

**FOOD & NUTRITION SERVICE**  
**STANDARD TERMS AND CONDITIONS**  
**FY 2024 NSLP Equipment Assistance**

All grant awards, as well as amendments to existing USDA Food and Nutrition grants, are subject to the following Standard Terms and Conditions.

The USDA Food and Nutrition Service (hereinafter referred to as “Agency”) awards funding to the Grantee (hereinafter referred to as “Recipient”). By acceptance of this award, the Recipient agrees to comply with the terms and conditions of the award listed below.

The Recipient will conduct the project as described in its submission of the Standard Form 424, 424A, proposal, and budget narrative, including any subsequent revisions, amendments and/or clarifications.

Important information regarding the award, including the Agency contact and Assistance Listing Number (formerly known as the CFDA), is contained on the Grant/Cooperative Agreement Form FNS-529.

**STANDARD TERMS OF THE AWARD**

- 1. Funding:** The Agency will provide funds to the Recipient in the amount stated on the Grant/Cooperative Agreement Form FNS-529, Box 11, and as specified in the grant award letter, for use in accordance with this agreement. Funds will be provided at the Agency’s discretion through the Letter of Credit, Reimbursement, or in advance of need, upon receipt of a properly executed Grant/Cooperative Agreement Form FNS-529.
- 2. Performance Period:** The period of performance for this project is listed on the Grant/Cooperative Agreement Form FNS-529, Box 20 and 21. The Recipient may only incur allowable costs during the period of performance. To maintain effective internal control over funds, the Recipient shall only withdraw funds for expenses incurred or anticipated within the period of performance.

All funds must be obligated and all program activities under the agreement (other than activities related to the close out of the agreement) must be completed by the Expiration Date listed on the Grant/Cooperative Agreement Form FNS-529, Box 21. The closeout of the agreement must occur within 120 days of the expiration date, and all obligations incurred under the agreement must be liquidated by this date.

- 3. Amendments/Revisions and Budget Changes:** The Recipient may request an amendment or revision to the agreement, including the proposal, in writing at any time

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during the duration of the agreement. Prior approval is required for any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision); changes in key personnel, such as the project director; disengagement from the project for more than three months (or a 25 percent reduction in time devoted to the project) by the project director; transfer of funds budgeted for participant support costs; the subawarding, transferring or contracting of any work (unless approved in the submitted application package); or changes to budget line cost/expenditure. All amendments or revision must be submitted in writing to the Agency Contact listed on the Grant/Cooperative Agreement Form FNS-529, box 7.

The Recipient may transfer costs within the approved direct cost categories to meet unanticipated requirements. However, as required in [2 CFR 200.308\(f\)](#) the Agency requires that prior approval be obtained for any budget revision that involves a shift of funds among line-items in excess of 10% of the total approved grant budget. Such revisions must be submitted in writing with a revised budget in the same format as the original budget. All other requirements within [2 CFR 200.308](#) shall also apply.

The Recipient must include justification with any proposed amendment/revision and budget changes. All requests for changes must be made at least 10 calendar days before the end of the grant period. Any request received after this time will not be considered.

No-cost extensions are not permitted under this Fiscal Year (FY) 2024, National School Lunch Program Equipment Assistance Grants NOFA.

4. **Non-agreement funds:** The Recipient may seek and apply for funds from other sources in support of the mission of the agreement.

## **REPORTING**

5. **Annual and Final Progress Report:** Unless otherwise authorized, only the OMB approved FNS-908 Performance Progress Report may be used. This report must be received by the Agency annually and within 120 calendar days following the end of the period of performance end date. As aforementioned, unless otherwise approved, the Recipient must use the standardized FNS-908 Performance Progress Report attached to these Terms and Conditions for all Progress Reports.

