately collect and segregate funds used for lobbying purposes;

(v) Using legal action to make abortion available in any way as a method of family planning; and

(vi) Developing or disseminating in any way materials (including printed matter, audiovisual materials and web-based materials) advocating abortion as a method of family planning.

The regulation provides several examples of activities that violate and do not violate this prohibition at 42 C.F.R. § 59.16(b)(1)-(8).

Consistent with longstanding cost principles you as the grantee must use accounting practices consistent with the cost principles in 42 C.F.R. part 75, including providing for adequate documentation to support costs charged to the Federal award (42 C.F.R. § 75.400(d)). It is your responsibility in accepting this award to ensure that membership dues, conference registration fees, and associated travel expenses document compliance with the requirements of 42 C.F.R. § 59.16 as part of your documentation to support that the costs are allowable, allocable, necessary and reasonable for the purpose of the award.

STANDARD TERMS

- 1. Compliance with Terms and Conditions.** You must comply with all terms and conditions outlined in the grant award, including grant policy terms and conditions contained in applicable Department of Health and Human Services (HHS) Grant Policy Statements (GPS), (note any references in the GPS to 45 C.F.R. Part 74 or 92 are now replaced by 45 C.F.R. Part 75, and the SF-269 is now the SF-425), and requirements imposed by program statutes and regulations, Executive Orders, and HHS grant administration regulations, as applicable; as well as any requirements or limitations in any applicable appropriations acts. By drawing or otherwise obtaining funds for the award from the grant payment system or office, you accept the terms and conditions of the award and agree to perform in accordance with the requirements of the award. The HHS Grants Policy Statement is available at: <http://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf> Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS awards are at 45 C.F.R. Part 75.
- 2. Grants Management Officer Prior Approval Requirements.** Certain changes to your project or personnel require prior approval from the Grants Management Officer (GMO). (See Part II, HHS Grants Policy Statement (GPS), any references in the GPS to 45 C.F.R. Part 74 or 92 are now replaced by 45 C.F.R. Part 75). All amendment requests requiring prior approval must be signed by the grantee authorizing official and or PI/PD and submitted through the GrantSolutions Amendment Module. Only responses signed by the GMO are considered valid. If you take action on the basis of responses from other officials or individuals, you do so at your own risk. Such responses will not be considered binding by or upon any OASH Office or HHS component. Any other correspondence not relating to a prior approval item should be uploaded to Grant Notes within the GrantSolutions system. Include the Federal grant number and signature of the authorized business official and the project director on all such correspondence.
- 3. Appropriations Act Restrictions and Requirements.** The Further Consolidated Appropriations Act, 2020 and Consolidated Appropriations Act, 2020, contains requirements and restrictions related to the use of federal funds from the HHS Office of the Assistant Secretary for Health (OASH) on all grant or cooperative agreements henceforth including the current budget period.



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A. Salary Limitation (Further Consolidated Appropriations Act, 2020, Div. A, Title II, sec. 202)

"None of the funds appropriated in this title shall be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate in excess of Executive Level II."

The Salary Limitation is based upon the Executive Level II of the Federal Executive Pay Scale. Effective January 5, 2020, the Executive Level II salary is \$197,300. For the purposes of the salary limitation, the direct salary is exclusive of fringe benefits and indirect costs. An individual's direct salary is not constrained by the legislative provision for a limitation of salary. The rate limitation simply limits the amount that may be awarded and charged to the grant. A recipient may pay an individual's salary amount in excess of the salary cap with non-federal funds.

B. Acknowledgement of Federal Grant Support (Section 505 of the Further Consolidated Appropriations Act, 2020)

When issuing statements, press releases, publications, requests for proposal, bid solicitations and other documents --such as tool-kits, resource guides, websites, and presentations (hereafter "statements")--describing the projects or programs funded in whole or in part with U.S. Department of Health and Human Services (HHS) federal funds, the recipient must clearly state:

- 1) the percentage and dollar amount of the total costs of the program or project funded with federal money; and,
- 2) the percentage and dollar amount of the total costs of the project or program funded by non-governmental sources.

