New Mexico Highlands University

Handbook on Research Policy

Office of Research and Sponsored Projects

Published: March 2000

Updated:
September 14, 2007; January 8, 2008;
October 18, 2011; October 21, 2011;
August 6, 2012; June 26, 2013;

UPDATED NOVEMBER 20, 2017 W/PENDING NOTIFICATIONS

Aligned with the U.S. Federal Uniform Guidance on December 1, 2015
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Introduction

New Mexico Highlands University (NMHU) acknowledges that research and service (professional and public) is the path and force for succeeding in our rapidly changing economy and society. It is the constant for redefining and enhancing existing theories, data, programs, techniques, equipment, and needs of our community and institution. It is the opportunity to apply scientific process and methodology in a variety of settings including laboratories, clinical settings, in the community, across the country, and around the world.

NMHU understands that the key to accomplishing its research and service goals is its faculty, staff and students; members who have the ability to identify emerging research areas, who attract resources and use them well, and who inspire others to continue in the pursuit of scholarly inquiry, the transmission of knowledge and assistance to others. In this respect, engagement of the university community faculty, staff and students in research and service is vital.

Equally, NMHU recognizes that the current size and critical mass of faculty in each discipline might not support a competitive national effort. To enhance this circumstance, the university aims to nurture interdisciplinary collaborations and enrichment of faculty-student interactions by assisting in the pursuit of multi-department and multi-institutional funding sources, while meeting the core values of the University.

To contribute and participate in the world of research and service, the Office of Research and Sponsored Projects (ORSP) provides the necessary leadership and support for faculty, staff and students by managing NMHU’s research and service enterprise. ORSP is administered through the Office for Academic Affairs with oversight authority imparted to the Associate Vice President of Academic Affairs to direct ORSP.

To assist in the compliance of managing grants for research and service, ORSP has produced, with approval from NMHU’s Board of Regents, the *NMHU Handbook on Research Policy*. Originally created in 2000, the Handbook reflects current state and federal policies and regulations, and is designed to assist faculty, staff and students in implementing, monitoring, and administering programs funded by agencies outside and within the university.

Please note that this handbook is not definitive. Individuals are urged to bring any essential omissions to the policies or procedures described in this document to the ORSP. Likewise, as documents are added or updated, the ORSP will identify the dates of change in the cover page of this Handbook. The specific changes are kept on file at ORSP.
Section 1: University Responsibilities and Authority

This section provides a brief description of the governing board, and committees referenced in New Mexico Highlands University’s Handbook on Research Policy. Included is a summary of the responsibilities and services of the Office of Research and Sponsored Projects (ORSP) that oversees major research activities at New Mexico Highlands University (NMHU). A full description of the academic organization of NMHU is detailed New Mexico Highlands Faculty Handbook.

1.1. New Mexico Highlands University Board of Regents

The ultimate control of the university is vested in the NMHU Board of Regents. The board consists of the Governor of the State and the State Superintendent of Public Instruction, as ex-officio members, and five other members appointed by the governor. Four members are appointed for overlapping terms of six years each. The fifth member is a student regent who is appointed to a two-year term.

All outside funds donated, granted, or contracted for by the university are under the ultimate control of the Board of Regents. New Mexico statutes grant authority to the board to accept funding from federal and other agencies or organizations. As a practical matter, the execution of these responsibilities is delegated to the President of the university.

1.2. The President of the University

The President of the University, as chief executive officer and recognized by the Board of Regents as the ranking officer of the University has delegated the responsibility for the administration of sponsored research and public service projects to the Provost/Vice President for Academic Affairs who in turn has appointed the daily operation of such projects to the Director of the Office Research and Sponsored Projects.

Reporting directly to the President is an Executive Management Team, which will recommend and review principles, policies, and rules that are significant to the university. The purpose of the Team is to ensure centrality of the university’s academic goals. The Team meets monthly for planning, review of issues, and to address operational and strategic concerns.

1.3. The Provost /Vice President of Academic Affairs

The Provost /Vice President of Academic Affairs, as the chief executive academic officer under the President and second ranking officer of the University, provides leadership in all academic matters and is responsible-for the creation and implementation of all academic policies and priorities of the university and for the allocation of resources to support those priorities and policies, including the ORSP.
1.4. Associate Vice President of Academic Affairs and Director of the Office of Research and Sponsored Projects

The Associate Vice President for Academic Affairs (AVPAA) reports to the Provost/Vice President for Academic Affairs. The AVPAA is expected to provide intellectual, academic and administrative support to the Provost and Office of Academic Affairs to further the University’s mission, vision, strategic goals, and is expected to work directly with the Center for Teaching Excellence, Office of Academic Enrichment, and ARMAS STEM Student Support Center, work on special projects, serve on committees and task force initiatives and serve as the Director of the Office of Research and Sponsored Projects (ORSP).

As the Director of the ORSP, the Associate VP of Academic Affairs is responsible for providing high-quality service to the university research community and for representing the interests of the Board of Regents, the President and Vice President of the Academic Affairs for the university. The Director of ORSP approves all requests for funds including external sources in support of research, instruction, public service, facilities construction and capital improvement. For further detail on the responsibilities of ORSP see Section 1.7.

1.5. School and College Dean

The Dean of each academic school or college reports to the Vice President for Academic Affairs and, in the context of shared governance with school or college faculty, is responsible for the organization and function of the school or college. As it pertains to sponsored projects, the School and College Deans, along with the Director of ORSP, are responsible for:

- Approval of university staff and faculty (e.g., professors emeritus or visiting scholars) in proposal submissions (see Section 2.3.1. in NMHU’s Research Handbook);
- Approval for the request of Independent Centers and Institutes and submission of request to the ORSP (see Section 2.5.2. in NMHU’s Resesarch Handbook);
- Approval of the allocation of space (see Section 3.2.1.#5) and other resources including any prior approval activities (see complete list in Section 3.2.1. #1.
- Handling issues and procedures for compliance with Financial Conflict of Interest (FCO) (see Section 9.5. in NMHU’s Research Handbook);

1.6. School and College Chair

Department Chairs reports directly to the College or School Dean and, in the context of shared governance with faculty, is responsible for the administration of his or her respective unit’s budget, curriculum and supervision and leadership for faculty. As it pertains to sponsored projects, shall work collaboratively with their school or college dean and the Director of ORSP and are responsible for:

- Approval of university staff and faculty (e.g., professors emeritus or visiting scholars) in proposal submissions (see Section 2.3.1. in NMHU’s Research Handbook);
• Approval of the allocation of space (see Section 3.2.1. #5) and resources including any prior approval activities listed in Section 3.2.1. #1.; and
• Approval of project travel and completion of forms impacting the personnel and/or facilities of the school and college under the supervision of the Chair.

1.7. Research Compliance Committees

Associated with research are committees established to ensure the university’s compliance with federal, state, and local regulations on research. This section references those committees as described in the New Mexico Highlands Faculty Handbook, with the exception of the Faculty Safety Committee.

1.7.1. Faculty Research Committee. The following provides a summary of the committee’s membership composition, required meetings, procedures for recording minutes, reporting authority, and duties and responsibilities.

1.7.1.1. Membership. The faculty membership consists of one elected faculty member from each College Department, up to two members each for the Schools of Education, Social Work and Business, and one professional librarian. See New Mexico Highlands Faculty Handbook for updates to the Faculty Research Committee membership.

1.7.1.2. Meetings. The chair of the previous year will convene the first meeting of an academic year for election of a chair and establishment of meeting times.

1.7.1.3. Minutes. Minutes are maintained for all meetings and forwarded to the secretary of the faculty senate.

1.7.1.4. Reports To: Faculty Senate.

1.7.1.5. Duties and Responsibilities

1. Review and formulate recommendations for policies and procedures regarding research activities conducted under the auspices of the university.
2. Formulate policies and procedures pertaining to allocation of university funds for support of scholarly, creative or research activities.
3. Review and approve/disapprove requests for funding of scholarly, creative or research projects through university monies.
4. Organize an annual Faculty Research Day.
5. Provide direction for an appeal if an investigator does not agree with FAC decision as outlined in Section 9.3.4

1.7.2. Institutional Review Board for Human Subjects Committee. The following provides a description of the committee’s membership composition, required meetings, procedures for recording minutes, reporting authority, and duties and responsibilities. For more detail see: Section 7: Research on Human Subjects in NMHU’s Research Handbook and the Institutional Review Board webpage.
1.7.2.1. Membership. The faculty membership consists of at least five members selected from NMHU Schools and College Departmental units involved in human subjects research. In addition, the IRB will include at least one outside Community member to complete the committee membership. The IRB chair serves a three-year term. Chairs are elected by a simple, majority vote by IRB members.

1.7.2.2. Meetings. Meetings are held at least once per semester or as the need arises.

1.7.2.3. Minutes. Minutes are maintained for all meetings and are forwarded to the Director of the ORSP.

1.7.2.4. Reports To: Director of the ORSP.

1.7.2.5. Duties and Responsibilities. A complete description of the duties and responsibilities of the Institutional Review Board for Human Subjects can be found in Section 7.2. of this Handbook.

1.7.3. Faculty Safety Committee. The following provides a description of the committee’s membership composition, required meetings, and procedures for recording minutes, reporting authority, and duties and responsibilities.

**Content Under Revision. For more information contact ORSP.**

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1.7.3.2. Meetings. 1.7.3.3. Minutes.

1.7.3.4. Reports To:

1.7.3.5. Duties and Responsibilities.

1.7.4. Environmental Health and Safety Committee. The following provides a description of the committee’s membership composition, required meetings, procedures for recording minutes, reporting authority, and duties and responsibilities.

1.7.4.1. Membership. The committee consists of a minimum of five faculty members including one faculty member who is directly involved with research related to safety hazards and the university’s Safety Officer.

1.7.4.2. Meetings. The chair of the previous year will convene the first meeting of an academic year for election of a chair and establishment of meeting times.

1.7.4.3. Minutes. Minutes are maintained for all meetings and forwarded to the secretary of the Faculty Senate.
1.7.4.4. Reports To: Faculty Research Committee.

1.7.4.5. Duties and Responsibilities. Oversee the university's compliance with environmental and safety regulations to ensure that all teaching, research, and clinical activities involving use and disposal of hazardous material are conducted in a manner and in an environment consistent with public safety and regulatory requirements. See Section 6 for further details on duties and responsibilities.

1.8. The Office of Research and Sponsored Projects.

The Office of Research and Sponsored Projects (ORSP) is designed to provide high-quality support and administrative expertise to the university on research sponsored projects and to represent the interest of the Board of Regents in its contractual relationships with the external sponsors. The following sections present the responsibilities of the office as it relates to sponsored projects.

1.8.1. ORSP Support Responsibilities. The ORSP is responsible for the administration of sponsored programs and the following related services:

- Have overall administration of office fiscal activities and responsibilities pertaining to the ORSP;
- Support to principal investigators/principal directors on all aspects of budget preparation;
- Have signatory authority all outgoing proposals prior to submission to the funding source;
- Approve all negotiated awards with sponsors and implementation of funding;
- Prepare-and negotiate-administration rates (indirect cost) with federal agencies;
- Maintain-current files on government regulations affecting management of externally sponsored fund and information regarding sponsored project proposals and agreements;
- Prepare the Annual Summary of Sponsored Project Activity data, other ad hoc reports and carries out statistical studies when needed;
- Offer to the university community updates on funding opportunities and various policies and procedures related to research and sponsored projects.
- Offer administrative support to all externally sponsored projects awarded to the University;
- Coordinate and present seminars related to research and sponsored projects;
- Offer advise to faculty on research support and funding opportunities;
- Establish and maintain-the Graduate Research Fund;
- Have oversight responsibility of Independent Centers and Institutes (See Section 2.5.1. In Research Handbook)
- Maintain property accounts of all equipment and other property acquired through sponsored projects, initiate property screening procedures for equipment to be supplied by the contractor; and assist faculty and principal investigators with procedures for acquiring equipment;
- Maintain records on cost sharing and report on the levels of cost sharing to sponsors;
• Process subcontracts; and
• Supervise both pre-award and post-award activities.

The office also assists in researching external sources of funding for research, education, and public service. The following outlines the major activities in this area:

• Provide information about funding sources, agency information and programs, changes in sponsor policies and procedures, management of organized research on campus and other timely information regarding research funds;
• Circulate announcements and fellowship opportunities;
• Maintain files on funding agencies, including program announcements, application forms, and annual reports;
• Sponsor and organize grant writing seminars and workshops; and
• Provide access to collection of reference materials such as foundation and grant directories, funding source bibliographies, and proposal and budget outlines.

According to §200.419, ORSP is also responsible for overseeing reporting when the university receives aggregate Federal awards totaling $50 million or more in Federal awards and disclosing all cost accounting practices by filing a Disclosure Statement (DS-2) in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs). The DS-2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit.

1.8.2. Sponsored Projects: Pre-Award Activity. The pre-award activity includes signature authority for outgoing proposals that have been delegated to the Director of the ORSP. The office also:
• assists principal investigators with technical aspects of proposal preparation including general information, required assurances, representations and certifications, and budget planning for projects;
• maintains and updates the files of all pending proposals;
• administers portions of contracts and grants relating to external funding as required by the university president;
• authorizes pre-award costs only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency (§200.458);
• interacts with sponsors as required by the university president;
• prepares and supervises printing and distribution of reports;
• approves all proposal budgets for compliance prior to submission to funding source; and
• notifies committees of project awards.

1.8.3. Sponsored Projects: Post-Award Activity. The post-award activity begins after the ORSP has accepted awards. ORSP also:
• notifies committees of project awards;
• works with the business office to assign account numbers for awarded sponsored projects;
• coordinates with the business office to set up and close out accounts;
• monitors the financial status of all sponsored programs through the business office;
• assists principal investigators in financial management of projects and resolution of accounting problems; and
• approves requisitions, travel requests, and other documents based on amounts which incur expenses and obligations against project accounts that require signatory authority by the ORSP.

1.9. Schedule of Annual Committee Meetings

<table>
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<tr>
<th>Cabinet/Committees</th>
<th>Meeting Schedule</th>
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<tr>
<td>Animal Care &amp; Uses</td>
<td>At the beginning of each academic year and as needed</td>
</tr>
<tr>
<td>Safety</td>
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</tr>
<tr>
<td>Faculty Research</td>
<td>At the beginning of each academic year and as needed</td>
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</tbody>
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Section 2: General Research Policies and Procedures

This section provides a summary of the policies and procedures for conducting research at New Mexico Highlands University (NMHU). All faculty and staff engaged in research related activities shall comply with the policies and procedures described in this section.


The Uniform Guidance consolidated eight policies into six subparts:

- Subpart A – Acronyms and Definitions
- Subpart B – General Provisions
- Subpart C – Pre-Federal Award Requirements and Contents of Federal Awards
- Subpart D – Post Federal Award Requirements
- Subpart E – Cost Principles
- Subpart F – Audit Requirements

NMHU’s Office of Research and Sponsored Projects (ORSP) updated the university’s Research Handbook to reflect these modifications and ensure consistency in wording from the Federal Uniform Guidance on December 1, 2015.

In addition, the following definitions used in the Uniform Guidance are applied to in this Handbook where applicable.

200.69 Non-Federal entity.
Non-Federal entity means a state, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

§200.74 Pass-through entity.
Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

2.1. Academic Freedom

The mission of the university depends upon rules of fairness, honesty, and respect for the rights of others. All faculty members are afforded the freedom of inquiry, thought, expression, publication, and peaceable assembly, which are all rights protected under the Constitution of the United States. Faculty also has the right to engage in external
consulting as allowed by the university. These principles hold for all faculty without regard to race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition, spousal affiliation, sexual orientation or gender identity as defined by the New Mexico Human Rights Act (1978).

