

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: Generally, to all Rules

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

What happens if a distributing agency violates any of the rules and/or fails to comply after notice thereof?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel
Date submitted to agency: February 9, 2024

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0101

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

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Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

09 NCAC 03M .0101 is amended as published in 38:08 NCR 478-483 as follows:

**SUBCHAPTER 03M – UNIFORM ADMINISTRATION OF STATE AWARDS OF ~~FINANCIAL~~
ASSISTANCE GRANTS**

SECTION .0100 - ORGANIZATION AND FUNCTION

09 NCAC 03M .0101 PURPOSE

Pursuant to G.S. 143C-6-23, the rules in this Subchapter establish reporting requirements for non-State entities that receive, hold, use, or expend ~~State financial assistance grants~~ and ensure the uniform administration of ~~State financial assistance grant funds~~ by all State agencies, recipients, and subrecipients. The requirements of this subchapter shall not apply to:

- (1) ~~State financial assistance Grants~~ to non-State entities subject to the audit and other reporting requirements of the Local Government Commission.
- (2) Tuition assistance to students.
- (3) Public assistance payments from Federal entitlement programs to or on behalf of enrolled individuals.
- (4) State funds disbursed to a contractor as defined in this Subchapter.

History Note: Authority G.S. 143C-6-22; 143C-6-23;

Eff. July 1, 2005;

Amended Eff. October 1, 2007;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015;

Amended Eff. July 1, 2024; July 1, 2016.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0102

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Line 10, item (2): Audit by whom? Can it be any audit?

Page 1, Line 11, item (3): Strike "means" or "is".

Page 1, Lines 14-15, item (4): Why is everything after "Treasurer" necessary?

Page 1, Line 19, item (18): I believe the agency wants a comma after "requirements".

Page 1, Line 27, item (10): I believe the agency wants a comma after "direct appropriation".

Page 2, Line 3, item (14): If the agency is going to incorporate 2 CFR 200.93 by reference it needs to abide by G.S. 150B-21.6.

Page 2, Line 12, item (11): The use of the phrase "an individual that is a beneficiary" can be read more than one way. Accordingly, it is unclear.

Page 2, Lines 15-17, item (18): Cite the rule by which a grantee gets designated "in a state of non-compliance."

Page 2, Lines 17-19, item (18): The second sentence is not a definition but a requirement or prohibition.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

09 NCAC 03M .0102 is amended with changes as published in 38:08 NCR 478-483 as follows:

09 NCAC 03M .0102 DEFINITIONS

~~As used in~~ In addition to the definitions set forth in G.S. 143C-6-23 and G.S. 143C-1-1, the following definitions shall apply to this Subchapter:

(1) "Agency" means every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of state or local government.

(2) "Audit" means an examination of records or financial accounts to verify their accuracy.

~~(3)~~ "Beneficiary" means is an individual receiving the funds or assistance as the end user.

~~(3)(4)~~ "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Division of the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.

~~(4)(5)~~ "Contract" means a legal instrument including any amendments ~~that is~~ used to document a relationship between the ~~agency,~~ agency and a recipient or between a recipient and subrecipient.

~~(5)(6)~~ "Contractor" means an entity subject to the contractor requirements, as well as any entity that would be subject to the contractor requirements but for a specific statute or rule exempting that entity from the contractor requirements.

~~(6)(7)~~ "Contractor requirements" means Article 3, 3C, 3D, 3E, 3G, or 8 of Chapter 143 of the General Statutes and related rules.

~~(7)(8)~~ "Fiscal Year" means the annual operating year of the non-State entity.

~~(8)(9)~~ "Financial Statement" means a report providing financial data relative to a given part of an organization's operations or status.

~~(12)(10)~~ ~~"State financial assistance"~~ "Grants" or "Grant funds" means State funds disbursed as a grant, cooperative agreement, non-cash contribution, food commodities, or direct appropriation to a recipient or subrecipient as defined in ~~Item (10) and (14)~~ of this Rule.