When issuing statements resulting from activities supported by HHS financial assistance, the recipient entity must include an acknowledgement of federal assistance using one of the following or a similar statement.

If the HHS Grant or Cooperative Agreement is NOT funded with other non-governmental sources:

This [project/publication/program/website, etc.] [is/was] supported by the [full name of the PROGRAM OFFICE] of the U.S. Department of Health and Human Services (HHS) as part of a financial assistance award totaling \$XX with 100 percent funded by [PROGRAM OFFICE]/OASH/HHS. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by [PROGRAM OFFICE]/OASH/HHS, or the U.S. Government. For more information, please visit [PROGRAM OFFICE website, if available].

The HHS Grant or Cooperative Agreement IS partially funded with other nongovernmental sources:



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This [project/publication/program/website, etc.] [is/was] supported by the [full name of the PROGRAM OFFICE] of the U.S. Department of Health and Human Services (HHS) as part of a financial assistance award totaling \$XX with XX percentage funded by [PROGRAM OFFICE]/OASH/HHS and \$XX amount and XX percentage funded by non-government source(s). The contents are those of the author (s) and do not necessarily represent the official views of, nor an endorsement, by [PROGRAM OFFICE]/OASH/HHS, or the U.S. Government. For more information, please visit [PROGRAM OFFICE website, if available].

The federal award total must reflect total costs (direct and indirect) for all authorized funds (including supplements and carryover) for the total competitive segment up to the time of the public statement.

Any amendments by the recipient to the acknowledgement statement must be coordinated with the OASH federal project officer and the OASH grants management officer.

If the recipient plans to issue a press release concerning the outcome of activities supported by this financial assistance, it should notify the the OASH federal project officer and the OASH grants management officer in advance to allow for coordination.

4. Reporting Subawards and Executive Compensation.

A. Reporting of first-tier subawards.

1) Applicability.

Unless you are exempt as provided in paragraph D. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2) Where and when to report.

You must report each obligating action described in paragraph A.1. of this award term to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FFRS). For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3) What to report.

You must report the information about each obligating action as specified in the submission instructions posted at <http://www.fsrs.gov>.



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B. Reporting Total Compensation of Recipient Executives.

1) Applicability and what to report.

You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

a) The total Federal funding authorized to date under this award is \$25,000 or more;

b) In the preceding fiscal year, you received—

(1) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. §170.320 (and subawards); and

(2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. §170.320 (and subawards); and

c) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at the Executive Compensation page of the SEC website.)

2) Where and when to report.

You must report executive total compensation described in paragraph B.1. of this award term:



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a) As part of your registration profile in the System for Award Management (SAM).

b) By the end of the month following the month in which this award is made, and annually thereafter.

C. Reporting of Total Compensation of Subrecipient Executives.

1) Applicability and what to report.

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

a) In the subrecipient's preceding fiscal year, the subrecipient received—

(1) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

(2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

b) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at the Executive Compensation page of the SEC website.)

2) Where and when to report.

You must report subrecipient executive total compensation described in paragraph C.1. of this award term:



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a) To the recipient.

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

D. Exemptions.

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

- 1) Subawards, and
- 2) The total compensation of the five most highly compensated executives of any subrecipient.

E. Definitions.

For purposes of this award term:

- 1) "Entity"

This term means all of the following, as defined in 2 C.F.R. Part 25:

- a) A Governmental organization, which is a State, local government, or Indian tribe;
- b) A foreign public entity;
- c) A domestic or foreign nonprofit organization;
- d) A domestic or foreign for-profit organization;
- e) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

- 2) "Executive"

This term means officers, managing partners, or any other employees in management positions.



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3) "Subaward":

a) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. II .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c) A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4) "Subrecipient"

This term means an entity that:

a) Receives a subaward from you (the recipient) under this award; and

b) Is accountable to you for the use of the Federal funds provided by the subaward.