Under the **Collective Bargaining Agreement** academic freedom is guaranteed to faculty members subject only to accepted standards of professional responsibility, including but not limited to:

1. The parties to this agreement recognize and accept the importance of academic freedom to teaching and learning. Academic freedom includes the right to study, discuss, investigate, teach, and publish. Academic freedom applies to both teaching and research. It includes the freedom to perform one’s professional duties and to present differing and sometimes controversial points of view, free from reprisal.
2. Faculty members are entitled to freedom in the discussion and presentation of their subject; however faculty members are expected to follow the established curriculum.
3. The concept of academic freedom is accompanied by an equally demanding concept of responsibility. The faculty members are members of a learned profession. When they speak or write as citizens, they must be free from institutional censorship of discipline, but their special position in the community imposes special obligations. As learned people and as educators, they should remember that the public may judge their profession and their institution by their statements. Hence they should at all times strive to be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should indicate that they are speaking only for themselves.

### 2.2. Responsibilities of Principal Investigators or Project Directors in Managing a Sponsored Project

#### 2.2.1. Obligations to Staff in the Sponsored Project

Each year, the Principal Investigator/Principal Director (PI/PD) should review relevant sections in the NMHU Handbook and other project and university policies that may impact the project with all members of the sponsored project including staff, students, and visiting scholars. Consider topics such as:

- Travel policies
- Charging and closeout of vacation, sick leave and holiday’s
- Record retention
- Program expenditures
- Conflict of interest prevention and detection
- Risk management and safety
- Misconduct prevention and detection
As part of the mission of NMHU, faculty members are encouraged to demonstrate support and appreciation for its staff and students by offering opportunities for involvement and for building mentor relationships.

In addition, all research team members have the right to know who is sponsoring the research and supporting her/his salary or stipend. With federal grants, all administration, faculty and staff are responsible for understanding relevant laws, regulations, and requirements for ensuring compliance. If team members do not comply, the faculty member in charge of the research should take the necessary disciplinary action.

2.2.2. Financial Conflict of Interest. As part of the university community, all faculty and staff are placed in positions of trust and should conduct themselves accordingly. To avoid financial conflicts of interest, faculty and staff should be aware of situations where conflict may exist between the private interests and the official responsibility of a person (see Section 9 in the NMHU’s Research Handbook). If a financial conflict of interest arises, faculty and staff members should advise their dean of any potential conflicts and disclose in writing any potential conflict of interest to the Federal awarding agency in accordance with applicable Federal awarding agency policy (§200.112 Conflict of Interest). For more detail on Financial Conflict of Interest in Section 9.

2.2.3. Policy on Copyrights. All participating researchers including students and visiting scholars must sign NMHU’s Patent and Copyright Agreement before commencing any research at NMHU (see Section 5).

2.2.4. Employment Eligibility Verification. Under the Immigration and Reform Control Act of 1986, the university is required to verify eligibility for all employees hired on or after November 6, 1986. Verification is required to preclude the unlawful hiring, or recruiting or referring for a fee, of individuals who are not authorized to work in the United States. For more details, contact the Office of Human Resources for procedure and process on completing Employment Eligibility Verification and hiring of employees (Policy #475).

2.2.5. Relations with Foundations. Faculty is expected to comply with the following procedures for implementing university relations with affiliated foundations.

1. Accounts for the university schools/college or faculty members shall not be established with a foundation or a university-affiliated, non-profit organization without the prior written approval from the Director of the ORSP.
2. University employees may not accept gifts in the name of NMHU from any source without the approval of the President. All such gifts shall be reported to the President.
3. No university entity shall establish a foundation or other university affiliated organization or initiate any fundraising program or activity without the prior approval of the Director of the ORSP and the President of NMHU.

2.2.6. Risk Management and Safety in Research. Each faculty member is responsible
for her/his own training, as well as the training of each research team member on health and safety procedures appropriate for the particular research area. Principal investigators (PIs) also are responsible for conducting periodic inspection of the work facilities, and are to cooperate in any inspections by the Safety Committee or by an external agency. More details on the role of the PI/PD related to safety issues are provided in Section 6.

The ultimate responsibility for safety, however, cannot be delegated as a staff function; it must be assumed by every member of the research team. Each individual is expected to comply with all identified life safety and health rules and regulations pursuant to the university’s policy for the prevention of accidents and job related illness (For further detail see Section 6).

2.2.7. Supplemental Compensation. Subject to the policies of the sponsor and the NMHU’s Collective Bargaining Agreement faculty may receive supplemental compensation from contract or grant funds for services performed between periods of appointment (i.e., during the summer or between academic semesters). For details, see Article 13: Work Under External Funding in the NMHU’s Collective Bargaining Agreement, Section 3.3.8 in NMHU’s Research Handbook, and Policy #600 Exempt and Nonexempt Employees in in NMHU’s Purchasing and Policies Manuel available at NMHU’s website in NMHU's Faculty Resources.

2.2.8. Misconduct. In spite of the infrequency of acts of misconduct in research, it is necessary for the university to set guidelines for the prevention and detection of these acts. The policies of the university conform to many of the federal definitions and regulations on this subject and are similar to those at other institutions of higher education. Detailed descriptions of these policies are located in Section 11: Research Misconduct.

2.3. Principal Investigator/Project Director Eligibility and Responsibilities in Preparing a Proposal

2.3.1. Eligibility for Principal Investigator/Project Director (PI/PD). Persons eligible to submit proposals and act a PI/PD, include tenured and non-tenured associate and assistant professors. Other university staff and faculty (e.g., professors emeritus or visiting scholars) must be approved by the appropriate dean and Director of the ORSP. This is due to the responsibility the PI/PD must maintain regarding the direction of the project and oversight of student participants and project staff. Two additional exceptions can be made to the PI/PD policy:

1. Written approval for someone other than faculty or academic staff to act as a PI/PD must be obtained by the relevant dean and Director of the ORSP, both who have oversight responsibility of the potential PI/PD. Projects that will be considered under this exception include:
   • Short conferences, exhibits, workshops or public events of a nature appropriate to the university;
• Specific projects that are interdisciplinary;
• When no member of the university associated with the project is qualified to take responsibility for the direction of the project, when more than one faculty is involved, when expertise in more than one discipline or technical area is required, when no incremental space is required for the project, or when the expected duration of the project is beyond the involvement of any faculty participant; or
• Projects related to career development awards that will advance the individual’s career, carried out under the mentorship of an established principal investigator, and conducted within the overall intellectual scope and laboratory space of the faculty advisor.

2. Approval for specific projects with a specific project period, such as proposals submitted by visiting faculty or scholars, special cases of sponsored instruction, and situations where a faculty member investigator ceases to be available and it is necessary for a faculty member to oversee an orderly phase-out of a project.

2.3.2. Expected Responsibilities of the PI/PD. When applying for a grant from a sponsored agency, the PI/PD will be responsible for overseeing all terms and conditions of the sponsored project. In carrying out these critical tasks, the PI/PD is also responsible for compliance with and understanding of the underpinnings of laws and regulations that touch on all applicable aspects of the research sponsored project, including:

- review and submission of proposals, pre-award activity, and post award activity (Sections 1.6.2., 1.6.3. and Section 3);
- general research and policies and procedures (Section 2);
- assurances (Section 3.7.1. and Faculty Handbook);
- general and fiscal administration and management (Section 3 and Section 4);
- research property, including: inventions, patents, copyrights, licensing, and authorship (Section 5);
- environmental health and safety (Section 6);
- human subjects (Section 7);
- laboratory animals (Section 8);
- disclosures and conflict of interest (Section 9: Conflict of Interest);
- appointments of non-faculty research appointments (Section 10); and
- adherence to appropriate research conduct and misconduct reporting (Section 11).

Note:
1. The PI/PD supervising on large-scale projects may delegate responsibility for particular aspects of the project to other project members (faculty or nonfaculty) if approved by the sponsoring agency.
2. Keep in mind that although awards to support sponsored projects are granted on the basis of the professional expertise of the PI/PD submitting the proposal, the actual award is made to university. Once accepted, the university assumes the responsibility for administering the award according to the regulations of the sponsor, NMHU, and the state of New Mexico. Thus, shared responsibility is
created between the PI/director and the university in accepting funds and implementing the program for which the funds were awarded.

2.4. Key State and Federal Regulations

All university employees are bound by the rules and regulations applicable to state employees. The university’s administration is responsible for managing the university in accordance with state laws, rules, regulations, and policies, as well as applicable federal regulations. This section identifies the most important policies that a PI/PD may need to be aware of depending on the purpose of the sponsored project.

2.4.1. Applicable Laws. The laws of the state of New Mexico must govern any contract/grant/purchase order or agreement accepted by the NMHU Board of Regents. The PI/PD also is required to adhere to federal regulations, where applicable. Web sites on federal regulations include, but are not limited to:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Health and Human Services;
- Federal Regulation on Animal Research; and
- NM Regulations And Standards On Environment.

2.4.2. Arbitration/Mediation/Disputes. In addition to NMHU policies on arbitration, mediation and disputes (See Faculty Handbook), sponsors may have additional provisions that will need to be followed. Moreover, federal agencies may terminate projects even if no specific termination clause exists in the award.

2.4.3. Billing and Payment. In general, federal awards carry specific, inflexible clauses that must be accepted. Nonfederal sponsors vary in their payment methods. Care should be taken to avoid clauses providing only payment at the conclusion of the project; an installment payment plan should be the method of funding. The Office of Research and Sponsored Projects (ORSP) or the business office should be contacted with questions regarding billing/payment policy and procedures. Also see Section 4: Fiscal Management and Administration.

2.4.4. Indemnification or Hold Harmless. These words (and variations thereof) are not acceptable. Deletion of such is best. If deletion is not possible, the provision should be modified to state "to the extent permitted by New Mexico law." Occasionally, consultation with the university attorney will be necessary to mediate more complex issues. Information on insurance liability limits may be obtained from the Office of Research and Sponsored Projects.

2.4.5. Patent Rights. In general, inventions created by employees (faculty, visiting scholars, staff, and students) become the property of the university. Benefits accruing to the university derived from such inventions will be used to further the academic or
research program of NMHU. When an external sponsor has supported the research leading to an invention disclosure, ownership of the patent rights is as follows: (a) Federal - under recently enacted legislation, rights rest with the university subject to retention of a paid-up non-exclusive license by the government. The rules implementing this change appear under Public Law 96-517 (H.R. 6933). (b) For non-profit organizations, rights rest with the university; any other arrangements must be negotiated through the Office of Research and Sponsored Projects. For more information on Patents see Section 5.2, of this handbook.

2.5. Independent Centers or Institutes

Independent centers and institutes in several ways enhance scholarship and interdisciplinary research at the university. Research conducted by faculty or staff facilitates new areas of inquiry and community service. Students and community citizens are offered training that extends beyond traditional programs of study.

While the establishment and continuance of centers and institutes bring the university many benefits, it also exposes the university to potential dangers that might result in potential harm or liability. An example of abuse of the center privilege might be an explicit or implicit assertion of a particular opinion, endorsement, or criticism expressed by a center faculty or staff member to represent an official position of the university. To ensure that the benefits of centers or institutes are not impaired, the following definitions and guidelines are established. Note: Exceptions to these procedures are centers or institutes who are funded by the N.M. Legislature or state statute.

2.5.1. Definition of a Center or Institute. The term “center” or “institute” at NMHU may be used to describe a research focus or programs (both academic and student support) within a single department, between multiple departments, or as a separate unit reporting directly to the Office of Research and Sponsored Projects. Centers or institutes are directed by the university and may offer courses or programs that are not cross listed with regular academic departments or offered under continuing education at the university. These centers do not admit students or confer degrees.

This definition does not apply to internal facilities such as departmental service centers; student organizations that operate under separate policies governing student organizations; or personal activities carried on by faculty or staff outside their professional responsibilities at the university.

Centers may operate within or outside NMHU premises, but must have an apparent association with the university, make substantial use of university resources, demonstrate substantial involvement from faculty and/or staff members and report regularly to the dean, vice-president, or ORSP as appropriate on the progress of the Center activities.

2.5.2. Procedures for Creating New Centers and Institutes. Faculty members
proposing to initiate a new center or institute must first notify their appropriate dean and submit a memorandum describing the purpose of the center with the following information and according to the following criteria:

- consistency with university mission, vision, core values, and strategic goals;
- focused research that establishes a unique or nationally recognized agenda;
- justification for the center or institute outside the existing university arrangement;
- its relevance to the school/college and university;
- the extent of faculty and student involvement;
- impact (positive and negative) on faculty and staff;
- financial support;
- resources required to support the center or institute including funding, space, and personnel;
- extent the establishment of the center or institute will help to attract external support;
- role of outside individuals, use of benefits and resources, and their likely contribution to the university; and
- administrative costs to the school/college and university.

If approved by the school dean or vice president, the request will then be submitted to the Office of Research and Sponsored Projects. ORSP will establish a review team to evaluate the proposal and make a recommendation to the provost/VPAA. The review team may consist of Faculty Research Committee members and other stakeholders with appropriate expertise. If approved by the provost/VPAA, the proposal will go to the executive management team and then the Board of Regents for final approval.

2.5.3. Regular Evaluations. Each center or institute will be evaluated by the appropriate school dean every year to ascertain whether the circumstances that led to its creation still exist and whether the organization continues to meet its goals and the goals of the university. The review will help determine:

- academic vitality of the organization;
- commitment of the faculty to the program;
- involvement of students, faculty, and visiting scholars;
- availability of funding and other resources; and
- adherence to the policies and procedures described in the policy handbook.

2.5.4. Problems During the Operation. Centers or institutes are required to follow all policies and procedures described in the policy handbook. If problems occur during the operation of a center, the provost/VPAA has the authority to review the center, consult with the center faculty and impart appropriate actions, including the closing of the organization if warranted. At the discretion of provost/VPAA or designee, an ad hoc review committee consisting of faculty and other stakeholders with appropriate expertise may be involved in the review process. Where appropriate procedures for misconduct related to research may be followed (see Section 11: Research Misconduct). Decisions made after the review may be appealed to the President of NMHU whose decision shall be final.
Section 3: Proposal Administration and Management

This section summarizes the policies and procedures related to the preparation, review, and submission of proposals, as well as the monitoring and closing of sponsorship (both on campus and off campus). Included in this section are guidelines for budgeting, responsibilities associated with proposal writing, and references on resources for seeking funding from a broad range of agencies.

3.1. Definition of Sponsored Projects

Sponsored projects are externally supported activities with funds provided typically in response to a request or proposal. A formal written agreement (i.e., a grant, contract, or cooperative agreement) is entered by New Mexico Highlands University (NMHU) and by the sponsor and contains the following financial accountability elements:

- an agreement that binds the university to a detailed statement of work and commitment to a specified project plan with “start” and “stop” dates;
- a project schedule and a line-item budget, both of which are essential to financial accountability;
- a requirement to return any unexpended funds at the end of the project funding period or as described in the binding agreement;
- regular financial reporting and audit, including, for federal and state awards under the terms of the 2 CFR - Grants and Agreements - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- the university’s full negotiated Facilities and Administrative (F & A) indirect cost rate, unless a waiver of those costs have been approved; and
- terms and conditions for the disposition of tangible properties (e.g., equipment, records, specified technical reports, theses or dissertations or intangible properties (e.g., rights in data, copyrights, inventions). See Section 3.3.1 for more detail on F & A.

While not all the above conditions are necessary to define a sponsored activity, they are indicative of the increased level of financial accountability associated with such projects.

3.2. Review and Submission of Sponsored Proposals

The policies described in this section apply to federal, state, for-profit and nonprofit contract or grant applications completed by NMHU faculty and staff.

3.2.1. Procedures For Submitting Proposals.

The Office of Research and Sponsored Projects (ORSP) submits proposal on behalf of NMHU for PIs and directors within the University. All awards must be officially accepted by ORSP, on behalf of the university, to assure that all legal requirements incumbent upon the university from the award are carefully reviewed and appropriately acknowledged.

