

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0202

RECOMMENDATION DATE: February 24, 2024

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☒ Unclear or ambiguous
  - ☒ Unnecessary
  - ☒ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

*09 NCAC 03M .0202 regulates recipients and subrecipients of state grants.*

*Item (1) requires recipients and subrecipients to provide information "required by the distributing agency."*

*I.*

*The information required by the distributing agency would need to be pursuant to either a rule or by a term in the grant contract.*

*If by another agency's rule, then this language is unnecessary.*

*If by a term in the contract, then this rule refers to a contract term not yet in existence and the substantive requirements of which cannot be incorporated by reference notwithstanding the recipients' or subrecipients' agreement to enter therein.*

*Accordingly, staff recommends objection pursuant to G.S. 150B-21.9(a)(3) for lack of necessity if the information is required by a rule, or, if the information is required by contract, pursuant to G.S. 150B-21.9(a)(1) and (4) for lack of authority and adoption not in accordance with Part 2 of Article 2A of the APA, and for 150B-21.9(a)(2) as the information required is ambiguous. How can it be clear as the terms do not yet exist?*

William W. Peaslee  
Commission Counsel

*II.*

*Item (2) requires recipients and subrecipients “maintain reports and accounting records” but fails to state the length of time for this obligation.*

*Staff recommends objection pursuant to G.S. 150B-21.9(a)(2) for lack of clarity and ambiguity.*

## **§ 150B-2. Definitions.**

As used in this Chapter, the following definitions apply:

- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
  - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
  - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
  - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
  - e. Statements of agency policy made in the context of another proceeding, including:
    - 1. Declaratory rulings under G.S. 150B-4.
    - 2. Orders establishing or fixing rates or tariffs.
  - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
  - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
  - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

**§ 150B-21.6. Incorporating material in a rule by reference.**

An agency may incorporate the following material by reference in a rule without repeating the text of the referenced material:

- (1) Another rule or part of a rule adopted by the agency.
- (2) All or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.
- (3) Repealed by Session Laws 1997-34, s. 5.

In incorporating material by reference, the agency must designate in the rule whether or not the incorporation includes subsequent amendments and editions of the referenced material. The agency can change this designation only by a subsequent rule-making proceeding. The agency must have copies of the incorporated material available for inspection and must specify in the rule both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material.

A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments and editions of the referenced material. A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes subsequent amendments and editions of the referenced material. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 64; 1981 (Reg. Sess., 1982), c. 1359, s. 5; 1983, c. 641, s. 3; c. 768, s. 19; 1985, c. 746, s. 1; 1987, c. 285, s. 13; 1991, c. 418, s. 1; 1997-34, s. 5.)

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. – The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. – The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)



09 NCAC 03M .0202 is amended with changes 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~~ purpose, as outlined in the contract. 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.
- (4) Have the option to request in writing 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 grants.

*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.*



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AGENCY: Office of State Budget and Management

RULE CITATION: 09 NCAC 03M .0401, and .0802

RECOMMENDATION DATE: February 24, 2024

RECOMMENDED ACTION:

- X Approve, but note staff's comment
  - Object, based on:
    - Lack of statutory authority
    - Unclear or ambiguous
    - Unnecessary
    - Failure to comply with the APA
  - Extend the period of review

COMMENT:

*The package of rules submitted to the RRC regulate recipients and subrecipients of state grants and the agencies which disburse those grants. The above captioned rules places responsibilities, requirements and duties upon distributing agencies.*

*While recipients and subrecipients of grants may face suspension of funding if found to be non-compliant with the rules Subchapter 03M, there does not appear to be any penalty or ramification within the rule scheme for an agency's violation of or non-compliance with the rules.*

*For instance, Rule .0401 requires the distributing agency to (a)(1) "notify each recipient of the purpose of the award and the reporting requirements..." What if the distributing agency does not?*

*In response to a general query to the rule package in the Request for Changes, the agency responded "the [distributing agency] may take action to amend the contract..." or the State Auditor may conduct an audit.*