~~(11)~~ "Monitoring plan" means a documented system of educating, reviewing, tracking, and reporting on the use of grant funds. Designed to assure that public funds are spent in compliance with applicable rules and statutes, and that performance expectations are being achieved.

~~(9)(12)~~ "Non-State Entity" has the meaning in G.S. 143C-1-1(d)(18).

~~(13)~~ "Program-specific audit" means an audit that includes an examination of financial statements, internal controls, and compliance with the requirements and contract clauses for an individual State award.

~~(10)(14)~~ "Recipient" means a non-State entity that receives ~~State financial assistance~~ grants directly from a State agency to carry out part of a State program, but does not include any non-State entity subject

to the audit and other reporting requirements of the Local Government Commission. For purposes of this Subchapter, "recipient" also includes a non-State entity that would be considered a "subrecipient" pursuant to 2 CFR 200.93 for Federal funds subawarded by a recipient State agency, but does not include a subrecipient as defined in Item ~~(14)~~(17) of this Rule.

~~(14)~~(15) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.

~~(13)~~(16) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities. Both Federal and State funds maintain their identity as they are disbursed as financial assistance to other organizations.

~~(14)~~(17) "Subrecipient" means a non-State entity that receives ~~State financial assistance~~ grants from a recipient to carry out part of a State program; but does not include an individual that is a beneficiary of such program. This definition of "subrecipient" applies throughout these Rules, except as used in Item ~~(14)~~(14) of this Rule.

~~(18)~~ "Suspension of Funding list" means a database maintained and distributed by Office of State Budget and Management in consultation with State agencies designating grantees or subgrantees in a state of non-compliance with grant agreement requirements. State Agencies are prohibited to disburse grant funds to entities on the Suspension of Funding List until that entity comes back into compliance and is removed from the list.

*History Note: Authority G.S. 143C-6-22; 143C-6-23;
Eff. July 1, 2005;
Amended Eff. October 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015;
Amended Eff. July 1, 2024; July 1, 2016.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0201

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Lines 8-11: What is the difference between the first and second sentences?

Line 8-11: If the agency is going to incorporate 2 CFR, Part 200 by reference it needs to abide by G.S. 150B-21.6.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel
Date submitted to agency: February 9, 2024

09 NCAC 03M .0201 is amended as published in 38:08 NCR 478-483 as follows:

09 NCAC 03M .0201 is proposed for amendment as follows:

SECTION .0200 - RESPONSIBILITIES OF RECIPIENTS AND SUBRECIPIENTS

09 NCAC 03M .0201 ALLOWABLE USES OF STATE FINANCIAL ASSISTANCE GRANTS

Expenditures of ~~State financial assistance grants~~ by any recipient or subrecipient shall be in accordance with the cost principles outlined in the Code of Federal Regulations, 2 CFR, Part 200. If the ~~State financial assistance grants~~ ~~includes~~ include federal sources, the recipient or subrecipient shall ensure adherence to the cost principles established in the Code of Federal Regulations, 2 CFR, Part 200.

History Note: Authority G.S. 143C-6-22; 143C-6-23;

Eff. July 1, 2005;

Readopted Eff. July 1, ~~2016-2016~~;

Amended July 1, 2024.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0202

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 5: Where are the "intended purposes" delineated? In the contract? Reference should be made to where the purposes of the award are stated.

Line 6: Explain why compliance with "their contract" is necessary in the rule. If an agency has a contract with the recipient the requirements should be enforceable through the contract.

Lines 7-8: To whom must the recipient provide "the information"?

Lines 7-8: Why is item (1) necessary? Information "required by the distributing agency" can only be lawfully required one of two ways; by rule (adopted pursuant to the APA), or by terms in the contract. Either way item (1) is redundant and unnecessary.