The proposal process typically consists of the Principal Investigator/Principal Director (PI/PD)
working within or across departments, schools, centers or institutes to prepare the proposal and routing it to all those for appropriate sign-offs before sending the application for review and submission to the sponsor agent by ORSP. In addition, ORSP will provide guidance in completing all aspects of the application, as needed. Below is a detailed description of the steps involved in the planning and submission of proposals.

1. **Prior Written Approval.** The PI/PD must submit a completed [Pre-Proposal Routing Form (PRF)](#) to the ORSP. The PRF contains the following three elements for preproposal approval:

   - A completed PRF with a signature from the appropriate dean;
   - Statement of work; and
   - Budget with justification and cost sharing or matching budget if it is to be included in the proposal;
   - An approved pre-proposal PRF shall be signed by the PI, appropriate dean, Associate VP of Academic Affairs/Director of the ORSP, VP of Academic Affairs, and if appropriate the VP of Finance.

According to 200.407, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of the following special or unusual costs in order to avoid disallowance or dispute based on unreasonableness or nonallocability. **Note:** The absence of prior written approval on any of these element of cost will not, in itself, affect its reasonableness or allocability, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections. For a definition of terms of activities requiring prior written approval, see [Part 200-Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards](#).

(a) §200.201. Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);
(b) §200.306. Cost sharing or matching;
(c) §200.307. Program income;
(d) §200.308. Revision of budget and program plans;
(e) §200.311. Real property;
(f) §200.313. Equipment;
(g) §200.332. Fixed amount subawards;
(h) §200.413. Direct costs, paragraph (c);
(i) §200.430. Compensation—personal services, paragraph (h);
(j) §200.431. Compensation—fringe benefits;
(k) §200.438. Entertainment costs;
(l) §200.439. Equipment and other capital expenditures;
(m) §200.440. Exchange rates;
(n) §200.441. Fines, penalties, damages and other settlements;
(o) §200.442. Fund raising and investment management costs;
(p) §200.445. Goods or services for personal use;
(q) §200.447. Insurance and indemnification;
(r) §200.454. Memberships, subscriptions, and professional activity costs, paragraph (c);
(s) §200.455. Organization costs;
(t) §200.456. Participant support costs;
(u) §200.458. Pre-award costs;
(v) §200.462. Rearrangement and reconversion costs;
(w) §200.467. Selling and marketing costs;
(x) §200.470. Taxes (including Value Added Tax); and
(y) §200.474. Travel costs.

2. Cost Allowability. The 2 CFR Part 200 Subpart E-Cost Principles of the Part 200-Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards govern costs that may be charged to or paid, even in part, by federal funds. The Cost Principles apply both to costs that will be paid directly from sponsored awards or indirectly via the institution's facilities and administrative reimbursement rate (see NMHU’s Fact Sheet for Completing Proposals). In general, the costs or expenses charged to the federal government are chargeable only if they meet the following criteria:

Allowable for reimbursement as specified by government regulations and under the terms of the specific award (See 2 CFR Part 200 Subpart E-Cost Principles §200.403, §200.400.8 and §200.409 in Part 200-Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

According to 200.403, costs must meet the following general criteria in order to be allowable under Federal awards except where otherwise authorized by statute:
(a) Be necessary and reasonable for the performance of the Federal award and be allocable to the Federal award;
(b) Conform to any limitations or exclusions set forth in the Federal award as to types or amount of cost items;
(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity;
(d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only;
(f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 (b) Cost sharing or matching; and
(g) Be adequately documented (see §200.300-200.309 Statutory and National Policy Requirements).

- Reasonable in its nature and amount, and does not exceed what would be incurred by a prudent person in a like circumstance (2 CFR Part 200 Subpart E-Cost Principles §200.404).
According to §200.404, a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.

(b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.

(c) Market prices for comparable goods or services for the geographic area.

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.

(e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

- **Allocable** to a particular Federal award or cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received (§200.405-Allocable costs). This standard is met if the cost:
  
  (a) Is incurred specifically for the Federal award;

  (b) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and

  (c) Is necessary to the overall operation of the award and is assignable in part to the Federal award.

**Unallowable** expenditures are not eligible for cost reimbursement by the federal government, but might be appropriate and reasonable under other nonfederal sources. Regardless of funding, they must be appropriately identified with the proper code number in NMHU’s Billing and Accounts Receivable (BAR) form once awarded a grant or gift.

Note: If non-Federal funds are used to pay for food at a grantee-sponsored meeting or conference, the grantee should make clear through a written disclaimer or announcement (e.g., a note on the agenda for the meeting) that Federal grant funds were not used to pay for the cost of the food or beverages. Grantees should also be sure that any food and beverages provided with non-Federal funds are appropriate for the grantee event, and do not detract from the event’s purpose.
3. **Unallowable Activities.** All expenses in support of the following activities are considered unallowable by the federal government, except with prior approval from the funding agency or specifically provided for in the Federal award:

- Advertising media and corollary administrative costs (e.g., magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals). Some exceptions exist for this item. See 3.2.1. Procedures For Submitting Proposals #5. Allowable Activities.
- Alcoholic beverages;
- Contributions and donations (e.g., cash, property, and services);
- Costs in excess of University severance policy;
- Commencement and Convocation (except as provided for in §200.429 and Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), under paragraph (B)(9) Student Administration and Services, as student activity costs.
- Defending or prosecuting certain criminal, civil or administrative proceedings
- Entertainment (except for programmatic purpose and authorized or approved by the Federal awarding agency or with prior written approval of the Federal awarding agency – 200.438);
- Fines, penalties, damage and other settlements (unless incurred as a result of compliance with specific provisions of the Federal award or with prior written approval of the Federal awarding agency 200.441 and 200.435);
- Fundraising or lobbying costs (including financial campaigns, endowment drives, solicitation of gifts, bequests, and similar expenses to raise capital or obtain contributions);
- General public relations and alumni activities
- Goods and services for the personal use of employees, including automobiles;
- Housing and personal living expenses of University Officers.
- Interest payments (except certain interest specifically coded as paid to outside parties and authorized by the Controller's Office);
- Insurance against defects in NMHU's materials or workmanship;
- Lobbying
- Managing investments solely to enhance income (except with prior written approval from the Federal awarding agency – §200.442)
- Memberships in civic, community or social organizations, or dining or country clubs;
- Membership subscriptions and professional activity costs (except with prior approval by the Federal awarding agency – 200.454(c);
- Memorabilia or Promotional Materials (allowable if used for "Employee Morale"));
- Organizations costs including incorporation fees, brokers’ fees, fees to promoters, organizers or management consultants, attorneys, accountants or investment counselors (except with prior approval from the Federal awarding agency – 200.455);
- Organized fund raising;
- Prosecuting claims against the federal government;
• Recruitment costs including special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the non-Federal entity and when a newly hired employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal Government (also see §200.463 Recruiting Costs and §200.464 Relocation Costs of Employees);

• Proposal Costs (normally treated as an indirect cost (§200.460);

• Selling or marketing of goods or services (except as direct costs, with prior approval by the Federal awarding agency §200.467 or unless allowed under §200.421);

• Selling and marketing costs;

• [Certain] Student activities (e.g., intramural activities, student clubs, student publications, unless specifically provided for the Federal award); and

• [Certain] Travel costs (e.g., first class travel and travel costs of dependents for 6 months or more with prior approval);

According to §200.410, payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this part, §200.300 Statutory and national policy requirements through §200.309 Period of performance.

To avoid disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek prior written approval from the cognizant agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required as identified in CFR Part 200 Subpart E-Cost Principles §200.407: Prior Written Approval.

4. Allowable Activities. Allowable activities include events that are:
(1) necessary and reasonable for successful performance under the Federal award;
(2) allowable under the applicable cost principles and practices and consistent with the non-Federal entity’s policies, and
(3) have prior written approval of the Federal funding agency and non-Federal entity.

See the Part 200-Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards,
for other activities that may not listed below.

• Advertising media and corollary administrative costs that are specifically for performance of a Federal award to recruit personnel and solely for performance of a Federal award to recruit personnel; procure goods and services, program
outreach and to dispose of scrap or surplus materials acquired in the Federal award.

- Capital expenditures of general purpose equipment of $5,000 or more, buildings and land.
- Conferences (e.g., meeting, retreat, seminar, symposium, workshop or event for disseminating technical information) See §200.432 for more detail.
- Employee health and welfare costs (e.g., improvement of working conditions, employer-employee relations, employee health, and employee performance that include equitably distribution). See §200.437 for more detail.
- Entertainment costs that have a programmatic purpose.
- Exchange rate cost increases due to fluctuations, but subject to the availability of funding and with prior approval when the change results in need for additional Federal funding or a need to significantly reduce the scope of the project (§200.440).
- Fringe Benefits in the form of tuition or tuition remission (§200.431).
- Publication and printing costs (must be identifiable with a particular cost objective – See §200.461)
- Rental costs of property.
- Recruitment costs provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of “help wanted” advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the non-Federal entity's standard recruitment program. Where the non-Federal entity uses employment agencies, costs not in excess of standard commercial rates for such services. See §200.463 for more detail.
- Scholarships, fellowships, and other programs of student aid.
- Short-term, travel visa costs (as opposed to longer-term, immigration visas).
- Travel costs related to Federal award (e.g., transportation, lodging, subsistence) including temporary dependent care costs (26 U.S.C. 152) that directly results from travel to conferences (see §200.474 for more details).

5. Estimated Use of Space and Personnel. The PI/PD must consider the availability and use of space and personnel while constructing a proposal… Content Under Revision.

6. Standards for Documenting Personnel Expenses. According to §200.430 Compensation – Personal Services, charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:
   (i) Be supported by a system of internal control, which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
   (ii) Be incorporated into the official records of the non-Federal entity (e.g., NMHU);
(iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);

(iv) Encompass both federally assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;

(v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.);

and

(vi) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(vii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes under specific conditions

7. Review and Approval Process of a Completed Proposal. All submitted proposals are required to be reviewed and approved programmatically by the unit head and dean or director and the Director of the ORSP. In addition, adequate time for review and approval will be needed for proposals involving such issues as:

- multiple department involvement;
- cost sharing;
- program income;
- reduced Facilitates and Administrative (F&A) costs or indirect cost; and/or
- conflict of interest issues;
- human subjects; and animal subjects approvals from FRC.

Under §200.207 - Specific Conditions, the Federal awarding agency or pass-through entity may impose additional specific award conditions as needed under the following circumstances:

(1) Based on the criteria set forth in §200.205 Federal awarding agency review of risk posed by applicants;

(2) When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award;

(3) When an applicant or recipient fails to meet expected performance goals as described in §200.210. Information contained in a Federal award; or

(4) When an applicant or recipient is not otherwise responsible.

(b) These additional Federal award conditions may include items such as the following:

(1) Requiring payments as reimbursements rather than advance payments;

(2) Withholding authority to proceed to the next phase until receipt of evidence of
acceptable performance within a given period of performance;
(3) Requiring additional, more detailed financial reports;
(4) Requiring additional project monitoring;
(5) Requiring NMHU to obtain technical or management assistance; or
(6) Establishing additional prior approvals.

When such circumstances occur, the Federal awarding agency or ORSP must notify the applicant as to:
(1) The nature of the additional requirements;
(2) The reason why the additional requirements are being imposed;
(3) The nature of the action needed to remove the additional requirement, if applicable;
(4) The time allowed for completing the actions if applicable, and
(5) The method for requesting reconsideration of the additional requirements imposed.

(d) Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.

8. Time Limit for Submitting Final Proposal from the Office of Research and Sponsored Projects. A complete copy of the proposal and all required application documents must be submitted to the ORSP at least 3 to 5 business days before the deadline. These additional days are required for the following reasons:
(a) federal and many private sponsors are using electronic submissions and extra time is required to ensure all aspects of the application are correctly submitted;
(b) extra time required by the local unit/department/school for their review; and
(c) the ORSP operates with a limited staff and needs time to schedule, review and approve the complete application.

9. Final Submission of the Proposal to a Sponsored Agency. All proposals, after review and approval, are submitted by the PI/PD or designee on behalf of NMHU. The ORSP is available to assist in the submission only if scheduled with sufficient lead time (see #5 time limit above).

10. Institutional Facts. There are a number of standard facts about NMHU that are required in a proposal. To ensure that proposals are complete, accurate and consistent, a list of required information (e.g., Federal ID #, DUNS #, and Assurance #’s) is compiled for completing application forms in (NMHU’s Fact Sheet for Completing Proposals). Also available, in PDF format, are memos and letters of NMHU’s Facilities and Administration (F & A) rate agreement and current fringe benefit rates on proposals (see Memos and other Research Documents).

3.2.2. Faculty and Staff Eligibility. Persons eligible to submit proposals and act as PIs/PDs include tenured and non-tenured associate and assistant professors. Other university staff and faculty (e.g., professors emeritus, visiting professors or visiting scholars) are encouraged to submit proposals, but due to liability purposes must seek approval by the appropriate dean and Director of the ORSP. Persons ineligible for PI status may be identified as an associate
investigator, but not as a Co-PI. For more detail see Section 2.3.1. in NMHU’s Research Handbook.

3.2.3. Student-Initiated Research. Registered NMHU students are eligible to submit proposals and act as a PI to external sponsors only under the following conditions:

- An eligible faculty member agrees to serve as an advisor to the project and the sponsor is informed through a formal university letter of transmittal that identifies the faculty member and her or his role as the advisor;
- A school, center or institute is willing to accept responsibility for administrative and logistical coordination of the project;
- The sponsor agrees to ensure compliance with all university policies and regulations pertaining to the grant;
- The adviser must approve all commitments for project expenditures; and
- Joint periodic reviews must occur between the adviser and the student at least once per semester during the project period.

3.2.4. The Faculty Research Fund. The primary purpose of the faculty research fund is to provide support to faculty in several ways including:

- initiating original, creative or scholarly activity;
- disseminating research, creative activity, or scholarly pursuits; and
- supporting specific activities that will contribute to external funding.

All faculty members are eligible to submit proposals. A maximum of $5,000 for research and a maximum of $1,200 for travel per faculty member is allowed per grant phase if funds are available. No quotas are set to allocate funds among the types of projects eligible for funding among schools. Funds are awarded on merit of each individual proposal established by the members of the Faculty Research Committee.

Only one proposal will be considered from an individual faculty member during each grant phase. Submission dates for each phase are published by the Research Committee and must be submitted by the deadline. While previous recipients are eligible to reapply each grant phase, preference is given to new applicants. More details about the Faculty Research Committee, funding and the application process are available from the chair of the committee. For updates on the Faculty Research Fund refer to NMHU’s Faculty Research Fund listed in NMHU's Faculty Handbook.

3.3. Budget Guidelines for a Proposal

Most granting agencies have their own format and forms for writing the budget for a proposal. According to §200.413 and §200.413, there is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Identification with the Federal award rather than the nature of the goods and
services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards.

Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations.

Included in this section are relevant policies cited from the 2 CFR Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards on facilities and administration for writing the budget portion of a proposal and additional policies such as fringe benefits, salaries, and tuition, release time, and travel. Note: The University develops F & A or indirect costs under the requirements specified in 2 CFR Part 200 Subpart E-Cost Principles §200.414.

3.3.1. Definition of Facilities and Administration (F&A) or Indirect Cost. F & A refers to costs, which provides the basis of indirect cost requirements (200.414).

In federally sponsored projects, indirect costs encompass broad categories of costs, expenditures. The term "facilities" is defined as depreciation of buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. Administration" is defined as general administration and general expenses, such as the director's office, accounting, personnel, salaries and expenses of executive officers, personnel administration and all other types of expenditures not listed specifically under one of the subcategories of “Facilities” (including cross allocations from other pools, where applicable). See §200.414 and Appendix III to Part 200.