*This is an ambiguous response. Further, neither of the suggested ramifications requires a violation of the rules by the distributing agency as a condition precedent. In short, the State Auditor does not need a violation of these rules to conduct an audit.*

*In short, it appears there is no penalty or ramifications established by the rules for a distributing agency that violates the rules.*

William W. Peaslee  
Commission Counsel

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. – The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. – The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

**§ 143C-6-22. Use of State funds by non-State entities.**

(a) Disbursement and Use of State Funds. – Every non-State entity that receives, uses, or expends any State funds shall use or expend the funds only for the purposes for which they were appropriated by the General Assembly. State funds include federal funds that flow through the State Treasury.

(b) Compliance by Non-State Entities. – If the Director of the Budget finds that a non-State entity has spent or encumbered State funds for an unauthorized purpose, or fails to submit or falsifies the information required by G.S. 143C-6-23 or any other provision of law, the Director shall take appropriate administrative action to ensure that no further irregularities or violations of law occur and shall report to the Attorney General any facts that pertain to an apparent violation of a criminal law or an apparent instance of malfeasance, misfeasance, or nonfeasance in connection with the use of State funds. Appropriate administrative action may include suspending or withholding the disbursement of State funds and recovering State funds previously disbursed.

(c) Civil Actions. – Civil actions to recover State funds or to obtain other mandatory orders in the name of the State on relation of the Attorney General, or in the name of the Office of State Budget and Management, shall be filed in the General Court of Justice in Wake County. (2006-203, s. 3.)

**§ 143C-6-23. State grant funds: administration; oversight and reporting requirements.**

(a) Definitions. – The following definitions apply in this section:

- (1) Grant or grant funds. – State funds disbursed as a grant by a State agency; however, the terms do not include any payment made by the Medicaid program, the State Health Plan for Teachers and State Employees, or other similar medical programs.
- (2) Grantee. – A non-State entity that receives State funds as a grant from a State agency but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.
- (3) Encumbrance. – A financial obligation created by a purchase order, contract, salary commitment, unearned or prepaid collections for services provided, or other legally binding agreement. A financial obligation is not an encumbrance for purposes of this section unless it (i) is in writing and has been signed by a person or entity who has authority to legally bind the grantee or subgrantee to spend the funds or (ii) was created by the provision of goods or services to the grantee or subgrantee by a third party under circumstances that create a legally binding obligation to pay for the goods or services.
- (4) Subgrantee. – A non-State entity that receives State funds as a grant from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(b) Conflict of Interest Policy. – Every grantee shall file with the State agency disbursing funds to the grantee a copy of that grantee's policy addressing conflicts of interest that may arise involving the grantee's management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the grantee's employees or members of its board or other governing body, from the grantee's disbursing of State funds, and shall include actions to be taken by the grantee or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the disbursing State agency may disburse the grant funds.

(c) No Overdue Tax Debts. – Every grantee shall file with the State agency or department disbursing funds to the grantee a written statement completed by that grantee's board of directors or other governing body stating that the grantee does not have any overdue tax debts, as defined by G.S. 105-243.1, at the federal, State, or local level. The written statement shall be made under oath and shall be filed before the disbursing State agency or department may disburse the grant funds. A person who makes a false statement in violation of this subsection is guilty of a criminal offense punishable as provided by G.S. 143C-10-1.