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For these grants, only an annual and a final FNS-908 Performance Progress Report Program will be required at the end of the performance period. Activities should include a summary of the reporting period, activities that highlight achievements and challenges, indicators which are specific to this grant. Please be sure to use the correct FNS-908 and associated Program Activities when reporting program performance for this grant. When reporting program performance, the Recipient should relate financial data and accomplishments to performance goals and objectives of the award. When completing the annual and the final FNS-908 Performance Progress Report, the Recipient will be giving consideration to the following information:

- List of all grantees and the equipment purchased (this can be included in the narrative or as an attachment)

The Recipient must also immediately report any problems, delays, or adverse conditions that impair the Recipient's ability to meet the grant/cooperative agreement objectives. The notification must include information on action taken or contemplated in response to the problem and any assistance needed to resolve the situation.

The annual and final FNS-908 Performance Progress Report will be submitted via email to the FNS Regional Office Program POC in PDF form (not Word or Excel). On this form, State agencies shall provide an annual and final reporting summary that will include a list of all grantees and equipment purchased (this can be included in the narrative or as an attachment).

- 6. Financial Status Reports:** The Recipient is required to electronically enter the quarterly and final financial status report (SF-425) into the FNS, Food Programs Reporting System (FPRS) under report title "CN-NSLPE-v5". Detailed FPRS enrollment instructions are provided at: <https://fprs.fns.usda.gov/>. This report must be entered within 30 days after the close of each quarter. The Final Financial Report must be entered into FPRS within 120 days of the expiration of this agreement. This report must also be certified by the Recipient's chief fiscal officer or an officer of comparable rank.

**REGULATORY AND STATUTORY REQUIREMENTS**

- 7. Office of Management and Budget (OMB) Guidance:** This Federal financial assistance award is subject to rules and regulations related to the Recipient's organizational entity type as noted below.

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**Government-wide Regulations**

- [2 CFR Part 25: “Universal Identifier and System for Award Management”](#)
- [2 CFR Part 170: “Reporting Sub-award and Executive Compensation Information”](#)
- [2 CFR Part 175: “Award Term for Trafficking in Persons”](#)
- [2 CFR Part 180: “OMB Guidelines to Agencies on Government-wide Debarment and Suspension \(Non-Procurement\)”](#)
- [2 CFR 200: “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”](#)
- [2 CFR 400: “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”](#)
- [2 CFR Part 415: “General Program Administrative Regulations”](#)
- [2 CFR Part 416: “General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments”](#)
- [2 CFR Part 417: “Non-Procurement Debarment and Suspension”](#)
- [2 CFR Part 418 “New Restrictions on Lobbying”](#)
- [2 CFR Part 421: “Requirements for Drug-Free Workplace \(Financial Assistance\)”](#)
- [7 CFR Part 3: “Debt Management”](#)
- [7 CFR Part 16: “Equal Opportunity for Religious Organizations”](#)
- [41 U.S.C. Section 22 “Interest of Member of Congress”](#)
- Privacy Act. The Cooperator/Grantee shall follow the rules and procedures of disclosure set forth in the [Privacy Act of 1974, 5 U.S.C. 552a](#), and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.
- Freedom of Information Act (FOIA). Public access to Federal Financial Assistance records shall not be limited, except when such records must be kept confidential and would have been excepted from disclosure pursuant to the “Freedom of Information” regulation ([5 U.S.C. 552](#))

**PROPERTY STANDARDS**

- 8. Insurance Coverage:** The Recipient must provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds.
- 9. Intangible Property:**

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- a. The Recipient may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under the award ([41 CFR 105-72.406](#)). The 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. Federal purposes “include the use of award products in activities or programs undertaken by the Agency, in response to a governmental request, or as otherwise required by federal law. The Agency may request copies of an award product for not-for-profit use. These copies will be provided at the cost of reproduction and shipping, and no royalties or other fees will be charged. However, the Agency’s use of copyrighted materials is not intended to interfere with or disadvantage the recipient or assignee in the sale and distribution of the award product.” The Recipient is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at [37 CFR P401](#).
- b. The Agency has the right to:
  1. Obtain, reproduce, publish or otherwise use the data first produced under an award; and
  2. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- c. In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Agency must request, and the recipient shall 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 Agency obtains the research data solely in response to a FOIA request, the 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 Agency, the recipient, and applicable sub-recipients. This fee is in addition to any fees the agency may assess under the FOIA ([5 U.S.C. 552\(a\)\(4\)\(A\)](#)).
- d. As defined in [2 CFR 200.315](#), title to intangible property (see definition for *Intangible property* in [2 CFR 200.1](#)) acquired under an award or sub-award vests

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upon acquisition in the Recipient. The Recipient must use that property for the originally authorized purpose and must not encumber the property without Agency approval. The Agency reserves the right to determine the disposition of the intangible property when it is no longer needed for the originally authorized purpose.