3.3.2. NMHU’s F&A (Indirect Cost) Agreement Rate. NMHU has a negotiated indirect rate with the U.S. Department of Health and Human Services, Division of Cost Allocation, and in accordance with the authority from the Office of Management and Budget in 2 CFR Part 200 Subpart E-Cost Principles §200.412 to §200.415. The indirect cost is applicable to all externally sponsored projects (grants, contracts, cooperative agreements, subgrants and subcontracts) funded by federal, state, or private sponsors. The application of these rates allows NMHU to recover certain costs associated with externally funded training and research activity.

NMHU’s approved Modified Total Direct Cost (MTDC) or F & A can be found in Quick Facts For Completing Proposals. Based on 2 CFR Part 200 Subpart E-Cost Principles §200.68, and under Direct and Indirect (F&A) Costs§ (200.412 to §200.415), the MTDC rate is derived from all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first $25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of $25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution
of indirect costs, and with the approval of the cognizant agency for indirect costs.

3.3.3. Departmental Administration Expenses and Limitations. In accordance with 2 CFR Appendix III to Part 200-Indirect (F&A) Costs Identification and Assignment, and Rate Determination for IHEs-Section B, subsections 5 and 6, expenses under this heading are those incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research units.

The expenses for sponsored projects administration are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, print shops, and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation. Appropriate adjustments will be made for services provided to other functions or organizations.

In the absence of the alternatives provided for in 2 CFR Appendix III to Part 200-Indirect (F&A) Costs Identification and Assignment, and Rate Determination for IHEs-Section A, Subsection 2.d, the expenses included in this category must be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

An appropriate adjustment must be made to eliminate any duplicate charges to Federal awards when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect (F&A) cost items, such as accounting, procurement, or personnel administration.

Organized research units include such units as institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations:

1. **Academic Dean Offices.** Salaries and operating expenses are limited to those attributable to administrative functions.

2. **Academic Departments.** Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads), and other professional personnel conducting research and/or instruction, must be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance must be added to the computation of the indirect (F&A) cost rate for major functions in 2 CFR Appendix III to Part 200-Indirect (F&A) Costs Identification and Assignment, and Rate Determination for IHEs - Section C, Determination and Application of Indirect (F&A) Cost Rate or Rates; the expenses covered by the allowance shall be
excluded from the departmental administration cost pool. No documentation is required to support this allowance.

Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

Other fringe benefit costs applicable to the salaries and wages included in subsections (1) and (2) are allowable, as well as an appropriate share of general administration and general expenses, operation and maintenance expenses, and depreciation.

Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

3. **Determination of Departmental Administrative Costs as Direct or F&A costs.** In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or F&A costs. For example, salaries of technical staff, laboratory supplies (e.g., chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs shall be treated as direct cost wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefiting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. See §200.413 Direct Costs, paragraph (c) and §200.468 Specializes Service Facilities.

Items such as office supplies, postage, local telephone costs, and memberships shall normally be treated as F&A costs. See CFR Appendix III to Part 200-Indirect (F&A) Costs Identification and Assignment, and Rate Determination for IHEs-Section B, Subsection 6.

Technical expenses shall be charged directly to sponsored projects if the expense can be specifically identified and provide technical benefit to the project’s scope of work. Examples of qualifying expenses include:

- Salaries of PI/PD and technical staff, and related fringe benefits (vacation, holidays, sick leave);
- Laboratory supplies (e.g., chemicals); Telephone toll charges related to the scope of work;
- Animals and animal care costs;
- Non-administrative computer costs;
- Travel costs related to the scope of work;
- Specialized shop costs; and
- Specialized health and safety supplies, training, and services.
The salaries of administrative and clerical staff should normally be treated as F&A or indirect costs. Direct charging of these costs may be appropriate where a major project or activity explicitly budgets for administrative or clerical services and individuals involved can be specifically identified with the project or activity. "Major project" is defined as a project that requires an extensive amount of administrative or clerical support, which is significantly greater than the routine level of such services provided by academic departments. Some examples of major projects include:

- Large complex programs such as research centers and other grants and contracts that entail assembling and managing teams of investigators from a number of institutions.
- Projects involving extensive data accumulation, analysis and entry, surveying, cataloging, searching literature, reporting (e.g., clinical trials or studies).
- Projects that require making travel and meeting arrangements for large numbers of participants, such as conferences and seminars.
- Projects whose principal focus is preparing and producing manuals and large reports, books, and monographs (excluding routine progress and technical reports).
- Projects that are geographically, inaccessible to normal departmental administrative services and remote from campus and:

4. **Library Expenses.** Library expenses are those incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under §200.406 Applicable Credits. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation. Costs incurred in the purchases of rare books (museum-type books) with no value to Federal awards should not be allocated to them.

In the absence of the alternatives provided for in Appendix III to Part 200, Section A-General, Subsection 2.d, the expenses included in this category must be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category must consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category must consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis. This category may also include post-doctorate fellows and graduate students.

(3) The other users category must consist of a reasonable factor as determined by institutional records to account for all other users of library facilities.

The amount allocated in above in this section must be further assigned as follows:

(1) The amount in the student category must be assigned to the instruction function
of the institution.
(2) The amount in the professional employee category must be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.
(3) The amount in the other users category must be assigned to the other institutional activities function of the institution.

5. **Student Administration and Services.** The expenses for student administration and services are those incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with Subpart E—Cost Principles. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, interest expense, and depreciation.

In the absence of the alternatives provided for in Appendix III to Part 200, Section A-General, Subsection 2.d, the expenses in this category must be allocated to the instruction function, and subsequently to Federal awards in that function.

6. **Offset for Indirect (F&A) Expenses Otherwise Provided for by the Federal Government.** The items to be accumulated under this heading are the reimbursements and other payments from the Federal government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in Appendix III to Part 200, Section B, subsections 2 through 9. The items in this group must be treated as a credit to the affected individual indirect (F&A) cost category before that category is allocated to benefitting functions.

7. **Contingency Provisions.** Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the Federal awarding agency) which is associated with possible events or conditions arising from causes where the precise outcome is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.

It is permissible for contingency amounts when estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal awarding agency. In order for actual costs incurred to be allowable, they must:

(1) comply with the cost principles and other requirements in §200.300 Statutory
and National Policy Requirements through §200.309 Period of Performance in Subpart D and in 200.403 Factors Affecting Allowability of Costs);

(2) be necessary and reasonable for proper and efficient accomplishment of project or program objectives; and

(3) be verifiable from the non-Federal entity’s records.

Payments made by the Federal awarding agency to the non-Federal entity's “contingency reserve” or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§200.431 Compensation—fringe benefits regarding self-insurance, pensions, severance and post-retirement health costs and 200.447 Insurance and indemnification.

3.3.4. F & A Exceptions.

1. Sponsors proposing lower facilities and administrative costs will require written approval from the Director of the ORSP. If a sponsor has established its own policies on facilities and administration costs and continues to support university research, they may be preapproved for a waiver of the negotiated facilities and administration rate.

2. In cases where granting agencies or programs will not allow facilities and administration charges, normally considered to be part of the facilities and administration, these expenses may in some instances be applied as a direct charge. However, approval for changes of indirect costs must be requested by the associate of research and sponsored projects.

3. The off campus rate is 24 percent MTDC, off campus is defined as activities performed in facilities not owned by the institution and to which rent is directly allocated to the project(s). Actual costs will be apportioned between on-campus and off-campus components based on appropriate rates.

4. The rate for Intergovernmental Personnel Agreements (IPAs) is 100 percent. These are very specific type of government agreement that reimburses NMHU for “loaned” employee’s salary and fringe benefits.

5. The rate for DoD contracts and contracts with industrial sponsors is 46 percent MTDC.

6. Equipment, which is nonexpendable, tangible personal property having a useful life of more than one year and an acquisition of $1,000 or more should be included as a direct cost in the equipment budget.

3.3.5. Fringe Benefits. In accordance with Appendix III to Part 200, Section C, Subsection 5, Negotiated Fixed Rates and Carry Forward Provisions, NMHU’s fringe benefits rates are the direct cost charged in a contract, grant, subcontract and subgrant. Fixed rates for fringe benefits shall be negotiated in advance for a fiscal year. Any over- or under-recovery for that year is included as an adjustment to the appropriate fringe benefits rate for a subsequent year. NMHU’s Collective Bargaining Agreement, Section 11 provides a breakdown of the fringe benefit rates
for eligible employees including eligible family members.

3.3.6. Treatment of Vacation, Holiday, & Sick Leave. Fringe benefit calculations do not include vacation, holiday, sick leave pay and other paid absences. These benefits must be claimed as part of the normal cost of salaries and wages on grants, contracts and other agreements. In addition, externally funded employees paid through externally funded grants/contracts with the University who are terminating their employment must either:

1. Take their accrued annual leave during the contract period in which they are terminating their employment; or

2. Terminate in sufficient time prior to the end of the contract period so that payment of unused annual leave accruals will not exceed the total monies provided in the contract (See Human Resources for more detail).

3.3.7. Student Salaries and Tuition. A 1986 IRS ruling states that any payments made to a student, for services rendered, are taxable. To remain in compliance with this ruling, the following policies for Research Assistants (RA), and Graduate Project Assistants (GPA) as well as other (primarily undergraduate) students are effective immediately.

- **IRS Reporting.** Salaries issued to RAs, GPA, and other project or undergraduate students for services rendered will be reported to the IRS and reported as a direct line item.

- **Tuition & Scholarships.** Tuition expenses or scholarships shall be calculated as a F&A or indirect item. Since most contracts or grants can not be charged “tuition” or “scholarships”, the compensation in the RA salary line must be sufficient to cover tuition remission and some additional salary (where appropriate), to cover the corresponding taxes that may have to be paid by the student to the IRS. Students may be compensated for possible taxes up to 16 percent by increasing the budgeted salary amount, depending upon availability of funds within contract or grant. During each semester, forward to the payroll office the tuition amounts paid by the university for each individual. Payroll will include the semester’s tuition amount as part of the student’s taxable wages during one month each semester. **Note: Once a scholarship is awarded, it cannot be retracted, even if the student’s contract is terminated before the end of the term for which it is written.**

  Note: According to the IRS, Scholarships may be all or partially taxable, even if a Form W-2 is not issued. Generally the entire amount is taxable if a student is not a candidate for a degree. If a student is a candidate for a degree, they generally can exclude from income that part of the grant used for: Tuition and fees required for enrollment or attendance, or Fees, books, supplies, and equipment required for courses. Students cannot exclude from income any part of the grant for other purposes, such as room and board.

- **Pell Grants, Supplemental Educational Opportunity Grants, and Grants to States for State Student Incentives.** These grants are nontaxable scholarships to the extent used for tuition and course-related expenses during the grant period.
• **Reduced Tuition**
  You may be entitled to reduced tuition because you or one of your parents is or was an employee of the school. If so, the amount of the reduction is not taxable so long as the tuition is for education below the graduate level. (But see Graduate student exception, next.) The reduced tuition program must not favor any highly paid employee. The reduced tuition is taxable if it represents payment for your services.

• **Graduate Student Exception**
  Tax-free treatment of reduced tuition can also apply to a graduate student who performs teaching or research activities at an educational institution. The qualified tuition reduction must be for education furnished by that institution and not represent pay.
  - **Enrollment Qualifications.** Student(s) must be enrolled at least halftime at the university to be eligible to participate in a sponsored project. For budget purposes, these students are considered university employees.
  - **Student Salaries.** For graduate research assistants, salaries are normally shown as a percent of time, and graduate project assistants and undergraduate students are normally shown as number of hours (i.e., a maximum of 700 hours in an academic year, a maximum of 520 hours in summer, and in rare cases a maximum of 160 hours between fall and spring semester). Allowable salaries for students are based on approved rates by the funding agency: Examples of how to report salaries in a proposal are as follows.
    - Research Assistants: $1,600/month (.50 FTE)
    - Project Assistants or Undergraduate Students, 500 hours @ $12/hr or $6,000

3.3.8. **Academic Faculty Release Time and Salaries.** Based on NMHU’s [Collective Bargaining Agreement](#), (Article 13):
Certain externally funded grants provide funds for reassigned time as part of the grant award. It is incumbent upon the faculty member to request and receive permission from both the Chair and the School of College Dean to submit a grant proposal that contains a request for reassigned-time funding. Once the grant is awarded, the faculty member will receive the reassigned time, unless the VPAA determines that student enrollment and/or necessary course offerings, plus the failure of a legitimate effort to find replacements faculty, dictate circumstances that require that the faculty member forego his or her reassigned time for the purpose of teaching.

Faculty members participating in grant proposals should ensure that those proposals include provisions for reassigned time, if appropriate, to enable reimbursements to the University, and to allow for faculty participation in that reassigned time from normally assigned teaching duties. In cases where reassigned time from teaching duties is not feasible, the faculty member may be provided an administrative “overload” supplemental contract for additional duties incurred with the grant with the following provisions:

1. The administrative “overload” supplemental contract will not exceed 15% of the faculty member’s academic year contract amount;
2. The School and/or discipline will not be adversely affected by the faculty member’s involvement in the project;
3. The funding agency approved the project without reassigned time; and
4. The funding agency allows supplemental overload contracts.

3.3.9. Summer Faculty Salaries. Based on NMHU’s Collective Bargaining Agreement (Article 13): faculty members who receive a 100% externally funded summer (may be up to 3/9 months of the academic year contract) are ineligible for teaching contracts during this period.

3.3.10. Secretarial Support. In some cases, extra secretarial assistance will be needed to support project activities and may be listed as a regular budget item. When this type of support is needed, it is essential that the Office of Human Resources be contacted to determine the appropriate salary rates approved by the university.

3.3.11. Travel. The State of New Mexico and NMHU have established regulations concerning travel using state funds. According to the Purchasing Manual, out-of-state travel requests must be submitted to the business office at least 10 working days prior to the start of the trip. In-state travel requests must be submitted at least 3 working days prior to the start of the trip. All out-of-state/international travel requests must be approved by the President or her/his designee.

Contact the Business Office for specific regulations relating to travel policy.

3.3.12. Employer Identification Number. The employer identification number assigned to the university by the federal government must be included in some proposals. This number is 85-6000-406.

3.3.13. Tax Exempt Status. The university is recognized by the Internal Revenue Code under Section 509(a)(3) as eligible for exemption from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code. This exemption was granted September 1986. A copy of the IRS letter is available at the ORSP.

3.3.14. Cost Sharing. Cost sharing may consist of allowable direct or facilities and administration (F&A) resources; but may not exceed 100 percent of a faculty, student, or staff’s effort in the performance of the sponsored project. See Section 4.2.1.5. for more detail on Cost Sharing procedures.

3.3.15. Restricted and Unrestricted Funds. Restricted funds are current funds on which restrictions are imposed by an external entity, such as a federal agency, individuals, private corporations, state, or local government. The funds received support research and other projects performed by the University and are in a form of a contract, grant or gift.

While the restrictions associated with these funds may vary by funding source, the money supporting these projects and the agreements for spending that money are all identified as "sponsored project awards." The ORSP has monitoring and oversight responsibility of all restricted funds and the Business Office is responsible for the accounting of all restricted funds from sponsored project awards.
Unrestricted funds are current funds with no restrictions imposed on them by entities outside the University. Unrestricted funds are included into a General Fund that relies largely on student fees, state appropriations, indirect cost recovery, and other sources to pay for teaching, research, library services, student scholarships, fellowships, and maintenance and operation of physical properties, among other services. However, unrestricted funds are not truly free of restrictions and are subject to University regulations. Major sources of unrestricted funds include:

- **Money received from students as tuition and fees.** Expenditures in these funds are generally limited to providing services for students. These funds are administered by the President, Vice Presidents and Financial Aid Director and accounted separately by the Business Office.

- **Operating support from the state of New Mexico.** The New Mexico Legislature typically provides funds to support instruction and general expenditures of the institution. These funds are administered by the President and Vice Presidents and accounted separately by the Business Office.