(d) Office of State Budget Rules Must Require Uniform Administration of State Grants. – The Office of State Budget and Management shall adopt rules to ensure the uniform administration of State grants by all grantor State agencies and grantees or subgrantees. The Office of State Budget and Management shall consult with the Office of the State Auditor and the Attorney General in establishing the rules required by this subsection. The rules shall establish policies and procedures for disbursements of State grants and for State agency oversight, monitoring, and evaluation of grantees and subgrantees. The policies and procedures shall:

- (1) Ensure that the purpose and reporting requirements of each grant are specified to the grantee.
- (2) Ensure that grantees specify the purpose and reporting requirements for grants made to subgrantees.
- (3) Ensure that State funds are spent in accordance with the purposes for which they were granted.
- (4) Hold the grantees and subgrantees accountable for the legal and appropriate expenditure of grant funds.
- (5) Provide for adequate oversight and monitoring to prevent the misuse of grant funds. These policies shall require each grantee and subgrantee to ensure that, for accounting purposes, State funds and interest earned on those funds remain separate and apart from other funds in the possession or control of the grantee or subgrantee.
- (6) Establish mandatory periodic reporting requirements for grantees and subgrantees, including methods of reporting, to provide financial and program performance information.
- (7) Require grantees and subgrantees to maintain reports, records, and other information to properly account for the expenditure of all grant funds and to make such reports, records, and other information available to the grantor State agency for oversight, monitoring, and evaluation purposes.
- (8) Repealed by Session Laws 2022-75, s. 5, effective July 12, 2022.
- (9) Require grantees to be responsible for managing and monitoring each project, program, or activity supported by grant funds and each subgrantee project, program, or activity supported by grant funds.
- (10) Provide procedures for the suspension of further disbursements or use of grant funds for noncompliance with these rules or other inappropriate use of the funds.
- (11) Provide procedures for use in appropriate circumstances for reinstatement of disbursements that have been suspended for noncompliance with these rules or other inappropriate use of grant funds.
- (12) Provide procedures for the recovery and return to the grantor State agency of unexpended grant funds from a grantee or subgrantee (i) in accordance with subsection (f1) of this section or (ii) in the event that the grantee or subgrantee is unable to fulfill the purposes of the grant for a reason not set forth in that subsection.

(d1) Required Grant Terms. – The terms of each grant shall include all of the following, which shall be deemed a part of the grant:

- (1) The limitation contained in G.S. 143C-6-8 concerning the availability of appropriated funds.
- (2) The relevant provisions of any legislation authorizing or governing the administration of the grant.
- (3) The terms of this section.

(e) Rules Are Subject to the Administrative Procedure Act. – Notwithstanding the provisions of G.S. 150B-2(8a)b. rules adopted pursuant to subsection (d) of this section are subject to the provisions of Chapter 150B of the General Statutes.

(f) Suspension and Recovery of Funds to Grant Recipients for Noncompliance. – The Office of State Budget and Management, after consultation with the administering State agency, shall have the

power to suspend disbursement of grant funds to grantees or subgrantees, to prevent further use of grant funds already disbursed, and to recover grant funds already disbursed for noncompliance with rules adopted pursuant to subsection (d) of this section. If the grant funds are a pass-through of funds granted by an agency of the United States, then the Office of State Budget and Management must consult with the granting agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking the actions authorized by this subsection.

(f1) Return of Grant Funds. – Except as otherwise required by federal law, a grantee or subgrantee shall return to the State all affected grant funds and interest earned on those funds if any of the following occurs:

- (1) The funds are in the possession or control of a grantee and are not expended, made subject to an encumbrance, or disbursed to a subgrantee by August 31 immediately following the fiscal year in which the funds are appropriated by the General Assembly, or a different period set forth in the terms of the applicable appropriation or federal grant.
- (2) The funds remain unexpended at the time that the grantee or subgrantee dissolves, ceases operations, or otherwise indicates that it does not intend to spend the funds.
- (3) The Office of State Budget and Management seeks to recover the funds pursuant to subsection (f) of this section.

(f2) Use of Returned Grant Funds. – Encumbered funds returned to the State pursuant to subsection (f1) of this section by a grantee or subgrantee shall upon appropriation by the General Assembly be spent in accordance with the terms of the encumbrance. All other funds returned to the State by a grantee or subgrantee pursuant to subsection (f1) of this section shall be credited to the fund from which they were appropriated and shall remain unexpended and unencumbered until appropriated by the General Assembly. Nothing in this section shall be construed to authorize an expenditure pursuant to an unlawful encumbrance or in a manner that would violate the terms of the appropriation of the grant funds at issue.