Lines 9-12: How long must the reports and records be maintained?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

09 NCAC 03M .0202 is amended as published in 38:08 NCR 478-483 as follows:

09 NCAC 03M .0202 RECIPIENT AND SUBRECIPIENT RESPONSIBILITIES

A recipient or subrecipient that receives ~~State financial assistance~~ grants shall ensure that those funds are utilized for their intended purpose and shall expend those funds in compliance with requirements established by this Subchapter and their contract. Recipients and subrecipients shall:

- (1) Provide the information required by the disbursing agency in order to comply with the procedures for disbursement of funds.
- (2) Maintain reports and accounting records that support the allowable expenditure of State funds. Recipients and subrecipients shall make available all reports and records for inspection by the awarding agency, the Office of State Budget and Management, and the Office of the State Auditor for oversight, monitoring, and evaluation purposes.
- (3) Ensure that subrecipients comply with all reporting requirements established by this Subchapter and their contract and report to the appropriate disbursing entity.

History Note: Authority G.S. 143C-6-22; 143C-6-23;
Eff. July 1, 2005;
Readopted Eff. July 1, ~~2016-2016~~;
Amended Eff. July 1, 2024.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0205

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Lines 9-17 and Page 2, Line 3: If the agency is going to incorporate parts of the CFR by reference it needs to abide by G.S. 150B-21.6.

Page 1, Lines 20-31: Consider: Rather than requiring other agencies to adopt rules, why wouldn't OSBM simply adopt rules applicable to all recipients and subrecipients?

Page 1, Line 22: To whom must the certification be presented?

Page 1, Lines 22-23: The noun and verb do not agree.

Page 1, Line 23: Remove the comma after "or".

Page 1, Lines 24-25: What does the agency mean by "an accounting"? Is there a form or format which is required? What information must be provided?

Page 1, Lines 24-25: To whom must the accounting be presented?

Page 1, Lines 26-28: What does the agency mean by "a report"? Is there a form or format which is required? What information must be provided?

Page 1, Lines 29-33: If the agency is going to incorporate the GAGA standards by reference it needs to abide by G.S. 150B-21.6.

Page 1, Line 34: Change "must" to "shall".

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

09 NCAC 03M .0205 is amended as published in 38:08 NCR 478-483 as follows:

09 NCAC 03M .0205 MINIMUM REPORTING REQUIREMENTS FOR RECIPIENTS AND SUBRECIPIENTS

(a) For the purposes of this Subchapter, there are ~~three~~ two reporting levels established for recipients and subrecipients receiving ~~State financial assistance grants~~. Reporting levels are based on the ~~level of State financial assistance allocated funds~~ from all ~~funding sources~~. grants disbursed through the State of North Carolina. The reporting levels are:

- (1) Level I – A recipient or subrecipient that receives, holds, uses, or expends ~~State financial assistance grants~~ in an amount less than ~~twenty thousand dollars (\$25,000)~~ the dollar amount requiring audit as listed in the Code of Federal Regulations 2 CFR 200.501(a) within its fiscal year. The dollar amount requiring audit listed in 2 CFR 200.501(a) is herein incorporated by reference, including subsequent amendments and editions, and can be accessed free of charge at <https://www.ecfr.gov/>.
- (2) Level II - A recipient or subrecipient that receives, holds, uses, or expends ~~State financial assistance grants~~ in an amount ~~of at least twenty five thousand (\$25,000) or greater, but less than five hundred thousand dollars (\$500,000)~~ equal to or greater than the dollar amount requiring audit as listed in 2 CFR 200.501(a) within its fiscal year.
- ~~(3) Level III – A recipient or subrecipient that receives, holds, uses, or expends State financial assistance in an amount equal to or greater than five hundred thousand dollars (\$500,000) within its fiscal year.~~

(b) Agencies shall establish reporting requirements for recipients that meet the following reporting standards on an annual basis:

- (1) All recipients and subrecipients shall provide a certification that ~~State financial assistance grants~~ received or, held was used for the purposes for which it was awarded.
- (2) All recipients and subrecipients shall provide an accounting of all ~~State financial assistance grants~~ received, held, used, or expended.
- ~~(3) Level II and III~~ All recipients and subrecipients shall report on activities and accomplishments undertaken by the recipient, including reporting on any performance measures established in the contract.
- ~~(4) Level III~~ II recipients and subrecipients shall have a single or program-specific audit prepared and completed in accordance with Generally Accepted Government Auditing Standards, also known as the Yellow Book.