- **Proceeds from the Sale of Goods and Services to Parties Outside the University.** Self-supporting activities from independent contracts, such as from the Bookstore, Cafeteria, Dormitory use, and property rental may generate funds from the sale of goods and service. Recorded income from these individual funds are called self-supporting funds. All expenditures relating to the operation of a self-supporting activity is charged to that activity's individual fund, administered by the President and Vice Presidents, and accounted separately by the Business Office.

- **Appropriations From University Funds.** These are annual appropriations generated from various sources, including indirect cost recovery from sponsored projects, and are placed into a General University fund. These appropriations support operations or projects that are necessary to the functioning of the University, but have not been provided for in the general fund. These funds are administered by the President and Vice Presidents and accounted separately for by the Business Office to reimburse the University on administration, infrastructure, and the ORSP.

### 3.4. Subawards and Contracts


#### 3.4.1. Definitions.

**Subaward.** A subaward, formerly known as “a subcontract”, is an award provided provided by a pass-through entity to a subrecipient for a subrecipient to carry out a part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through
any form of legal agreement, including an agreement that the pass-through entity considers a contract (§200.92-Subaward).

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity (e.g., NMHU) to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency (§200.93-Subrecipient).

Contractors. According to §200.23-Contractor, a contract is for the purpose of obtaining goods and services for the NMHU’s own use and creates a procurement relationship with the contractor… Content Under Revision. For more information contact ORSP.

The term "contract" does not include written agreements between different departments (or other similar units) of the University. Such interdepartmental agreements may consist of email correspondence between, or documents signed by, the parties’ designees. These agreements are not legally binding, so their sole purpose is to memorialize mutually acceptable arrangements.

3.4.2. Subrecipient and Contractor Determinations (§200.330). The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

(1) Determines who is eligible to receive what Federal assistance;

(2) Has its performance measured in relation to whether objectives of a Federal program were met;

(3) Has responsibility for programmatic decision making;

(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

(5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

Characteristics indicative of a procurement relationship between non-Federal entity and a contractor are when the contractor:

(1) Provides the goods and services within normal business operations;
(2) Provides similar goods or services to many different purchasers;
(3) Normally operates in a competitive environment;
(4) Provides goods or services that are ancillary to the operation of the Federal program; and
(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

3.4.3. Use of Judgment in Making Determination. In determining whether an agreement between NMHU and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and NMHU must use judgment in classifying each agreement as a subaward or a procurement contract.

3.4.4. Subrecipient Requirements for Pass-Through Entities (§200.331)
A. Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

1. Federal Award Identification
   (i) Subrecipient name (which must match the name associated with its unique entity identifier);
   (ii) Subrecipient’s unique entity identifier;
   (iii) Federal Award Identification Number (FAIN);
   (iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal Agency;
   (v) Subaward Period of Performance Start and End Date;
   (vi) Amount of Federal Funds Obligated by this action from NMHU to the subrecipient;
   (vii) Total Amount of Federal Funds Obligated to the subrecipient by NMHU including the current obligation;
   (viii) Total Amount of the Federal Award committed to the subrecipient by NMHU’
   (ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
   (x) Name of Federal awarding agency, NMHU Department, and ORSP contact information;
   (xi) CFDA number and name; NMHU’s PI must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
   (xii) Identification of whether the award is R&D; and
   (xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) Costs.

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;
(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) Costs, paragraph (f);

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

B. Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

C. Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §200.207 Specific Conditions.

D. Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management Decision.

E. Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for
the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:
(1) Providing subrecipients with training and technical assistance on program-related matters; and
(2) Performing on-site reviews of the subrecipient's program operations;
(3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit Services.

F. Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit Requirements.

G. Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

H. Consider taking enforcement action against noncompliant subrecipients as described in §200.338 Remedies for Noncompliance of this Part and in Program Regulations.

3.4.5. Fixed Amount Subawards. In accordance with §200.332, the pass-through entity may seek prior written approval from the Federal awarding agency to provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in §200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

3.4.6. PI Responsibility. The subrecipient or contractor may not involve an individual who is also a direct beneficiary of such a program at NMHU, the sponsor, or higher-tier subrecipient. The subrecipient or contractor may be another educational institution, an independent laboratory, a foundation, a for-profit corporation, a non-profit corporation, or other organization, and may be a domestic or foreign entity. A subrecipient or contractor may also be a recipient of other federal awards directly from a federal awarding agency.

The PI/PD must select a subrecipient based upon his or her assessment of the potential subrecipient’s ability to perform the service or research work successfully. This includes an analysis of the subrecipient’s/contractor’s past performance, technical resources and financial viability, and an assessment of the reasonableness of the subrecipient’s proposed costs in light of the work to be performed. This information must be documented in NMHU’s Subrecipient/Contractor Commitment Form and submitted to the ORSP for final approval. To meet audit requirement’s, NMHU is required to retain documentation of this latter assessment for subawards proposed under a contract (see 3.4.4.).

In rare cases, a PI/PD may recognize the need for outside involvement on a project, but is either unable to identify the best subrecipient/contractor by the time of proposal submission, or is unable to acquire all of the required paperwork from that subrecipient. In such an instance, proposals may be submitted with a subrecipient/contractor as “To Be Named”, if allowed by the contractor or sponsoring agency. PI’s may need to be prepared to provide documentation on the
basis for their subaward cost estimates of the work to be performed. Note: PIs and their school/college will be responsible for managing any budgetary shortfalls that may result from their inability to accurately predict a subrecipients’/contractors’ costs [see Section 4.2.2.(6)]. In addition, subrecipients’/contractors’ should not be asked to reduce their F&A recovery or to otherwise cost-share because of NMHU’s failure to include cost in our proposal.

If the university is the prime contractor, then as the lead institution, the university will be responsible to the granting agency for successful completion of the project. To ensure clarity in the agreement, a Contractor/ Subrecipient Commitment Form must be completed with other institution(s). Once the grant is awarded, two copies of the signed form and work statement from the other institution(s) should be submitted to the ORSP.

If the university is not the lead institution, the other organization should provide an agreement form. Coordination in planning the agreement should take place with the dean, the ORSP, and other administrative personnel, as appropriate. A Proposal Routing Form (PRF) should also be prepared and submitted to the ORSP.

### 3.5. Fixed Fee Contracts

#### 3.5.1. Fixed Fees Contracts.

1. A ceiling price shall be negotiated for the contract at a level that reflects a reasonable sharing of risk by NMHU and the contractor. The established ceiling price may be adjusted only if required by the operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

2. The contract should be awarded only after negotiation of a billing price that is as fair and reasonable as the circumstances permit.

3. Since this contract type provides the contractor no cost control incentive except the ceiling price, NMHU must make clear to the contractor during discussion before award that the contractor’s management effectiveness and ingenuity will be considered in retroactively predetermining the price.

#### 3.5.2. Fixed Fee Payment Requirement. According to §200.201-Use of Grant Agreements (including Fixed Amount Awards), Cooperative Agreements and Contracts, Fixed amount awards may be used with subawards under the following conditions:

1. The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal awarding agency or institution may use fixed amount awards if the project scope is specific and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-
Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to:

(i) In several partial payments, the amount of each agreed upon in advance, and the "milestone" or event triggering the payment also agreed upon in advance, and set forth in the Federal award;
(ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; or,
(iii) In one payment at Federal award completion.

2. A fixed amount award cannot be used in programs that require mandatory cost sharing or match;

3. The non-Federal entity must certify in writing to the Federal awarding agency or NMHU at the end of the Federal award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.

4. Periodic reports may be established for each Federal award.

5. Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the Federal awarding agency or pass-through entity.

3.5.3. Establishing Contracts and Budgets. NMHU may decide to proceed with a contract if it can be demonstrated that it is in accordance with Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards and the work fits the research, education, and public service mission of the university, and if the work will advance the research, creative, or scholarly activities of the faculty, staff and students who will undertake it. If it proceeds, then the university must fully recover its costs (direct costs plus indirect costs) in performing the services, and it can neither set out to generate a profit nor be in a deficit when the project ends.

For audit purposes, the university PI/PD must document all expenditures to show they comply with the terms and conditions of the award, ensure that all costs are fully expensed to the sponsor, provide evidence that all personnel costs reflect actual effort, and carefully handle any residual funds. Failing to do so could be disastrous if costs are disallowed or if the university is found to be in violation of state or federal rules and regulations that govern its nonprofit status.

PIs/PDs will make reasonable efforts to price these projects appropriately. The pricing must insure that all University costs are covered unless special permission is obtained, and the University may accept higher rates offered by the Sponsor.

For more information contact.
be submitted by the ORSP to execute contracts on behalf of the university. All PIs/PDs and departments are encouraged to consult with the Director of the ORSP to develop the project budget and price quote for a fixed-fee contract that will ensure that all costs—both direct costs and indirect costs—are recovered and that the risks described above are mitigated. With careful budgeting and accurate cost accounting, there should be neither a deficit nor a substantial surplus of sponsor funds when the project ends.

All fixed-fee contracts awarded to the university will be set up as a separate project grant and will require a Proposal Routing Form with all required signatures and a detailed budget presenting all proposed direct costs in appropriate cost categories as well as the university’s approved F&A costs. In certain situations, the Director of the ORSP may approve the use of an F&A rate that is different from the university’s approved rate. However, in no case will an F&A rate of less than 10 percent be applied to the project’s direct costs for fixed-fee projects.

3.5.4. Closing Fixed-Fee Contracts. At the end date specified in the fixed-fee contract, the staff in the ORSP will work with the PI/PD to determine that (a) the work has been completed, (b) the deliverables and any required technical reports have been accepted by the sponsor, and (c) no outstanding items remain in question with the sponsor. A final bill will then be sent by the ORSP to the sponsor.

The project account’s balance will be determined only after the sponsor’s final payment is received, all salaries and outstanding invoices have been paid, all encumbrances on the project account have been released, and all F&A costs are recovered by the university. In some cases, this might take up to 6 months to complete.

If the project’s total costs exceed the sponsor’s payments, then the project will present the university with a deficit. The ORSP staff will write a memorandum to the PI/PD with copies to the department chair, dean, and Director of the ORSP requesting the PI/PD identify an alternative unrestricted fund source to absorb the cost overrun and clear the deficit. Money will be transferred from this alternative fund source until the university’s costs are fully recovered.

3.5.5. Residual Funds. If the PI/PD completes the project for less than the agreed upon price, the sponsor’s payments will exceed the total costs, yielding residual funds. Residual funds on a fixed-fee contract will be recognized by the controller’s office as deferred revenue… Content

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The ORSP staff will prepare a request to the budget to transfer the residual funds to the PI’s/PDs departmental account. When the residual funds are transferred, then the project account will be closed. Note: Before the transfer request is processed, the residual funds may be used to cover any cost overruns (deficits) made by the same PI/PD on other project accounts where he or she is responsible.

Although the PI/PD will have access to these residual funds with no restrictions imposed by the contract’s requirements, the residual funds must only be used for expenditures in support of the PI’s/PD's research-related activities.
In cases where the residual funds total is significant, the PI/PD will be asked to provide a written explanation for why the actual direct costs of the project were substantially less than the total payments received from the sponsor. The PI/PD must obtain the department chairperson’s and the dean’s or unit head’s written approval and then forward the explanation to the ORSP. The approval of the Director of the ORSP will be necessary before the residual funds can be transferred. Significant is defined as follows:

- For a fixed fee contract of less that $25,000, when the residual funds total is $2,500 or greater.
- For a fixed fee contract of $25,000 or more, when the residual funds total is equal to or greater than 10 percent of the total payments received.

Funds to be transferred to NMHU from another educational or research institution, which were residual funds held at that institution for a PI/PD who is accepted at NMHU, become the property of NMHU. These funds will be treated in the same manner as residual funds derived from fixed-fee contracts conducted at NMHU.

In accordance with the 2 CFR Subpart C, §200.201, the fixed-fee contract utilized by the University is a fixed-ceiling-price contract. Fixed-ceiling-price contracts are appropriate for research and development contracts estimated at $100,000 or less when it is established at the outset that a fair and reasonable firm fixed price cannot be negotiated and that the amount involved and short performance period make the use of any other fixed-price contract type impracticable. As per 2 CFR Subpart C, §200.201 (b) (2), a fixed amount award cannot be used in programs which require mandatory cost sharing or match.

### 3.6. Openness in Research

Individual scholars shall be free to select the subject matter of their research, to seek support from any source for their work, and to form their own findings and conclusions. Accordingly, this research shall be available for scrutiny and criticism as required by the university and shall be implemented to the fullest extent practicable. Research techniques should not violate established professional ethics pertaining to the health, safety, privacy, and other personal rights of human beings or to the infliction of injury or pain on vertebrate animals.

Moreover, the university shall not enter into a contract or grant to carry out research if the grant or contract restrained the freedom of the university to disclose:

- The existence of the contract or grant or
- The general nature of the inquiry to be conducted or
- The identity of the outside contracting or granting entity, or
- The research results.

**Note:** Clause (c) above shall not apply to either anonymous gifts or grants that do not call for the performance of specified lines of inquiry, or to research grants or contracts from individuals or non-governmental entities who request anonymity out of a justifiable motivation to protect...
individual privacy.

**Exceptions.** A program of research that requires secrecy may be conducted at NMHU under the following conditions.

1. With approval from the ORSP and the department, a research program shall be regarded as requiring secrecy only:

   (a) If any part of the sponsoring or granting documents that establish the project is not freely publishable; or
   (b) If there is a reasonable basis for expectation that any documents to be generated in the course of the research project will be subjected by an outside sponsor to restrictions on publication for a period in excess of that reasonably required (i.e., more than 90 days) for the sponsor to ascertain whether information he or she is entitled to have treated as confidential would be disclosed by publication; or
   (c) If access will be required in the course of the project to confidential data so centrally related to the research that a member of the research group who was not privy to the confidential data would be unable to participate fully in all of the intellectually significant portions of the project.

2. With approval from the Director of the ORSP, provisions for secrecy in a program of research may be made when one or more of the following circumstances exists:

   (a) If interview techniques or otherwise use a living human being and the rights of that individual to privacy would be protected.
   (b) A program of research would be significantly advanced by access to information generated elsewhere, which had been subjected to security classification. A provision (excluding payment by NMHU) may be made for security clearance and for access to that information on the part of one or several of the participating investigators provided that the classified information is peripheral to the research program in the following sense: the relationship between the classified data and the overall research endeavor must be sufficiently remote so that:
      • a member of the research group who did not hold a security clearance would nevertheless be able to participate fully in all of the intellectually significant portions of the project; and <
      • there is no substantial basis for an expectation that any part of the final results of the research, or any but a trivial part of the research processes, will be subject to restriction on publication more enduring than those described in this section in item #2 above.

3. In a program of sponsored research, provisions may be made in the contractual agreement between NMHU and the sponsor for a delay in the publication of research results, in the following circumstances:

   (a) For a short delay (the period of delay not to exceed 90 days), for patenting purposes or for sponsor review of and comment on manuscripts, providing that no basis exists at the
beginning of the project to expect that the sponsor would attempt either to suppress publication or to impose substantive changes in the manuscripts;

(b) For a longer delay in the case of multi-site clinical research (the period of delay not to exceed 24 months from the completion of research at all sites), where a publication committee receives data from participating sites and makes decisions about joint publications. Such delays are permitted only if the NMHU investigator is ensured the ability to publish without restrictions after the specified delay; and

(c) When it is in the best interests of the research, the Director of the ORSP may approve contractual arrangements that could lead to longer publication delays. Requests for the Director of the ORSP to approve such contractual arrangements should include:

- the rationale for the request;
- a description of who will have authority over publication decisions; and
- a statement of the provisions that will allow the investigator to publish within a defined period of time, regardless of other considerations.

**Note:** Under no circumstances should a faculty member engage a student or trainee in a project governed by an extended publication delay agreement or contractual arrangement that could present a barrier to the timely submission of the student's thesis or dissertation or to the publication of a trainee's work.