5) "Total compensation"

This term means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):



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- a) Salary and bonus.
- b) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- c) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- d) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- e) Above-market earnings on deferred compensation which is not tax-qualified.
- f) Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

5. **Trafficking in Persons.** This award is subject to the requirements of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104)



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A. Provisions applicable to a recipient that is a private entity.

1) You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not

a) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

b) Procure a commercial sex act during the period of time that the award is in effect; or

c) Use forced labor in the performance of the award or subawards under the award.

2) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –

a) Is determined to have violated a prohibition in paragraph A.1 of this award term; or

b) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph A.1 of this award term through conduct that is either-

(1) Associated with performance under this award; or

(2) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 C.F.R. Part 376.

B. Provision applicable to a recipient other than a private entity.

We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity-



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- 1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

- 2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either
 - a) Associated with performance under this award; or

 - b) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 C.F.R. Part 376.

C. Provisions applicable to any recipient.

- 1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph A.1 of this award term

- 2) Our right to terminate unilaterally that is described in paragraph A.2 or B of this section:
 - a) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and

 - b) Is in addition to all other remedies for noncompliance that are available to us under this award.

- 3) You must include the requirements of paragraph A.1 of this award term in any subaward you make to a private entity.

D. Definitions. For purposes of this award term:

- 1) "Employee" means either:
 - a) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or



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b) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2) "Forced labor" means:

Labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3) "Private entity":

a) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.

b) Includes:

(1) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).

(2) A for-profit organization.

4) "Severe forms of trafficking in persons," "commercial sex act," and "coercion"

These terms have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102)

6. **Whistleblower Protections.** You are hereby given notice that the 48 C.F.R. § 3.908 (related to the enhancement of contractor employee whistleblower protections), implementing 41 U.S.C. § 4712, as amended (entitled "Enhancement of contractor protection from reprisal for disclosure of certain information") applies to this award.

7. **Reporting of Matters Related to Recipient Integrity and Performance.**

A. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee



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Performance and Integrity Information System (FPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. § 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

B. Proceedings About Which You Must Report

Submit the information required about each proceeding that:



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

C. Reporting Procedures

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

D. Reporting Frequency

During any period of time when you are subject to this requirement in paragraph A of this award term and condition, you must report proceedings information through SAM for the most recent five year



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period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

E. Definitions

For purposes of this award term and condition:

- 1) Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- 2) Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- 3) Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - a) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - b) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

F. Disclosure Requirements.

Consistent with 45 C.F.R. § 75.113, applicants and recipients must disclose, in a timely manner, in writing to the HHS Awarding Agency, with a copy to the HHS Office of the Inspector General, all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Subrecipients must disclose, in a timely manner, in writing to the prime recipient (pass through entity) and the HHS Office of the Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Disclosures must be sent in writing to the awarding agency and to the HHS OIG at the following addresses:

*HHS OASH Grants and Acquisitions Management
1101 Wootton Parkway, Plaza Level
Rockville, MD 20852*



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AND

*US Department of Health and Human Services Office of Inspector General
ATTN: OIG HOTLINE OPERATIONS—MANDATORY GRANT DISCLOSURES
PO Box 23489
Washington, DC 20026*

URL: <http://oig.hhs.gov/fraud/report-fraud/index.asp>

(Include "Mandatory Grant Disclosures" in subject line)

Fax: 1-800-223-8164 (Include "Mandatory Grant Disclosures" in subject line)

Failure to make required disclosures can result in any of the remedies described in 45 C.F.R. § 75.371 ("Remedies for noncompliance"), including suspension or debarment (See also 2 C.F.R. Parts 180 & 376 and 31 U.S.C. § 3321).

The recipient must include this mandatory disclosure requirement in all subawards and contracts under this award.

8. Prohibition on certain telecommunications and video surveillance services or equipment.

A. As described in CFR 200.216, recipients and subrecipients are prohibited to obligate or spend grant funds (to include direct and indirect expenditures as well as cost share and program) to:



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- 1) Procure or obtain.