(c) All reports shall be filed with the disbursing agency in the format and method specified by the agency no later than three months after the end of the recipient's fiscal year, unless the same information is already required through more frequent reporting. Audits must be provided to the funding agency no later than nine months after the end of the recipient's fiscal year.

(d) Agency-established reporting requirements to meet the standards set forth in Paragraph (b) of this Rule shall be specified in each recipient's contract.

1 (e) Unless prohibited by law, the costs of audits made in accordance with the provisions of this Rule shall be allowable
2 charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as
3 determined in accordance with cost principles outlined in the Code of Federal Regulations, 2 CFR Part 200. The cost
4 of any audit not conducted in accordance with this Subchapter shall not be charged to State awards.

5 (f) Notwithstanding the provisions of this Subchapter, a recipient may satisfy the reporting requirements of
6 Subparagraph (b)(4) of this Rule by submitting a copy of the report required under federal law with respect to the
7 same funds.

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9 *History Note: Authority G.S. 143C-6-22; 143C-6-23;*

10 *Eff. July 1, 2005;*

11 *Readopted Eff. July 1, ~~2016~~. 2016;*

12 *Amended Eff. July 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0401

DEADLINE FOR RECEIPT: February 23, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 1, Lines 11-16: Formats and forms and the substantive requirements therein fall under the definition of a "rule" pursuant to G.S. 150B-2(8a). An agency cannot adopt a run which requires the regulated to abide by a standard that has not been adopted pursuant to the APA.

Page 1, Lines 22-23: What criteria will OSBM use to make the approval determination?

Page 1, Line 32: Define or delete "appropriate".

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

09 NCAC 03M .0401 is amended as published in 38:08 NCR 478-483 as follows:

SECTION .0400 - RESPONSIBILITIES OF AGENCIES

09 NCAC 03M .0401 AGENCY RESPONSIBILITIES

(a) An agency that receives State funds and disburses those funds as ~~State financial assistance~~ grant funds to a recipient shall:

- (1) Notify each recipient, at the time the ~~State financial assistance grant~~ award is made, of the purpose of the award and the reporting requirements established in this Subchapter.
- (2) Prior to disbursing any ~~State financial assistance~~ grant funds:
 - (A) Register each State assistance program with the Office of State Budget and Management in the format and method specified by the Office of State Budget and Management.
 - (B) Execute a contract with the recipient that complies with the requirements of this Subchapter.
 - (C) Report each individual award to the Office of State Budget and Management in the format and method specified by the Office of State Budget and Management.
 - (D) Follow the procedures for disbursement of ~~State financial assistance~~ grant funds.
- (3) Develop compliance supplement reports that describe standards of compliance and audit procedures to give direction to independent auditors. This report shall be provided to the State and Local Government Finance Division in the North Carolina Department of State Treasurer for inclusion in the North Carolina State Compliance Supplement.
- (4) Develop a monitoring plan for each State assistance program the agency oversees and ~~submit gain approval of the plan to by the Office of State Budget and Management for approval. Management.~~
- (5) Perform monitoring and oversight functions as specified in agency monitoring plans to ensure that ~~State financial assistance is~~ grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts, and that performance goals are achieved.
- (6) Ensure that ~~State financial assistance is~~ grant funds are spent consistent with the purposes for which it was awarded.
- (7) Determine that reporting requirements have been met by the recipient and that all reports have been completed and submitted in accordance with the recipient's contract.
- (8) Monitor compliance by recipients with all terms of a contract. Upon determination of noncompliance the agency shall take appropriate action as specified in Section .0800 of this Subchapter.
- (9) Require agency internal auditors to conduct periodic audits of agency compliance with requirements of this Subchapter.