4. If a non-NMHU employee or entity has made available to the PI/PD of the sponsored program confidential information, a provision may be made to preserve confidentiality and/or a short delay in the publication of research results during which time the information source may examine the proposed publication in order to ensure that the investigator has not disclosed, intentionally or unintentionally, any portion of the confidential information supplied, provided that any such provision for delay must contain assurance from the information source that he will conduct his review as expeditiously as possible, that he will not attempt to thwart publication for any reason except to protect confidential information previously supplied, and that he will indicate with specificity a sentence or sentences which he contends constitute such a disclosure.

5. If private papers, documents, diaries or analogous materials have been provided to the PI/PD of the research program, a provision may be made to preserve the confidentiality of those materials for the purpose of protecting the individual privacy of the author, or of the addressee, or of the immediate family of either the author or the addressee.

6. No research on a thesis or dissertation should be undertaken if, at the time the topic is set, there is any substantial possibility that it will lead to a secret thesis or dissertation.

7. No secret thesis or dissertation should be accepted as the basis for a degree unless, in the judgment of the NMHU Internal Review Board, the imposition of secrecy could not reasonably have been foreseen until the work was so far advanced that modification of the thesis topic would have resulted in substantial inequity to the student.

### 3.7. Other Documentation and Procedure Responsibilities
Congress has mandated that the university make certain assurances to the granting agency concerning its policies in regards to the following issues:

3.7.1. Assurances.

- Civil Rights
-Conflict of Interest
- Lobbying
- Sex Discrimination
- Handicapped Individuals
- Scientific Fraud

To address these concerns, the university observes specific procedures and policies, which are described in the **NMHU Faculty Handbook**. The following are excerpts from the Faculty Handbook that pertain to assurances in this section.

1. Each university staff member (officer, administrator, faculty member, professional staff member, or other employee) is required to report in writing to the Vice President of Academic Affairs any outside employment, research and consulting activities, any controlling interest (greater than 20 percent) in a business, and any financial interest that the staff member has reason to believe may be affected by action of the university.

2. University staff members shall disqualify themselves from participating in any official action directly affecting a business in which they have a financial interest.

3. No university staff member shall acquire a financial interest in a business at a time when there is reason to believe that it will be directly affected by the official action of the staff member.

4. No university staff member shall use confidential information acquired by virtue of university employment for the staff member’s or another’s private gain.

5. No university staff member shall request or accept a gift or a loan for themselves or others, 1) if it tends to influence him/her in the discharge of his/her official duties, or 2) if he/she, within two years, have been involved in any official action directly affecting the donor or lender, or 3) if he/she knows that he/she will be involved in any official action directly affecting the donor or lender.

6. No university staff member shall purchase or influence the purchase of services, equipment, instruments, materials or other items for the university or its programs from any firm in which the staff member has an interest. Note that the purchase of a book (or the designated of an assigned textbook) written by the faculty member is not considered a conflict of interest.

7. No university staff member shall make unauthorized use of privileged information acquired in connection with university’s activities.

8. No university staff member shall permit transmission to a private firm or make other use for personal gain of university products, research results, materials, records, or information that are not made generally available.

9. A university faculty member holding no university responsibility requiring full-time (40 hours per week) attendance on campus may undertake consulting services, subject to all of the conditions of this code of conduct, for not more than one day a week during those weeks of academic instruction, examinations, and registration.
10. If the university employs a faculty member as a consultant, the compensation for a full day shall not exceed one two-hundredths (0.005) of the nine-month contract salary for teaching services.

11. No university staff member may let an outside activity interfere with primary obligations to the university. This does not mean that a staff member may not enter into an outside consulting activity; if a staff member does enter into an outside consulting activity, it must yield precedence to university assignments.

12. The Director of the ORSP is available to advise faculty and other staff members on matters relating to possible conflict of interest.

13. By law, public funds shall not be expended for the purpose of paying compensation to any faculty member or employee of a state higher educational institution for any period of absence from assigned duties with such state higher educational institution unless the period of absence is approved by a designated administrative authority according to the procedures established for this purpose by the Board of Regents.

3.7.2. State Review. The U.S. Department of Education and other granting agencies require proposals to be reviewed by a state agency. When a state review is required, a copy of the proposal should be sent to the agency identified in the Request for Application or Proposal (RFP). A copy of the review letter should then be forwarded to the granting agency.

3.7.3. Human and Animal Subjects. The use of human and animal subjects in research is strictly regulated by the federal government and the university and requires special licensing. See Sections 7 and Section 8 for more detail.

3.7.4. Informing Sponsors of Changes in Principal Investigators or Project Directors. This section includes policies related to changes of a PI/PD in a sponsored project.

A. Transfer of Project to Another PI/PD. In cases where the PI/PD is away from the campus on sabbatical or on leave from the university for three months or more, another eligible faculty or staff member should be named as acting PI/PD by the Director of the ORSP. The acting PI/PD will assume the direction of the project subject to the approval of the sponsoring agency. If absence of the regular PI/PD does not permit sufficient level of involvement in the sponsored project beyond the three-month period, another eligible faculty or staff member should assume full responsibility.

B. Transfer of PI/PD to Another Institution. In general, research grants transfer with a PI. Contracts and grants for public service or training projects generally remain at the institution and are assigned to a new PI/PD. NMHU adheres to the guidelines in the contract or grant instructing the institution as to how to transfer the grant or request the assignment of a new PI/PD. A suitable replacement will be selected based on the recommendation of the chair, dean/director, and other PIs/PDs. If a PI should resign from the university, the PI/PD should advise the ORSP as soon as possible, to maintain continuity in the project and to discuss transfer procedures.

C. Transfer of Active Research Grants. In cases where active research grants are awarded primarily on the basis of the qualifications and research program of the PI/PD, it is common to transfer the grant to the new institution. Funding agencies such as the National Science
Foundation and National Institutes of Health offer forms and procedures for requesting a transfer of a grant. The completed forms should be submitted along with NMHU’s Proposal Routing Form on the proposal to the ORSP for institutional approval.

Congress has mandated that the university make certain assurances to the granting agency concerning its policies in regards to the following issues.

3.7.5. Grant Transfers.

For more information contact ORSP.

3.8. Acceptance and Negotiation of Grants

ORSP is responsible for reviewing, negotiating and accepting awards received from external sponsors. Individual PIs or directors should not sign award agreements until ORSP has agreed to the terms and conditions of the award, including the scope of the work, special circumstances and the university’s key agreement points. The grant notice of award/contract award document is the legal document notifying a recipient organization that it has received an award.

Questions to consider during the review process include:

- Do the funds awarded correspond to the proposed activities and corresponding budget in the proposal?
- Does the award include special terms and conditions that are different from the original application?
- Does the award contain provisions that are incompatible with the university's policies on sponsored research?
- Is the award consistent with government regulations for universities?

The answers to these questions may cause a recipient to renegotiate the award or decide not to accept the award because of negative impact on the institution or project. ORSP will consult with the PI or director on the award and include them in the negotiation process. Once agreed, the terms and conditions are legally binding, and both the recipient and the awarding agency must follow them. Unilateral changes by either party are not permitted.

Not all awards are negotiated; many grants have general terms and conditions which address issues such as financial and performance reports, compliance with public policy, invention reporting, etc. These general terms and conditions are usually boilerplate documents attached to all grant awarded by a particular agency.

3.8.1. Account Creation of Approved Grant Procedures.

Once the award has been accepted by NMHU the PI or director is required to complete the following procedures:
1. Inform the dean or appropriate supervisor of the award. Identify any special implications that the award may have on the school/college/university. For example, if the funding agency requests a budget reduction, it may mean a corresponding reduction in activities and or a rejection of the grant.

2. Submit the award notice, approved budget, and any special guidelines and other relevant information to the ORSP. The ORSP will then:
   - prepare BARs so an account can be established;
   - set up an account in the business office; and
   - collaborate with other administrative and academic units to develop and maintain financial policies, procedures and systems required to comply with the terms and conditions of the sponsored award.

3.9. Non Funded Proposals

While a rejection of a proposal may be disappointing, ORSP should be notified in order to deactivate the proposal from the office files. The ORSP will assist the faculty and/or staff member in determining the cause for the non-award and provide technical assistance in resubmitting the proposal if requested by the submitting PI or project director. (NOTE: While, the following 3.10. Project Monitoring subsection is presented in a different section in the Handbook, it will appear in Phase 4 of the Project Lifecycle as the last drop-down file)

3.10. Project Budget Monitoring

For a PI/director to manage sponsored funds and ensure that expenditures and revenues are within appropriate limits and guidelines, reconciling accounts should be conducted on a regular basis. Detailed information on project and budget monitoring is provided in 2 CFR Subpart D-Post Federal Award Requirements and 2 CFR Appendix XII to Part 200 – Award Term and Condition for Recipient Integrity and Performance Matters.

Overall, regular monitoring of a sponsored account will:
   - ascertain that revenues have been received.
   - confirm the availability of project funds as needed.
   - ensure that costs are consistent with the project schedule and incurred between the start and stop dates of the project.
   - discover any errors in your budget (for more information on budgeting and budget reporting,
   - avoid overspending, which may cause a deficit and limit further spending.
   - give the PI/director a high degree of confidence that the project is in compliance with the sponsor's spending terms and conditions.
   - verify that cost transfers and corrections have been made or are made in a timely manner.
   - ensure any committed cost sharing has been fulfilled.
3.10.1. **Additional Reporting Guidelines and Forms from Federal Sponsors.** Certain federal sponsors have specific reporting requirements. The following federal sponsor links provide detailed reporting guidelines.

- **Department of Health and Human Services.** Provides information sites such as grants and funding policies regulations, and resource locators.
- **National Institutes of Health** of the National Institutes of Health offers the following information sites: health information, news and events, scientific resources, institutes, centers and offices, about NIH, and grants and funding opportunities:
  - The **NIH Guide for Grants and Contracts** is the official publication of NIH policies, procedures, and availability of funds. Notices: [Policy Updates and Request For Proposals (RFP).](#) **NIH Grants Policy Statement** Provides notices and grants policy statements indicating changes and revisions to NIH policies.
- **National Science Foundation and Overview of Grants and Awards.** Includes general information and policies.
- **Department of Defense.** The **Defense Advanced Research Projects Agency** is the central research and development organization for the Department of Defense (DoD). It manages and directs selected basic and applied research and development projects for DoD. **The Office of Naval Research, Acquisition Department, Grants and Contracts** is also under the Department of Defense.
- **Department of Education.** Contains an information site on grants and contracts, research and statistics, policy, and programs.
- **Department of Energy.** Includes grants and contracts Web site
- **National Aeronautics and Space Administration.** Offers information and resources for researchers.
- **National Endowment for the Humanities** Presents guidelines, application materials, grant programs offered, and deadlines for specific programs.

3.10.2. **PI Roles and Responsibilities** for monitoring project funds are as follows.

1. **Fiscal management.** Principal investigators are responsible for the ongoing fiscal management of awarded projects, including regular monitoring against project period budgets. NMHU adheres to the federal grants policy in 2 CFR Subpart D-Post Federal Award Requirements and 2 CFR Appendix XII to Part 200 – Award Term and Condition for Recipient Integrity and Performance Matters, which establishes the approved project budget as the financial expression of the project, and sponsors may evaluate the project against the budget at any time.

2. **Reporting on Significant Changes in Scope of Project.** PIs are obligated to request prior approval when revisions to budget and program plans indicate a significant change in scope. Examples of indicators of a change can include significant expenditures beyond the amount authorized on the award, or requests for additional funding (See **Section 4.2.2. #5: Rebudgeting of Project Funds**).
3. **Reviewing Project Expenditures.** PIs are highly encouraged to review expenditure statements for sponsored project and cost sharing accounts each month so adjustments can be made in a timely manner, and that rates of expenditures can be monitored to ensure availability of funds. If needed:

- Questionable charges must be corrected by an appropriate transfer.
- Transfers should be initiated as soon as possible after a need has been identified.
- Whenever expenses are transferred between sponsored accounts, the PI must ensure that the project ultimately paying the expense is the project that benefits from that expense, and there is adequate documentation to support the appropriateness of the transaction.

4. **Certifying Project Expenditures.** In addition to monthly review, expenditures for sponsored project and cost-sharing accounts must be certified by the principal investigator at least quarterly. Project expenditures must be certified no less frequently than every academic quarter, recorded by signature on the last expenditure statement of the quarter (or the last statement for a project which ends mid-quarter). This certification is the responsibility of the project principal investigator (or co-PI). A PI may delegate the monthly review of statements for accuracy, but may not delegate certification of the appropriateness of the charges.

The PI certification ensures all expenses charged to the account are allowable, allocable to the project, and reasonable. The certification of salary expenditures ensures that salaries charged to the account are supported by a corresponding expenditure of effort during the time period being certified. The certification also ensures other expenditures are for items or services purchased and used during the project period as specified by the award. It is the PI's responsibility to seek a no-cost extension of the award if it is necessary in order to complete the project. To be considered timely, the certification must be signed within two months of the end of the academic quarter being certified. A quarterly calendar detailing timeliness for both monthly reviews and quarterly certifications of expenditures are available at the ORSP.

5. **Cost Transfers.** A cost transfer is defined as an after-the-fact reallocation of costs associated with a transaction from one project task award to another. While costs should be charged to the correct project task award, cost transfers are sometimes necessary. To be allowable, cost transfers must be timely, fully documented, conform to NMHU’s and the sponsor’s allowable policies based on the terms of award agreement, and have appropriate authorizing signatures.

To ensure that the University is in compliance with these regulations, the principal investigator is thus responsible for ensuring that cost transfers are:

- made within 90 days after the month in which the cost was originally recorded on the Journal Entry but no later than 60 days after the project terminates;
- supported by a written explanation describing in detail why the transfer is
necessary in the **Cost Transfer Explanation Form** and submitted to the appropriate Chair or Dean and the ORSP.

- Requests to transfer costs onto sponsored projects greater than 12 months from the original date of occurrence will generally not be approved.

Cost transfers not made within the time frames stated above will be reviewed on a case-by-case basis and require signature approval by the appropriate Chair or Dean and head of the ORSP.

6. **Residual Supplies.** If there is a residual inventory of unused materials and supplies (including computing devices) that exceed $5,000 in total aggregate value upon termination or completion of the project or program, and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment (For ore detail see: §200.314 Supplies; §200.313 Equipment; and §200.313 (e)(2) Calculation Methodology).

### 3.11. Project Closeout

The last phase of a project’s life cycle is a proper closeout. A closeout means the process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in §200.343 Closeout.

The PI or director is directly responsible for overseeing the closeout of the project including:

- final financial reporting,
- invoicing,
- disposition of equipment, and
- termination of employees as required by the terms and conditions of the award.

While the ORSP prepares and submits final administrative reports (including financial and property reports), they do so based on the documentation created by the PI or director. The PI or director is thus responsible for ensuring that any necessary adjustments or documentation (e.g., final invoices) are received promptly to ORSP and in accordance with sponsor requirements, including necessary notification to the sponsor about the project status. A **Project Closeout Procedure Record** is provided to assist the PI or director in following the required steps for closing out a sponsored project. Below is a summary of the PI or director responsibilities in the project closeout.

#### 3.11.1. 90 Day Reporting Period.

Ninety days prior to the project end date, the PI shall complete and submit the 90-Day portion of the **Project Closeout Procedure Record** to the ORSP and budget office. This form ensures the nonFederal entity (NMHU) that key terms and agreements of the grant award are complete or nearing completion. In accordance with §200.343, the nonFederal entity must submit all financial, performance, and other reports as required by the
terms and conditions of the Federal award no later than 90 calendar days after the end date of the period of performance.

Thus, prior to 90 days of the project end date, the PI or director is responsible for verifying the submission dates for all final reports (including the financial report) from the sponsoring agency. Most reports required at the close of a project are due within 90 days of the project end date. During this time period, the PI or director may request an authorization from the Federal awarding agency for a no-cost extension.