10. **Federally-owned and exempt property:** Title to federally-owned property remains vested in the Federal entity. The Recipient must submit annually an inventory listing of federally-owned property in its custody to the Agency. Upon completion of the project, or when the property is no longer needed, the recipient must contact the Agency for instruction on utilization or disposition ([2 CFR 200.312](#)).
11. **Equipment:** Equipment is defined as tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit. The purchase of equipment not included in the approved project budget is allowable only if it is specifically approved beforehand by the Agency and there is documentation to support that the purchase is necessary and reasonable to carry out project activities.

Equipment records must be maintained that include the description of the equipment, the serial number or other identification number, the source of funding for the equipment (including the Federal Award Identification Number, or FAIN), the title holder, the acquisition date, the percentage of Federal participation in the project costs for the Federal award under which the equipment was acquired, the location, use, and condition of the equipment, and any ultimate disposition data including the date of disposal and the sale price of the equipment. A physical inventory of the equipment must be taken, and the results reconciled with the equipment records every two years or at the grant close out, based on which of these occurs first. A Tangible Personal Property Report, SF-428, 428B, and 428S, must be submitted at award close-out to report the status of the equipment. The Recipient will follow the Agency's equipment disposition guidance and procedures as defined in [2 CFR 200.312](#).

12. **Sub-recipient compliance:** The Recipient will ensure that sub-recipients are in compliance with applicable Federal administrative requirements and cost principles. No funds shall be provided to an eligible collaborator or contractor before such an agreement is signed by all parties.

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**PROCUREMENT STANDARDS**

The recipient will adhere to all procurement standards, including those listed below, if applicable, as found in [2 CFR 200.318 through 2 CFR 200.323](#), however, State recipients will comply with [2 CFR 200.317](#). When procuring property and services under a Federal award, a State must follow the same policies and procedures used for procurements from its non-Federal funds.

**General procurement standards:** The non-Federal entity must use its own documented procurement procedures, which reflect applicable State and local laws and regulations provided that procurements conform to applicable Federal law and the standards identified in this section. The Recipient must maintain oversight over contractors to ensure performance in accordance with the terms, conditions and specifications of their contracts or purchase orders, including written performance standards of its employees engaged in the selection, award and administration of contracts. The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. In accordance with [2 CFR 200.318\(j\)\(1\)](#), the non-Federal entity may only use time and material type contracts after a determination that no other contract is suitable and if the contract includes a ceiling that the contractor exceeds at its own risk.

**Buy America Preference in Federal Financial Assistance Programs for Infrastructure**

- A) In accordance with Build America, Buy America Act, Pub. L. No. 117-58, §§ 70901-52. Section 70914; recipients of an award of Federal financial assistance from a program<sup>1</sup> for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:
- 1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
  - 2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced,

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<sup>1</sup>Federal financial assistance program for infrastructure includes any program under which an award may be issued for an infrastructure project, regardless of whether infrastructure is the primary purpose of the award. Refer to definitions in section (B) for more information.

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- or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- 3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. (See definitions below) As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

**B) Compliance**

- 1) All grant recipients and sub-recipients are responsible for documenting compliance with the Buy American Preference requirements set forth above. Grant recipients and sub-recipients may utilize documentation such as product labels indicating country of origin, statements from manufacturers, vendors or suppliers certifying that items being sold/purchased meet the Buy American Preference for Infrastructure requirements, and/or any other type of documentation that would demonstrate compliance.
- 2) Prior to any entering any procurement transactions related to the grant award, grant recipients and sub-recipients must obtain the appropriate certification of compliance from their contractors, manufacturers, vendors, or suppliers. If this certification cannot be obtained, a waiver request must be pursued using the process outlined below.
- 3) Applicable infrastructure costs that are unable to be certified as compliant with the Buy American Preference requirements for Infrastructure and have no approved FNS waiver may be disallowed by the awarding agency.