1 (10) Provide all requested documentation when subject to an audit of compliance with the requirements
2 of this Subchapter. Audits may be conducted by the Office of State Budget and Management, the
3 Office of the State Auditor, or the agency's internal auditor.

4 (11) Notify the Office of State Budget and Management when to remove entities from the Suspension of
5 Funding List.

6 (b) Each recipient shall ensure that subrecipients have complied with the applicable provisions of this Subchapter.
7 Failure to comply with such provisions shall be the basis for an audit exception.

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9 *History Note: Authority G.S. 143C-6-22; 143C-6-23;*

10 *Eff. July 1, 2005;*

11 *Readopted Eff. July 1, ~~2016~~. 2016;*

12 *Amended Eff. July 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0601

DEADLINE FOR RECEIPT: February 23, 2023

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Generally, to the rule: Explain why this rule is reasonably necessary pursuant to G.S. 150B-21.9(a)(3). An agency cannot adopt a rule enlarging its own authority. Either OSBM already has the authority to do the items listed or it does not. If it has the authority, why is the rule necessary? If it does not already have the authority, it cannot self-grant the authority.

Lines 7-8: Are the "guidelines" requirements or suggestions? If suggestions, item (1) is unnecessary. If requirements, the substantive requirements would meet the definition of a "rule" and would need to be adopted pursuant to the APA.

Line 9: Define or delete "readily".

Lines 9-12: Add a citation to the rule by which a recipient is added to and removed from the list.

Lines 17-19: Add a citation to the rule or statute establishing the appeals process.

Line 22: Define or delete "appropriate".

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

09 NCAC 03M .0601 is amended as published in 38:08 NCR 478-483 as follows:

SECTION .0600 - RESPONSIBILITIES OF THE OFFICE OF STATE BUDGET AND MANAGEMENT

09 NCAC 03M .0601 OFFICE OF STATE BUDGET AND MANAGEMENT RESPONSIBILITIES

The Office of State Budget and Management shall:

- (1) Provide guidelines to agencies for developing monitoring plans and establishing reporting processes that meet the requirements established in this Subchapter.
- (2) Maintain a Suspension of Funding list readily accessible to any interested party that identifies any recipient found in noncompliance with the requirements of this Subchapter or the terms of their contract. This list shall serve as notice to other agencies that no further ~~State financial assistance grant funds~~ shall be provided to that recipient until they are removed from the list.
- (3) Periodically audit State agencies to ensure compliance with requirements set forth in Section .0400 of this Subchapter.
- (4) Upon notification from a disbursing agency that a recipient is no longer noncompliant with the requirements set forth in Section .0200 of this Subchapter, validate that all such noncompliance has been corrected prior to the removal of that recipient from the Suspension of Funding listing. A recipient may appeal to the Office of State Budget and Management to be removed from the Suspension of Funding list if they believe they have been suspended in error. Once removed from the Suspension of Funding list, the recipient is eligible for current and future ~~State financial assistance grants~~.
- (5) Take appropriate administrative action when the Director of the Budget finds that the recipient has spent or encumbered State funds for an unauthorized purpose, including ensuring allegations of criminal violations are reported to the Attorney General and the State Bureau of Investigation by the disbursing agency.
- (6) If the funds are a pass-through of funds awarded by an agency of the United States, consult with the awarding agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking actions authorized by this Subchapter.

*History Note: Authority G.S. 143C-6-22; 143C-6-23;
Eff. July 1, 2005;
Readopted Eff. July 1, 2016;
Amended Eff. July 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0703

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Lines 6-7: This sentence is oddly placed and can be interpreted in different ways. Is the agency making this a term in the contract? Or is the agency requiring this in subrecipient contracts with the agency as well? Is the agency requiring subrecipients to execute the contract with the recipient?

Page 1, Line 19: Isn't the inclusion of the word "binding" drawing a legal conclusion? How would an agency know if a signature binds a party until it is determined in court?