(g) Audit Oversight. – The State Auditor has audit oversight, with respect to grant funds received by the grantee or subgrantee, pursuant to Article 5A of Chapter 147 of the General Statutes, of every grantee or subgrantee that receives, uses, or expends grant funds. A grantee or subgrantee shall, upon request, furnish to the State Auditor for audit all books, records, and other information necessary for the State Auditor to account fully for the use and expenditure of grant funds received by the grantee or subgrantee. The grantee or subgrantee shall furnish any additional financial or budgetary information requested by the State Auditor, including audit work papers in the possession of any auditor of a grantee or subgrantee directly related to the use and expenditure of grant funds. The grantee or subgrantee shall post conspicuously in its office the State Auditor's hotline telephone number, as described in G.S. 147-64.6B(a).

(h) Report on Grant Recipients That Failed to Comply. – The Office of State Budget and Management shall post online at regular intervals a list of all grantees or subgrantees that failed to comply with this section with respect to grant funds received in the prior fiscal year.

(i) Repealed by Session Laws 2022-75, s. 5, effective July 12, 2022.

(j) Use of Interest Earned on Grant Funds. – Except as otherwise required by federal law or the terms of a federal grant, interest earned on grant funds after receipt of the funds by a grantee or subgrantee shall be credited to the grantee or subgrantee and shall be used for the same purposes for which the grant or subgrant was made.

(k) Reporting by Grantees and Subgrantees That Cease Operations. – A grantee or subgrantee that intends to dissolve or cease operations shall report that decision in writing to the Office of State Budget and Management and to the Fiscal Research Division at least 30 days prior to taking that action. (2006-203, s. 3; 2007-323, s. 28.22A(o); 2007-345, s. 12; 2014-100, s. 6.5(a); 2015-264, s. 21; 2019-19, s. 1(a); 2021-180, s. 37.5(c); 2022-75, s. 5.)

09 NCAC 03M .0401 is amended with changes 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, using the NC Grants Management System which can be accessed at <https://www.osbm.nc.gov>. Information required to register includes program ID and description, program name, and funding year.
  - (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, using the NC Grants Management System which can be accessed at <https://www.osbm.nc.gov>. Information required to report includes CRIS program ID, award date, completion date, award amount, and program name.
  - (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. Monitoring plans will be evaluated based on plan elements including programs covered, education and technical assistance, risk assessment framework, monitoring procedures, non-compliance procedures, and closeout of award procedures.
- (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.



1 (7) Determine that reporting requirements have been met by the recipient and that all reports have been  
2 completed and submitted in accordance with the recipient's contract.

3 (8) Monitor compliance by recipients with all terms of a contract. Upon determination of  
4 noncompliance the agency shall take ~~appropriate~~ action as specified in Section .0800 of this  
5 Subchapter.

6 (9) Require agency internal auditors to conduct periodic audits of agency compliance with requirements  
7 of this Subchapter.

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

11 (11) Notify the Office of State Budget and Management when a recipient is not compliant with the  
12 requirements set forth in this Subchapter or the terms of their contract such that the recipient should  
13 be added to the Suspension of Funding List and have the disbursement of funds to the recipient  
14 suspended in accordance with G.S. 143C-6-23(f). Agencies shall not disburse grant funds to a  
15 recipient on the Suspension of Funding List until that recipient comes back into compliance and is  
16 removed from the Suspension of Funding List.

17 ~~(11)~~(12) Notify the Office of State Budget and Management when to remove entities from the Suspension of  
18 Funding List.

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

21  
22 *History Note: Authority G.S. 143C-6-22; 143C-6-23;*

23 *Eff. July 1, 2005;*

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

25 *Amended Eff. July 1, 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;] award as stated in the signed grant contract;

(3) Is noncompliant with the reporting ~~requirements.~~ [requirements;] requirements as stated in the signed grant contract; 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.*