- 2) Extend or renew a contract to procure or obtain; or

- 3) Enter into contract (or extend or renew contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Pub. L. 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

 - b) Telecommunications or video surveillance services provided by such entities or using such equipment.

 - c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise, connected to the government of a covered foreign country.

9. Intellectual Property.

- A. **Data.** The federal government has the right to: 1) Obtain, reproduce, publish, or otherwise use the data produced under this award; and 2) Authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.

- B. **Copyright.** The awardee may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a federal award. The federal government 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.

- C. **Patents and Inventions.** The awardee is subject to applicable regulations governing patents and inventions, including government- wide regulations issued by the Department of Commerce at 37 CFR part 401.

REPORTING REQUIREMENTS



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1. **Financial Reporting Requirement—Federal Financial Report (FFR) SF 425.** Effective October 1, 2020, you must submit your SF-425 to OASH using the Department of Health and Human Services (HHS) Payment Management System for any OASH awards with a project period ending October 1, 2020 or later. Failure to submit the FFR in the correct system by the due date may delay processing of any pending requests or applications.

OASH and the Program Support Center are collaborating in the submission of the SF-425 to reduce the burden on grantees and assist with the reconciliation of expenditures and disbursements, and to allow for timely closeout of grants. Your submission must be through the HHS Payment Management System. SF-425 submissions through Grant Solutions will no longer be accepted for OASH awards.

You must use the SF-425 Federal Financial Report (FFR) for expenditure reporting. To assist in your preparation for submission you may find the SF-425 and instructions for completing the form on the Web at: <http://apply07.grants.gov/apply/forms/sample/SF425-V1.0.pdf>. You must complete **all** sections of the FFR.

A. Quarterly FFR Due Date.

Your FFR is due 30 days after the end of each Quarter in the federal fiscal year. That is for the:

Quarter ending September 30, your FFR is due October 30

Quarter ending December 31, your FFR is due January 30

Quarter ending March 30, your FFR is due April 30

Quarter ending June 30, your FFR is due July 30.

B. Final FFR Due Date.

Your final FFR covering the entire project is due 90 days after the end date for your project period.

C. Past due reports.

If you have not submitted by the due date, you will receive a message indicating the report is **Past Due**. Please ensure your Payment Management System account and contact information are up to date so you receive notifications.

D. Electronic Submission.

Electronic Submissions are accepted only via the HHS Payment Management System – No other submission methods will be accepted without prior written approval from the GMO. You must be assigned to the grant with authorized access to the FFR reporting Module when submitting. If you encounter any difficulties, contact the HHS Payment Management System Help Desk or your



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assigned Grants Management Specialist. Please reference the CONTACTS section of NoA Terms and Conditions to locate the name of your assigned Grants Management Specialist.

2. **Annual Progress Report Requirements.** You must submit annual progress reports 30 days after the end of each performance reporting period unless otherwise required under the Special Terms and Requirements for this award. Your progress reports must address content required by 45 CFR § 75.342(b)(2). Additional progress reporting may be requirement under Special Terms and Requirements as required by statute, regulation, or specific circumstances warranting additional monitoring. Additional guidance may be provided by the Program Office. Reports must be submitted electronically via upload to Grant Notes in GrantSolutions.
3. **Audit Requirements.** The Single Audit Act Amendments of 1996 (31 U.S.C. §§ 7501-7507) combined the audit requirements for all entities under one Act. An audit is required for all non-Federal entities expending Federal awards, and must be consistent with the standards set out at 45 CFR Part 75, Subpart F (“Audit Requirements”). The audits are due within 30 days of receipt from the auditor or within 9 months of the end of the fiscal year, whichever occurs first. The audit report when completed should be submitted online to the Federal Audit Clearinghouse at <https://harvester.census.gov/facides/Account/Login.aspx>.
4. **Closeout Requirements.** This project is in its final budget period. Once the project period has ended you are required to submit a Final Program Progress report, the SF-425 using the Department of Health and Human Services (HHS) Payment Management System and the SF-428 Tangible Personal Property report and/or Disposition report within 120 calendar days after the expiration of the project and budget period end date. Failure to submit these required reports when due may result in the imposition of a special award condition or the withholding of support for other active or future projects or activities involving your organization.