If an extension is not requested or denied by the Federal awarding agency, the nonFederal entity is responsible for liquidating all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award. The Federal awarding agency must make prompt payments to the funded project for allowable reimbursable costs under the Federal award being closed out and the nonFederal entity must promptly refund any balances of unobligated cash that the Federal awarding agency paid in advance or paid and that are not authorized to be retained by the nonFederal entity in other projects. See §200.345 Closeout and §200.345 Collection of Amounts Due, for Requirements Regarding Unreturned Amounts that Become Delinquent Debts.

In addition, the nonFederal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§200.310 Insurance Coverage through 200.316 Property Trust Relationship and 200.329 Reporting on Real Property.

3.11.2. 60 Days Prior to Award End Date. Sixty days prior to the project end date, the PI shall complete and submit the 60-Day portion of the Project Closeout Procedure Record and submit it to the ORSP and budget office. This form helps to ensure expenses are complete.

In addition to submitting final reports to the sponsored projects, a complete copy of all reports also should be forwarded to the ORSP. This will facilitate post award audits, and minimize requests to the PI or director and department staff for evidence that reports were submitted. Projects are considered completed or "closed out" after the sponsor receives and approves all reports as required by the terms and conditions of the award, and notification is received by NMHU of its acceptance and closure of the project.

Failure to submit required reports by the sponsor's deadline can result in the sponsor withholding continued funding or final payment on an award, and/or suspension and termination of any and all active awards.

Project records, both scientific and administrative, need to be retained for specified periods after closeout. Normally, the retention period is three years. Records are subject to audit at any time during this period. The three-year retention period can be expanded in the case of lawsuits, patent applications, charges of misconduct or conflict of interest, etc. Equipment records must be kept for three years after final disposition of equipment or three years after project closeout, whichever is later.
3.11.3. Post-Closeout Adjustments and Continuing Responsibilities.
The closeout of a Federal award does not affect any of the following:

1. The right of the Federal awarding agency or the University to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

2. The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

3. Audit requirements in Subpart F—Audit Requirements.


After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity provided the responsibilities of the non-Federal entity including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity as appropriate.
Section 4: Fiscal Management and Administration

This section summarizes the major fiscal obligations imposed on sponsored projects by the federal government and the University. Other references to fiscal accountability also are addressed in Section 3: Proposal Administration and Management.

4.1. Overall PI/PD Budget Responsibilities

While the day-to-day management of project finances may be delegated to administrative or other staff, the Principal Investigator/Principal Director (PI/PD) has overall responsibility for fiscal management of the sponsored. Provided below is a summary of these responsibilities.

1. Manage the project in accordance with the approved Statement Of Work (SOW). Significant changes to the SOW need prior written approval of the funding agency. Request for changes in the SOW must be routed to the Office of Research and Sponsored Projects (ORSP);
2. Initiate and supervise grant expenditures as stipulated in accordance with the terms, condition and limitations of the funding agency;
3. Adhere to federal, state, university, and sponsored allowances and policies or charging expenditures in 2 CFR Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
4. Follow conflict of interest in research policies (see Section 9);
5. Initiate, monitor, and approve any subawards according to NMHU’s policies (see Section 3 and Business Policies and Procedures);
6. Ensure cost sharing requirements are properly documented by the award and seek appropriate approvals for cost sharing and other actions before committing the university’s finances or resources (see Section 4.2.1, Item #5);
7. Ensure the university and potential sponsors that project finances are represented as accurately and reasonably as possible;
8. Submit salary and nonsalary transfers on a timely basis;
9. Complete effort certifications and timesheets as required for the project on a timely basis;
10. Certify the appropriateness of direct charges, salary, annual and sick leave each month during the project period;
11. Seek no-cost extension, rebudgeting requests, and modification in the scope of the project of the award if necessary;
12. Follow intellectual research property policies (see Section 5);
13. Inform sponsors of significant changes affecting the project (see §200.308 – Revision of Budget and Program Plans);
14. Oversee the clearing of overdrafts or overruns if necessary and the proper and timely closeout of sponsored projects (see Section 4.2.2, Items #6 & #13);
15. Complete all reports (financial and technical) and all Personnel Action Request (PAR) forms as required by the award; and
16. Be accountable for deficits or disallowances that occur under the grant or contract.
4.2. PI/PD Responsibilities for Preparing, Submitting and Managing Budgets

The technical and fiscal management of a sponsorship project includes the preparation of the proposal, management of the project, adherence to reporting requirements, and assurance that the sponsor will be notified when significant conditions related to the project change. The major development and management policies and procedures related to the fiscal responsibility of the PI/PD are described in the following two subsections.

4.2.1. Preparation and Submission of Proposed Budgets. In proposing budgets for sponsored projects, the PI ensures NMHU and the potential sponsor that project finances are represented as accurately as possible. In addition, all federal requirements related to cost principles in the *Uniform Federal Guidance, Subpart E—Cost Principles* and the *Accounting Standards Board* must be adhered to at the proposal stage. Key policies to address are as follows.

1. **Commitment of University Resources.** Sponsored awards are made to the university. To accept awards, the university must legally commit itself to the conditions of the award document and the provision of resources necessary to fulfill the award. ORSP is the official authorized to approve grants documents, contracts and intergovernmental agreements.

2. **Allowability.** Proposals should not include expenses, which the federal government or the sponsor has identified as unallowable. Similarly, expenses which are to be considered as indirect expenses (e.g., certain types of office supplies and clerical salaries) may not be proposed and budgeted as direct expenses, unless they meet the criteria defined in Section 3.2.1.(3).

3. **Commitment to Effort.** Proposals should accurately represent the amount of time that key personnel are committing to the project. In preparing proposals, PI/director must be cautious to not over commit themselves or others. Effort to the project must take into account the time required for teaching and campus citizenship.
   - PIs may submit proposals on the assumption that not all will be awarded, but, at the time of award, an accurate representation of time to be devoted to the project, whether that effort will be paid for by the sponsor or by NMHU, is necessary. Subsequent changes in levels of effort may also require advance notification to and approval by sponsors.

4. **Estimating Methods.** When estimating funding to be budgeted for project expenses, estimating methods must be consistent with NMHU’s accounting practices and must allow expenditures to be accumulated and reported to at least the same level of detail as the estimate.
5. **Cost Sharing.** Cost sharing is the portion of the total sponsored project cost that is not provided by the Sponsoring agency (§200.29). Several types of cost sharing may occur in a grant:

- **Mandatory cost sharing** is required by the sponsor as a condition to obtaining an award;
- **Committed cost sharing** is a binding commitment that New Mexico Highlands University (NMHU) must provide as part of the performance of the sponsored agreement. A committed cost sharing commitment may occur in awarded applications that include voluntary or mandatory cost sharing, or matching. This commitment must be tracked in the accounting system as cost sharing;
- **Voluntary cost sharing** is not required by the Federal sponsor as a condition of obtaining an award, but included in the proposal. It cannot be used as a factor during the merit review of the proposal application unless specified in both the Federal awarding agency regulations or notice of funding opportunity. However, voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal's budget or the Federal award on the part of the non-Federal entity and that becomes a binding requirement of Federal award (§.200.99); and
- **Voluntary uncommitted cost sharing** is faculty-donated additional time above that agreed to as part of the award and should be treated differently from committed effort and not be included in the organized research base for computing the Facilities and Administration (F&A) indirect rate or reflected in any allocation of F&A costs (For more detail see [OMB memorandum M-01-06](#)).

In either case, when the award is received, cost sharing becomes a legally binding commitment of the university. As a result, a Cost Sharing Authorization Form must be completed and submitted to the ORSP for approval before the university commits to sharing the costs of externally funded projects. The type of cost sharing and amount expected to be contributed to a sponsor needs to be estimated based on associated dollars and recorded in the proposal budget as cost sharing.

Administrative requirements for including cost sharing on federal grants and cooperative agreements are defined in §200.306. Both in-kind and cash contributions by a recipient are acceptable as cost sharing or matching when all six criteria are met:

1. Verifiable from the nonFederal entity’s records;
2. Not included as contribution for any other federal program;
3. Necessary and reasonable for proper and efficient accomplishment of project or program objectives;
4. Allowable under Subpart E-Cost Principles;
5. Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be
applied to matching or cost sharing requirements of other Federal programs;
(6) Is provided for in the approved budget when required by the Federal awarding agency; and
(7) Conforms to other provisions in §200.306-Cost Sharing or Matching, §200.414 Indirect (F&A) costs, 200.203 Notices of funding opportunities, and Appendix I to Part 200—Full Text of Notice of Funding Opportunity.

The key policies related to these six criteria are as follows.

- **Direct Costs (Faculty, Student or Staff Support).** It may be appropriate to contribute faculty, student, or staff effort to the performance of a sponsored agreement with prior approval from the nonFederal entity. The commitment to provide such support, binds the university to contribute the effort and record the associated expenditures including fringe benefits in separate cost sharing accounts.

- **Cost Sharing.** Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (e.g., provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as described in §200.306. See Section 3.3.4 for more detail. If facilities and administration costs are to be waived, approval must be obtained from the Office of Research and Sponsored Projects (ORSP).

- **Equipment.** The following rules of allowability must apply to equipment and other capital expenditures:

  1. Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity.
  2. Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5,000 or more have the prior written approval of the Federal awarding agency or nonFederal entity.
  3. Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See §200.436 Depreciation, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also §200.465 Rental costs of real property and equipment.
  4. When approved as a direct charge, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the Federal awarding agency.
(5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the non-Federal entity is instructed by the Federal awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See §200.436-Depreciation.

For more detail related to equipment, see §200.13 Capital expenditures, §200.33 Equipment, §200.89 Special purpose equipment, §200.48 General purpose equipment, §200.2 Acquisition cost, and §200.12 Capital assets.

- **Other Direct Costs.** Allowable direct costs other than salaries, fringe benefits, or equipment may be committed by the PI/PD as cost sharing on the proposal budget. The following examples of other direct costs that may be cost shared including travel expenses and items that do not meet the capitalization threshold, and supplies.

- **Facilities and Administration Costs (Indirect Costs).** Facilities and administration costs are those expenses that the university and, through the university, the state of New Mexico incur every time the university accepts an award from an outside sponsor. These costs are not set arbitrarily by the university administration; they are not profit for the university or the state of New Mexico. They represent reimbursement for real expenses, which cannot be allocated uniquely to individual projects, for example, utilities, building use, libraries, and administrative services. Federal and other sponsors expect to pay facilities and administration costs and budget their allocations accordingly. The federal auditors scrutinize facilities and administration costs in detail. As a result, the university must maintain its own staff to keep the appropriate books. The university is legally obligated to recover these costs. See **Section 3.4.1** for more detail or contact the ORSP.

- **Sources of Funds for Cost Sharing.** Funds from another federal award or grant may not be used as the source of cost sharing, unless authorized by statute. In this case, the cost sharing arrangement must be approved by all sponsors.

- **Use of Nonfederal Funds.** Identifying and providing resources for cost sharing of direct costs (including equipment) is always the responsibility of the PI/PD. The PI/PD may not use funds from another federal award as the source of cost sharing, except as authorized by statute. The PI/PD may not use funds from nonfederal sources to provide cost sharing unless the cost sharing is authorized by the nonfederal sponsor.
• **Expenditures NOT Eligible for Cost Sharing.** Unallowable costs as defined in §200.410 include:
  - Negotiated indirect (F&A) cost rates; and
  - salary dollars above a regulatory cap (see NIH’s 2011 Notice on Salary Limitations).

6. **Reporting Cost Sharing.** Cost-shared expenses should be regularly documented. The university is responsible for providing information on cost sharing to sponsoring agencies, which demonstrates the university has fulfilled the cost sharing commitments that is made as a condition of receiving external sponsorship and as required in §200.306 and in accordance with Subpart E-Cost Principles. The ORSP is responsible for providing cost sharing reports to sponsors when required by the sponsor. In order to do so, departments must provide the necessary information on the Cost Sharing Authorization Form at the time of the award, follow accounting procedures described in Section 4.2.2. During the financial close-out of a sponsored project, cost sharing commitments will be reviewed by the ORSP.

7. **Reduction in Cost Sharing.** The actual effort and other costs required to accomplish the goals of a sponsored project might differ from what was proposed and awarded. The total costs could decrease due to changes in programmatic needs. When there is cost sharing on such projects, the sponsor may need to be consulted to determine if the reduction can be applied to either the university's committed cost sharing or to both sponsor and university resource contributions on a pro rata basis. Otherwise, the sponsor's share is reduced and the university’s entire cost sharing commitment must be met. The PI/director or the departmental or research administrator must consult with the ORSP before the sponsor is contacted.

8. **Outside Professional Services.** Services rendered at the request of and for the benefit of the university by corporations, partnerships, or consultants (not university employees) may be contracted. For details, see Section 10.3 or contact the ORSP.

9. **Stipend Award Procedures.** Student costs are normally seen only in training projects or fellowships and rarely in research or public service projects. Costs such as student stipends, tuition, housing, travel, books, and supplies must be listed separately in the proposal budget and are excluded from the F&A cost calculations (There are some exceptions with the U.S. Department of Health). For student costs such as salaries, fringe benefits and scholarship, see Section 3.3.7: Student Salaries. Note: Participant costs such as in workshops, surveys, and studies are typically in small fixed amounts to compensate participants for their effort and are included in the F&A calculation.

4.2.2. **PI/PD Budget Management Responsibilities.** Beginning with the receipt of funds
at the onset of the award, the PI/Director is responsible for the day to day management of the sponsored project budget, including:

1. **Receipt of Funds.** All funds from sponsors must be deposited with NMHU’s Business Office. Checks for sponsored awards are usually received by the Business Office. Occasionally, checks are sent directly to the PI/director. In such a case, the check must be forwarded to the business office for deposit.

2. **Business Related Expenses.** Ordinary and necessary expenditures incurred in conjunction with sponsored research projects may be reimbursed. These expenses are usually not associated with capital equipment, personal services, or travel. For details, see NMHU’s *Purchasing and Policies Manuel* available at NMHU’s website in **NMHU’s Faculty Resources**.

3. **Financial Reporting To Sponsor.** Every project is assigned an account number. The account manager in the Business Office handles all official financial transactions and financial reports of a project from its inception to its termination. Financial reports that are required by the sponsor are prepared by the Business Office based on information generated by the university’s accounting system. These reports must be approved by the PI and the ORSP before they are forwarded to the sponsor. Questions about financial reports should be directed to the account manager at the Business Office.

4. **Purchasing Procedures.** All purchases made with sponsored funds must follow procedures outlined in NMHU’s *Purchasing and Policies Manuel* available at NMHU’s website in **NMHU’s Faculty Resources**.

In addition, the non-Federal entity must use one of the following methods of procurement according to §200.320. *Methods of Procurement to be Followed.*

(a) **Micro-purchases.** Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the §200.67 micro-purchase threshold of $3,000 (or $2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) **Small purchase procedures.** Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) **Sealed bids (formal advertising).** Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the
preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:
   (i) A complete, adequate, and realistic specification or purchase description is available;
   (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
   (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:
   (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publically advertised;
   (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
   (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
   (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
   (v) Any or all bids may be rejected if there is a sound documented reason.

(d) Competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

   (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to published requests for proposals must be considered to the maximum extent practical;
   (2) Proposals must be solicited from an adequate number of qualified sources;
   (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
   (4) Contracts must be awarded to the responsible firm whose proposal is
most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) Noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

5. **Rebudgeting of Project Funds.** The PI/PD is responsible for the ongoing fiscal management of awarded projects, including regular monitoring against project period budgets. Federal grants policy §200.301, §200.302 and Appendix XII to Part 200—Award Term and Condition for Recipient Integrity and Performance Matters establishes the approved project budget as the financial expression of the project, and sponsors may evaluate the project against the budget at any time. Although sponsors allow certain flexibilities with respect to rebudgeting, unobligated balances, and pre-award costs, NMHU and sponsors expect expenditures to be reasonably consistent with the approved project and budget. In regards to pre-awards, such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency (§200.458 Pre-Award Costs).