**C) Reporting Requirements**

- 1) Please note, there are no specific reporting requirements related to the Buy America Preference in Federal Financial Assistance Programs for Infrastructure conditions listed in this section. However, in accordance with [2 CFR 200.334](#); Retention Requirements for Records, all related records must be maintained for a



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period of three years from the date of submission of the final expenditure report or audit and the Grantee will be required to provide this information to FNS within 30 days of request.

**D) Definitions**

- 1) “Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; excluding aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:
  - non-ferrous metals;
  - plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
  - glass (including optic glass);
  - lumber; or
  - drywall.
- 2) “Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.
- 3) “Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.
- 4) “Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

**Waiver Requests to Buy America Preference in Federal Financial Assistance Programs for Infrastructure Requirements**

- A) In situations where the grantee determines that one of the following exceptions applies, the grantee may submit to FNS a waiver to the application of Buy American Preference for their infrastructure costs:
  - (1) applying the domestic content procurement preference would be inconsistent with the public interest;

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- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

B) A written request to waive the application of the domestic content procurement preference must be submitted to FNS at, [sm.fn.fm-grantpolicy@usda.gov](mailto:sm.fn.fm-grantpolicy@usda.gov), and must include the following in the title of the email: “(Title of Grant) – Buy American Preference Waiver Request”. Please also use the following suggested format with the waiver exception request:

- Exception being requested (#1-#3 listed above in section A) along with a brief narrative explaining the need for the waiver request.
- Include a section with specific information that supports the exception being requested.
- Attach any supporting documentation such as estimates, invoices, receipts, letters of support, and/or any other documentation that would support the exception requested.

Waiver requests will be decided on a case-by-case basis. FNS will be responsible for seeking public comment of no less than 30 days on General Applicability waiver (#1) requests, while all other waiver requests (#2-#3) are subject to a minimum 15-day public comment period. All waiver requests will be posted for public comment at <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>. Additionally, all waivers must be reviewed by the Made in America Office before a final decision is provided. The Made in American Office will notify FNS of its determination. The decision provided is final and there is no further appeal process.

There may be instances where an award qualifies, in whole or in part, for an existing approved USDA-wide waiver described at <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>. This website provides information on the currently approved Buy American for Infrastructure Waivers for De Minimis, Small Grants and Minor Components. These waivers are separate and distinct from the waivers and accompanying waiver request process listed in (A) and (B) above.

A general description of the existing waivers can be found below:

- 1) The De Minimis Waiver sets a threshold of 5% of project costs up to a maximum of \$1,000,000. This waiver applies to infrastructure project purchases below a de

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- minimis threshold. For example, if a recipient's award is \$1,000,000, up to \$50,000 in infrastructure costs would be exempt from the Buy American for Infrastructure requirements.
- 2) The Small Grants Waiver applies to awards with total federal funding below the Simplified Acquisition Threshold, which is currently set at \$250,000. Any grant with total funding below \$250,000 would be exempt from the Buy American for Infrastructure requirements.
  - 3) The Minor Components Waiver allows for minor deviations for miscellaneous minor components within iron and steel products in a project when there is no domestic component available. This waiver allows recipients of USDA funds to use non-domestically produced miscellaneous minor component comprising no more than 5% of the total material cost of an otherwise domestically produced iron and steel product to be used. The recipient is expected to provide analysis that the awarding agency and staff office will need to verify and validate.

Prior to any entering any procurement transactions related to the grant award, grant recipients and sub-recipients must provide the awarding agency with advanced notification of their intent to utilize an existing USDA Buy American for Infrastructure Waiver. The grant recipient or sub-recipient must receive concurrence from their awarding agency prior to proceeding with utilizing the USDA Buy American for Infrastructure Waivers. Notifications must be sent to [sm.fn.fm-grantpolicy@usda.gov](mailto:sm.fn.fm-grantpolicy@usda.gov), and a final concurrence or denial will be provided within 15 days or receipt. The response provided is final and there is no further appeal process.