Page 1, Line 28: Add "A" before "provision".

Page 1, Lines 34-36 and Page 2, Lines 1-3 seem conceptually incomplete.

Page 1, Lines 34-36: Can recipients freely assign contracts? It is not entirely clear what the agency means by (a).

Page 2, Lines 1-3: In what instrument is the subrecipient agreeing to abide by the Subchapter and provide information? Is this an agreement between the recipient and the subrecipient? In that case ought this not be a requirement of a term in said agreement? It is unclear what the agency is trying to do and how.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

09 NCAC 03M .0703 is amended as published in 38:08 NCR 478-483 as follows:

09 NCAC 03M .0703 REQUIRED CONTRACT PROVISIONS

Prior to receiving ~~State financial assistance~~, grant funds, the recipient shall sign a contract with the agency that shall contain the obligations of both parties. Prior to disbursing any ~~State financial assistance~~, grant funds, each agency shall sign a contract with the recipient requiring compliance with the rules in this Subchapter. The requirements of this Rule shall also be applicable to all subrecipient relationships. Each contract agreement shall contain:

- (1) A specification of the purpose of the award, services to be provided, objectives to be achieved, and expected results;
- (2) The source of funds (such as federal or state) must be identified, including the CFDA number and percentages of each source where applicable.
- (3) Account coding information sufficient to provide for tracking of the disbursement through the disbursing agency's accounting system.
- (4) Agreement to maintain all pertinent records for a period of five years or until all audit exceptions have been resolved, whichever is longer.
- (5) Names of all parties to the terms of the contract. For the recipient or subrecipient, each contract shall contain the employer/tax identification number, address, contact information, and the recipient's or subrecipient's fiscal year end date.
- (6) Signatures binding all parties to the terms of the contract.
- (7) Duration of the contract, including the effective and termination dates.
- (8) Amount of the contract and schedule of payment(s).
- (9) Particular duties of the recipient.
- (10) Required reports and reporting deadlines.
- (11) Provisions for termination by mutual consent with 60 days written notice to the other party, or as otherwise provided by law.
- (12) A provision that the awarding of ~~State financial assistance~~ grant funds is subject to allocation and appropriation of funds to the agency for the purposes set forth in the contract.
- (13) Provision that requires reversion of unexpended ~~State financial assistance~~ grant funds to the agency upon termination of the contract.
- (14) A provision that requires compliance with the requirements set forth in this Subchapter, including audit oversight by the Office of the State Auditor, access to the accounting records by both the funding entity and the Office of the State Auditor, and availability of audit work papers in the possession of any auditor of any recipient of State funding.
- (15) A clause addressing assignability and subcontracting, including the following:
 - (a) The recipient or subrecipient is not relieved of any of the duties and responsibilities of the original contract.

(b) The subrecipient agrees to abide by the standards contained in this Subchapter and to provide information in its possession that is needed by the recipient to comply with these standards.

History Note: Authority G.S. 143C-6-22; 143C-6-23;
Eff. July 1, 2005;
Readopted Eff. July 1, ~~2016~~; 2016;
Amended Eff. July 1, 2024.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0801

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 8: Requiring an agency to “take measures” is ambiguous.

Line 11: How does an agency “require” a written response?

Line 14: Define or delete “appropriate.”

Line 17: “Take action” is ambiguous.

Line 18: Delete “possible.”

Line 22: Define or delete “appropriate.”

Line 23: Define or delete “appropriate.”

Line 29: This is an ambiguous standard. Is the OSBM imposing strict liability?

Line 37: Define or delete “appropriate”.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: February 9, 2024

09 NCAC 03M .0801 is amended as published in 38:08 NCR 478-483 as follows:

SECTION .0800 - SANCTIONS

09 NCAC 03M .0801 NONCOMPLIANCE WITH RULES

(a) An agency shall not disburse any ~~State financial assistance~~ grant funds to an entity that is on the Suspension of Funding list.