A. The Final Program Progress Report:

Your reports must address content required by 45 CFR § 75.342(b)(2). Additional guidance on content of the progress report may be provided by the Program Office. Submit your report via attachment to the Grant Notes section within GrantSolutions.

B. SF-425 Final Federal Financial Report:

Submit your Final FFR using the Department of Health and Human Services (HHS) Payment Management System. SF-425 submissions through Grant Solutions will no longer be accepted for OASH awards. Electronic Submissions are accepted only via the HHS Payment Management System – No other submission methods will be accepted without prior written approval from the GMO. You must be assigned to the grant with authorized access to the FFR reporting Module when submitting. If you encounter any difficulties, contact the HHS Payment Management System Help Desk or your assigned Grants Management Specialist. Please reference the CONTACTS section of NoA Terms and Conditions to locate the name of your assigned Grants Management Specialist.

C. SF-428 and SF-428-B Tangible Personal Property report and/or Disposition reports:

Submit reports via attachment to the Grant Notes section within GrantSolutions. You may find the forms SF 428 on the Web at: <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html#sortby=1>



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Additional instructions for completing all reports will be provided in the Pre-closeout letter from the Office of Grants & Acquisitions Management

CONTACTS

- 1. Fraud, Waste, and Abuse.** The HHS Inspector General accepts tips and complaints from all sources about potential fraud, waste, abuse, and mismanagement in Department of Health and Human Services' programs. Your information will be reviewed promptly by a professional staff member. Due to the high volume of information that they receive, they are unable to reply to submissions. You may reach the OIG through various channels.

Internet: <https://forms.oig.hhs.gov/hotlineoperations/index.aspx>

Phone: 1-800-HHS-TIPS (1-800-447-8477)

*Mail: US Department of Health and Human Services
Office of Inspector General
ATTN: OIG HOTLINE OPERATIONS
PO Box 23489
Washington, DC 20026*

For additional information visit <https://oig.hhs.gov/fraud/report-fraud/index.asp>

- 2. Payment Procedures.** Payments for grants awarded by OASH Program Offices are made through Payment Management Services (previously known as the Division of Payment Management) <https://pms.psc.gov/home.html> PMS is administered by the Program Support Center (PSC), HHS. NOTE: Please contact the Payment Management Services to establish an account if you do not have one.

Inquiries regarding payments should be directed to <https://pms.psc.gov/home.html>; or

Payment Management Services, P.O. Box 6021, Rockville, MD 20852;

or 1-877-614-5533.

- 3. Use of Grant Solutions.** GrantSolutions is our web-based system that will be used to manage your grant throughout its life cycle. Please contact GrantSolutions User Support to establish an account if you do not have one. Your Grants Management Specialist has the ability to create a GrantSolutions account for the Grantee Authorized Official and Principle Investigator/Program Director roles. Financial Officer accounts may only be established by GrantSolutions staff. All account requests must be signed by the prospective user and their supervisor or other authorized organization official.

For assistance on GrantSolutions issues please contact: GrantSolutions User Support at 202-401-5282 or 866-577-0771, email help@grantsolutions.gov, Monday – Friday, 8 a.m. – 6 p.m. ET. Frequently Asked Questions and answers are available at <https://grantsolutions.secure.force.com/>.

- 4. Grants Administration Assistance.** For assistance on grants administration issues please contact: Robin Fuller, Grants Management Specialist, at (240) 453-8830, or e-mail robin.fuller@hhs.gov or mail:

*OASH Grants and Acquisitions Management Division
Department of Health and Human Services*



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*Office of the Secretary
Office of the Assistant Secretary for Health
1101 Wootton Parkway, Rockville, MD 20852.*