13. **Competition:** All procurement transactions must be conducted in a manner providing full and open competition consistent with [2 CFR 200.319](#).
14. **Suspension/Debarment:** The Recipient agrees to ensure that all sub-recipients are neither excluded nor disqualified under the Suspension and Debarment rules found at [2 CFR Part 180](#) and 2 CFR Part [417](#) by doing any one of the following:
  - a. Checking the System for Awards Management (SAM) to determine if the applicant or Recipient has been debarred or suspended. This information can be found at <https://www.sam.gov/>
  - b. Collecting a certification that the entity is neither excluded nor disqualified. Because a Federal certification form is no longer available, the Recipient or sub-Recipient electing this must devise its own.
  - c. Including a clause to this effect in the sub-recipient agreement and in any procurement contract expected to equal or exceed \$25,000, awarded by the Recipient or a sub-recipient within any agreements.

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**15. Civil Rights:**

**Assurance of Civil Rights Compliance for Child Nutrition:**

The Grantee hereby agrees that it will comply with

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
- ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
- iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
- v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
- vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);
- vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
- viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);
- ix. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex (including gender identity and sexual orientation), age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.
- x. The USDA non-discrimination statement that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property

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or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance. By accepting this assurance, the Grantee agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Grantee, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA.

**RECORD RETENTION AND ACCESS**

**16. Evaluation and Access to Records:** The Recipient will cooperate with any evaluation of the program by providing the Agency requested data and access to records. The Recipient will cooperate with any, as needed, on-site financial and/or technical reviews and audits at any time during the term of the agreement. In addition, the Recipient shall make all records pertaining to activities under the grant available for audit purposes. The Recipient will require any sub-recipient or contractors to comply with the requirements of this agreement and ensure that the Agency has access to any sub-recipient or contractors for purposes of evaluating, monitoring or reviewing other operations or records as they relate to this grant. When entering into a sub-award, the Recipient shall ensure that the sub-recipient agreement contains any clause required by Federal Statute or Executive Order and their implementing regulations. Records pertaining to this grant shall be retained by the Recipient for a period of three years from the date of the submission of the annual financial status report, as required under [2 CFR 200.334](#).

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and audits at any time during the term of the agreement. In addition, the Recipient shall make all records pertaining to activities under the grant available for audit purposes. The Recipient will require any sub-recipient or contractors to comply with the requirements of this agreement and ensure that the Agency has access to any sub-recipient or contractors for purposes of evaluating, monitoring or reviewing other operations or records as they relate to this grant. When entering into a sub-award, the Recipient shall ensure that the sub-recipient agreement contains any clause required by Federal Statute or Executive Order and their implementing regulations. Records pertaining to this grant shall be retained by the Recipient for a period of three years from the date of the submission of the annual financial status report, as required under [2 CFR 200.334](#).

**NONCOMPLIANCE AND TERMINATION**

- 17. Noncompliance:** As provided in [2 CFR 200.340](#), the Agency may unilaterally terminate this grant agreement or recover, withhold, or disallow costs of up to 100 percent of the funds made available under the agreement if the Recipient fails to comply with any term of the agreement. **The Agency will consider failure to comply with the reporting requirements of this agreement to be a material failure to comply with the agreement and a basis for termination.** If the Agency decides to take action against the Recipient for noncompliance under this agreement, the Agency will provide the recipient written notice of the basis for its determination.

In the event that an award is suspended and corrective action is not taken within 90 days of the suspension effective date, the Agency may issue a notice of termination. No costs that are incurred during the suspension period or after the effective date of termination will be allowable, except those that are specifically authorized by the suspension or termination notice or those that, in the opinion of the Agency, could not have been reasonably avoided.

Within 30 days of the termination date, the Recipient shall furnish to the Agency a summary of progress achieved under the award, an itemized accounting of charges incurred against award funds and cost sharing prior to the effective date of the suspension or termination, and a separate accounting and justification for any costs that may have been incurred after this date.