(b) When a non-State entity does not comply with the requirements of this Subchapter, the agency shall take measures to ensure that the requirements are met, including:

(1) Communicating the requirements in writing to the non-State ~~entity~~ entity within 30 business days.

(2) Requiring a response in writing from the non-State entity upon a determination of noncompliance.

(3) Suspending payments to the non-State entity until the non-State entity is in compliance.

(c) When an agency discovers evidence of management deficiencies or criminal activity leading to the misuse of funds, the agency shall notify the Office of State Budget and Management and take the appropriate action or actions, such as:

(1) Suspend payments until the matter has been fully investigated and corrective action has been taken.

(2) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures.

(3) Report possible violations of criminal statutes involving misuse of State property to the State Bureau of Investigation, in accordance with G.S. 143B-920.

(d) Upon determination of noncompliance with requirements of the contract that are not indicative of management deficiencies or criminal activity, the agency shall give the recipient or subrecipient 60 days written notice to take corrective action. If the recipient or subrecipient has not taken the appropriate corrective action after the 60-day period, the disbursing agency shall notify the Office of State Budget and Management and take the appropriate action or actions, such as:

(1) Suspend payments pending negotiation of a plan of corrective action.

(2) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures.

(3) Offset future payments with any amounts ~~improperly spent~~ spent for purposes other than those described in the signed grant contract.

(e) Each disbursing agency shall ensure that recipients and subrecipients have complied with the applicable provisions of this Subchapter.

(f) Agencies are subject to audit for compliance with the requirements of this Subchapter by the Office of State Budget and Management, the Office of the State Auditor, and agency internal auditors. Any finding of noncompliance by an agency shall be reported to the Office of State Budget and Management to take appropriate action, as set forth in this Rule.

(g) The Office of State Budget and Management shall notify the agency of the finding and provide 60 days to take corrective action. After the 60-day period, the Office of State Budget and Management shall conduct a follow-up audit to determine if appropriate corrective action has been taken. If an awarding agency fails to take appropriate corrective

1 action or is repeatedly found to be out of compliance with the requirements of this Subchapter, the Office of State
2 Budget and Management shall notify the head of the agency and the State Auditor of the finding.

3
4 *History Note: Authority G.S. 143C-6-22; 143C-6-23;*

5 *Eff. July 1, 2005;*

6 *Readopted Eff. July 1, ~~2016~~ 2016;*

7 *Amended Eff. July 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0802

DEADLINE FOR RECEIPT: February 23, 2023

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Line 4: Define or delete "appropriate".

Line 7: Where are the purposes of the award delineated? In the contract? Reference should be made to where the purposes of the award are stated.

Line 8: Add a citation to the rule which states the reporting requirements.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel
Date submitted to agency: February 9, 2024

09 NCAC 03M .0802 is amended with changes as published in 38:08 NCAC 478-483 as follows:

09 NCAC 03M .0802 RECOVERY OF STATE FUNDS

(a) The disbursing agency shall take appropriate administrative action to recover ~~State financial assistance~~ grant funds in the event a recipient or subrecipient:

(1) Is unable to fulfill the obligations of the contractual ~~agreement.~~ agreement;

(2) Is unable to accomplish the purposes of the ~~award.~~ award;

(3) Is noncompliant with the reporting ~~requirements.~~ requirements; or

(4) Has ~~inappropriately used State financial assistance.~~ grant funds for purposes other than those described in the signed grant contract.

(b) The disbursing agency shall seek the assistance of the Attorney General in the recovery and return of ~~State financial assistance~~ grant funds if legal action is required.

(c) Any apparent violations of a criminal law or malfeasance, misfeasance, or nonfeasance in connection with the use of ~~State financial assistance~~ grant funds shall be reported by the agency to the Office of State Budget and Management, the Attorney General, and the State Bureau of Investigation.

History Note: Authority G.S. 143C-6-22; 143C-6-23;

Eff. July 1, 2005;

Readopted Eff. July 1, 2016. 2016;

Amended Eff. July 1, 2024.