**OTHER REQUIREMENTS**

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- 18. USDA/FNS acknowledgement:** Unless otherwise advised by the Agency, the Recipient will acknowledge the support of USDA FNS whenever publicizing the work under this grant. To this end, the Recipient must include in any publication resulting from work performed under this grant an acknowledgment in substantially the form set below:

“This project has been funded at least in part with Federal funds from the U.S. Department of Agriculture. The contents of this publication do not necessarily reflect the view or policies of the U.S. Department of Agriculture, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.”

- 19. Liabilities:** The Recipient may not seek any financial recourse from the Agency as a result of any liabilities the Recipient may incur for bodily injury or personal property damage resulting from negligent acts, errors, or omissions of the Recipient, their officers, agents or employees, or if applicable its sub-Recipients or their officers, agents, or employees, in performing this agreement. Liabilities of the United States are governed by the Federal Tort Claims Act, [28 U.S.C. 2671 et seq.](#)
- 20. Privacy Act Policy:** The USDA Food and Nutrition Service does not collect any personal identifiable information without explicit consent. To view the Agency’s Privacy Act Statement, visit: <https://www.fns.usda.gov/privacy-policy>.
- 21. Program Income:** Program income is money that is earned or received by a Recipient or a sub-Recipient from the activities supported by award funds or from products resulting from award activities. It includes, but is not limited to, income from fees for services performed and from the sale of items produced under an award; usage or rental fees for equipment or property acquired under an award; admission fees; broadcast or distribution rights; and license fees and royalties on patents and copyrights. The Federal share of program income is determined by the percentage of total project costs that are supported by the Agency.

**Income Earned During the Award Period:** The Federal share of program income earned during the award period shall be retained by the Recipient and, unless the award specifies how such income will be used, the Recipient must use it in the following way:



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It may be added to the existing project funding to cover increased costs of the project.

A report of program income earned during the award period must be submitted with the final Federal Financial Report whenever program income is earned during the award period or when the terms and conditions of the award specifically require such a report. The report shall indicate the total amount of program income that was earned and how it was used.

If income is to be returned to the Agency, the grantee should utilize the ASAP.gov System. If a check must be submitted, the check should be made payable to the Food and Nutrition Service (FNS) and identified as program income must be submitted to the Accounting Division at the following address:

USDA Food and Nutrition Service  
ATTN: Accounting Division  
P.O. Box 979027  
St. Louis, MO 61397-9000

All checks must include: **Project Fiscal Year, Agency Name, and GAD Number.**  
**Checks lacking the above information will be returned to the grantee.**

**Whenever possible, the grantee will return any unobligated funding to the Agency via the ASAP.gov account. The grantee will minimize any transactions utilizing physical checks.**

**The grantee will draw only those funds needed for to pay for expenditures. The draws for these expenditures will occur no more than 3 days in advance of need whenever possible.**

**POST CLOSEOUT ADJUSTMENTS AND COLLECTIONS**

**22. Post-closeout adjustments:** If the Recipient needs to return funds at the end of the grant period, the Recipient shall log in to their ASAP account and conduct a book adjustment to return the funds electronically. ASAP is only accessible to those with an ASAP login, so the Recipient will need to contact the ASAP help desk directly at <https://fiscal.treasury.gov/asap/contact.html> if assistance is needed. The closeout of a Federal award does not affect:

- The right of the Agency to disallow costs and recover funds on the basis of an audit or later review;



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- The obligation of a Recipient to return funds as a result of later cost adjustments;
- Audit requirements;
- Property management and disposition requirements; and
- Record retention requirements.

- 23. Collections:** Any funds paid in excess of the amount in which the non-Federal entity is finally determined to be entitled will constitute a debt to the Federal Government. If these funds are not repaid within 90 days, the Agency may: make an administrative offset; withhold advance payments or take other necessary actions. In addition, interest will accrue on this overdue debt in accordance with the Federal Claims Collections Standards ([31 CFR 900 through 999](#))

(End of Document)

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