Sponsors may question or restrict expenditures appearing inconsistent with the project plan and budget. PIs are obligated to request prior approval when budget and program plan revisions indicate a significant change in scope. Example indicators of a change in scope may include significant expenditures beyond the amount authorized on the award or requests for additional funding. Principal investigators should verify the terms of their awards with the business office account manager before they request rebudgeting.
6. **Cost Overruns.** Costs in excess of project budgets are the responsibility of the PI/PD and school/college and are considered unallowable costs. Nonetheless, the university is obligated to account properly for this action. If a cost overrun is discovered and additional funds are required, the PI's school/college may be required to settle the overdraft.

7. **Underestimating Project Budgets when Funds are Initially Requested from the Sponsoring Agency.** The PI/PD should carefully consider all potential costs of projects when the budgets are first developed. Monthly university financial reports should be reviewed by the PI/PD or her or his representative in a manner similar to reconciliation of a personal checking account. Any exceptions should be promptly called to the attention of the account manager, with special urgency during the final 90 days of the project. A visit to the account manager should be made at this time to maximize use of awarded funds while avoiding overruns.

8. **Control of Property.** The university is responsible for the control of property funded under the terms of sponsored project contracts and grants. The PI/PD is responsible for the control and maintenance of the sponsored property. The PI/PD may delegate property control functions to the persons related to the project such as the project staff, research coordinator, department property administrator, or administrative staff.

   For information related to procedures and policies for acquiring, controlling, shipping, moving, and disposing of sponsor-funded property refer to the NMHU’s *Purchasing and Policies Manuel* available at NMHU’s website in NMHU's Faculty Resources or contact the ORSP.

9. **Travel Policies and Participant Support Costs.** Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies. Notwithstanding the provisions of §200.444 General costs of government, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award (§200.456 and §200.474).

   All travel allowances on sponsored funds must comply with the university’s travel policy. Contact the ORSP or the Business Office for further policy guidelines on travel procedures.
10. **Charging of Holiday, Sick Leave or Vacation to Projects.** Holiday, sick or vacation charges to sponsored projects are appropriate only when such vacation is earned within the respective project and as specified by university policy. Employees on fixed-term and fixed-funding appointments and continuing employees paid from fixed-funding sources may be required to use all accrued vacation before the end of the fixed-term appointment period or the expiration of the funding source. For more detail see NMHU’s *Purchasing and Policies Manuel* available at NMHU’s website in NMHU's Faculty Resources.

11. **Overdrafts.** At the end of the project performance period, if unanticipated project expenses result in more charges to a sponsored account than were funded, the amount of the overdraft is accounted for in the same manner as cost sharing. These costs represent project costs being borne by NMHU, and therefore, must be accounted for in the same manner as cost sharing. However, these costs cannot be considered cost sharing for purposes of fulfilling a cost commitment because overdrafts are considered unallowable under §200.451 (For more detail on overdrafts see Research Handbook, Section 4.2.2 (#6.Overruns).

12. **No-Cost Time Extensions.** If additional time is needed to complete a project and there is an unexpended balance in the award, PIs may request that the period of performance of an award be extended. In most cases, agency prior approval is required. Requests for extensions should be initiated by a PI/director and processed in accordance with the terms of the sponsored award. The PI/PD is responsible for determining whether a countersignature from the ORSP is required. Requests for a no-cost extension should be submitted no later than the end date of the award (unless an earlier date is required by the agency.) Award closeouts cannot be delayed to accommodate pending requests submitted after the award end date.

If final technical reports are to be completed after the project end date, and funds from the project are available to pay these expenses, a no-cost extension should be obtained from the sponsor to cover the expense of producing and distributing those reports. If funds are not available from the project, then the PI, department or school must identify unrestricted funds to pay final report costs.

13. **Collection of Improper Payments.** According to (§200.428), costs incurred by a nonFederal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the in accordance with cas management standards in §200.305 Payment.

14. **Records Retention.** For some projects, the retention period may be longer based on the following conditions:
   a) to protect any intellectual property resulting from the work;
   b) to ensure that charges of misconduct or conflict of interest regarding the research are fully resolved; and
c) to ascertain that a student involved in the research graduates has graduated, or until it is clear that the student has abandoned the work.

Failure to retain required documentation will result in certain disallowance in the event of an audit. If litigation, a claim, or an audit occurs, documentation must be retained until all issues have been resolved regardless of the time period.

In accordance with record retention procedures, schools/college and/or principal investigators are responsible for retaining pertinent documentation on sponsored projects. Such documentation would include not only financial transactions and time and effort certification, but also statistical data, such as lab books, data tapes, graphs, case studies, field notes, original samples in unanalyzed form, and reports as well. Certain agreements require the transfer of certain records to a sponsor’s custody; in that situation, the three-year retention period does not apply.

For all projects, the ORSP is responsible for retaining the official contract files, including copies of the original award and any amendments, required sponsor approvals, consulting agreements, and subcontracts. The business office is responsible for retaining the official accounting records, including financial transaction reports and invoices.

It is important to note that federal record retention provisions allow the federal government access to records even after the required retention period has passed if such records are still maintained. It is, therefore, advisable to have a schedule for purging the financial records once the required retention period has passed. Careful consideration should be given to maintaining the scientific records. After the identified period of retention, the PI or department, if the PI is no longer at the university is responsible for destruction of the research material.

If PI/director is involved in the research project leaves the university, they are entitled to copies of the research data. However, original data must be retained at the university. Approval must be sought from the ORSP if a request has been made by the PI for copies of research data. In addition, written agreement from the PI’s new institution must be provided guaranteeing custodial responsibilities for the data and allowing the university access to the data if necessary.

15. Project Closeout. The PI/director is responsible for overseeing the proper closeout of sponsored projects (see Section 3.11), including the timely submission of all required reports. While the ORSP prepare and submit final administrative reports, including financial and property reports, they do so on the basis of documentation created in the department. The PI/PD must ensure that such documentation is adequate and readily available. In addition, PIs/PDs are responsible for ensuring that any necessary final financial adjustments and documentation (e.g., final invoices from vendors or subrecipients) are received promptly after the end of the award.

If an approval to close an award has not already been provided by the PI/PD, the ORSP will prepare and submit financial reports based on the information reflected
in the financial system as of two weeks prior to the due date for the final report. In addition, some financial reports may require the PI's signature.

16. Audits. All awards that expend $750,000 or more in a given fiscal year after December 24, 2014 are required to conduct a single audit in accordance with 2 CFR, Part 200, Subpart F—Audit Requirements, §200.514.

17. Allowable and Unallowable Audit Costs. A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:

   (1) Any costs when audits required by the Single Audit Act and Subpart F—Audit Requirements of this part have not been conducted or have been conducted but not in accordance therewith; and

   (2) Any costs of auditing the institution is exempted from having an audit conducted under the Single Audit Act and Subpart F—Audit Requirements because its expenditures under Federal awards are less than $750,000 during the non-Federal entity's fiscal year.

   (b) The costs of a financial statement audit of a non-Federal entity that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

   (c) Pass-through entities may charge Federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients in accordance with Subpart D—Post Federal Award Requirements (200.330 Subrecipient and Contractor Determinations through 200.332 Fixed Amount Subawards) who are exempted from the requirements of the Single Audit Act and Subpart F—Audit Requirements. This cost is allowable only if the agreed-upon-procedures engagements are:

      (1) Conducted in accordance with GAGAS attestation standards;

      (2) Paid for and arranged by the pass-through entity; and

      (3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

Auditors are ensured full cooperation in arranging contacts with university employees. Auditors are expected to inform the university in advance of proposed audits and to arrange all contacts through the ORSP and the Comptroller’s Office. If any university employee is contacted by an auditor without prior notification from the ORSP, the employee should notify the ORSP, who will then contact the comptroller’s office.

18. Disallowances. One unfortunate outcome of an audit is a recommendation for disallowance of costs. Common findings that result in disallowances include the following:

   • Failure to follow federal or contractual requirements;
• Failure to obtain required prior approvals;
• Failure to provide adequate supporting documentation for charges;
• Failure to meet the federal cost principles; and
• Excessive transfers of costs among projects, especially at project termination.

A disallowance requires repayment by the university for previously billed costs. Alternate funding will need to be provided by the responsible school/college. Disallowed costs may not be transferred to another sponsored agreement. All audits must be carried out through the ORSP. If a PI/PD is contacted directly by the auditor, the auditor should be referred to the ORSP. Federal regulations require that the university retain ownership and stewardship of all research records based on §200.33-Retention Requirements for Records. As a result, all financial records, supporting documents, statistical records, and all other information pertinent to a federally funded agreement must be retained throughout the period of performance and for a minimum period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient.
Section 5: Intellectual Property

5.1. Inventions

Individuals or “creators” who judge that their invention has potential for commercial marketing shall follow the procedures presented in this section. Included are explanations for the terms “invention” and “disallowances”.

5.1.1. Definition. According to the U.S. Patent and Trademark Office, “The threshold question in determining inventorship is who conceived the invention. Unless a person contributes to the conception of the invention, he is not an inventor. General knowledge regarding the anticipated invention is insufficient to confer inventorship status with respect to a specifically claimed invention.”

An invention is a novel and useful idea relating to processes, machines, manufactures and compositions of matter. It is probable that an invention has been made when something new and useful has been conceived or developed, or when unusual, unexpected, or non-obvious results have been obtained and can be exploited. The following types of works provide examples of specific types of inventions:

- **Technological Work** is a novel and useful idea relating to processes, machines, manufactures, and compositions of matter. It may cover such things as new or improved devices, systems, circuits, chemical compounds, mixtures, and other technical creations. It is probable that an invention has been made when something new and useful has been conceived or developed, or when unusual, unexpected, or nonobvious results have been obtained and can be exploited;
- **Scholarly Work**, which includes any scholarly, artistic, literary, and musical work developed by creators, in any medium. This category includes all materials developed by faculty and other personnel directly involved in instruction, and are protected by copyrights, design patents, and other means; and
- **Technical Information**, meaning all tangible and intangible research results, including samples, prototypes, data, graphs, charts, lab notebooks, technical drawings, and biogenic materials.

An invention can be made individually or with others as long as each co-inventor has conceived or contributed substantially to the general concept. Title to inventions occurring within the domain of the university shall be assigned to the university, regardless of the source of the funding. The university shall share royalties from inventions assigned to the inventor(s).

5.1.2. Invention Rights.

1. Scholarly Works are owned by the creators, with three exceptions:

   (a) Works created by prearranged contractual obligation with substantial directed investment of university facilities or funds (exclusive of creators’ salary) or in
the performance of a written university assignment or commission to create such a work (these works are owned by the university);

(b) Works that capitalize on an affiliation with the university by explicit labeling of the work to gain a market advantage, beyond the notice of the creators’ affiliation. The university owns all rights in the university’s name, seal, and/or logos, and their use requires the prior written approval of the President; and

(c) Works created under a sponsored research agreement.

2. Technological works and technical information are owned by the university, including those works that are created without the use of university facilities (with the exception of the university libraries) and/or funds administered by the university but which fall within the creator’s scope of employment. Factors considered in determining scope of employment shall include the relationship of the work(s) to creator’s recent teaching, research, and other university activities, including activities stipulated in any appointment contract.

3. Disagreements concerning ownership and other matters regarding this policy must be brought to the Office of Research and Sponsored Projects (ORSP). The Director of the ORSP will empanel an Intellectual Property and Review Board (IPRB) composed of one faculty representative from each academic department that reports to the VPAA. The Director the ORSP and a university appointed Intellectual Property (IP) attorney, or their designees respectively, are nonvoting members ex officio. At all times, the IPRB shall include at least one faculty member with invention backgrounds. Moreover:

a) Two thirds of the voting members of the IPRB shall constitute a quorum;

b) Initially, one-third of the faculty members of the IPRB will have a one-year term, one-third a two-year term, and one-third a three-year term, as determined by the IPC chair. After the initial term, new members of the IPC will be named for three-year terms. In the event that a member is appointed in the middle of a term, he/she will fill the remainder of that term;

c) If at any time an IPRB member with invention backgrounds is not available, the Director of the ORSP, in consultation with the Faculty Senate, will appoint additional members to the IPC as needed to fulfill this requirement;

d) The chair will be elected annually by the IPRB from among its voting members;

e) The chair may call upon experts from inside or outside the university to help in reviewing invention disclosures and to provide informal advisory opinions;
f) A quorum of the full voting membership of the IPRB is required for adjudication of intellectual property rights, whereas a simple majority of those present suffices for deciding other committee business. The IPC's determinations may be appealed to the Director of the ORSP;

g) The IPRB shall meet at least monthly during the academic year;

h) Due to the confidential and proprietary subject matter, IPRB meetings are closed to all except members, creators whose work is under discussion, the creators' representatives, and consulting experts;

i) Recording devices will be used to record hearings and proceedings. These recordings or the transcripts thereof shall be treated as confidential information by all parties involved, until intellectual property protection is secured or all parties agree to the disclosure;

j) Minutes shall be kept of all IPCR meetings and IPRB subcommittee meetings, recording actions, determinations, and topics of discussion. The minutes are public records. Minutes shall not contain any confidential information; and

k) The ORSP is the office of record for IPRB minutes, recording, transcripts, and accompanying documentation.

5.1.3. Invention Disclosures. Once an invention is conceived or implemented in whole or in part through the university and is considered potentially patentable, the inventor(s) is responsible for submitting in a timely manner an Invention and Technology Disclosure Form describing the invention and including other related facts to the ORSP. Forms may be requested from these offices.

An invention disclosure is a document which provides information about the inventor(s), what was invented, circumstances leading to the invention, and facts concerning subsequent activities. It provides the basis for a determination of patentability and the technical information for drafting a patent application. An invention disclosure is also used to report technology that may not be patented but is protected by other means such as copyrights.

5.1.4. Duties of Inventors. The following practical considerations relate to invention disclosures:

a) The inventor(s) covered by this policy are expected to apply reasonable judgment as to whether an invention has potential for commercial marketing. If such commercial potential exists, the invention should be considered "potentially patentable," and disclosed to NMHU; and
b) The inventor(s) may not use university resources, including facilities, personnel, equipment, or confidential information, except in a purely incidental way, for any non-university purposes, including outside consulting activities or other activities in pursuit of personal gain.

"More than incidental use of university resources" would include:

- the use of specialized, research-related facilities, equipment or supplies, provided by NMHU for academic purposes; and
- significant use of "on-the-job" time.

The occasional and infrequent use of the following would typically not constitute "more than incidental use of University resources":

- routinely available, office-type equipment, including desktop computers and commercially available software; and
- reference materials or other resources collected on the NMHU campus, and which are generally available in non-NMHU locations.

The inventor, or inventors acting collectively when there are more than one, is free to place inventions in the public domain if that would be in the best interest of technology transfer and if doing so is not in violation of the terms of any agreements that supported or governed the work. The university will not assert intellectual property rights when inventors have placed their inventions in the public domain.

5.1.5. Administrative Invention Responsibilities.

1. During and after their association with the university, creators shall assist and cooperate with the university in its efforts to secure intellectual property protection and commercialization of NMHU’s IP, including executing appropriate assignments to perfect the University’s legal rights in NMHU’s IP.

2. In the event the university takes legal action against any inventor or inventor’s heir or personal representative, for his/her failure to comply with the provisions of this policy, the university may deduct its legal costs, including attorneys’ fees, from any royalties due the creator, or creator’s heir or personal representative, as the case may be.

3. The university may require inventors to refrain from publishing for a reasonable period of time in order to enable a sponsor or the university to evaluate NMHU’s intellectual property policies and procedures to determine whether to pursue intellectual property protection. The Director of the ORSP shall work with inventors to ensure this process proceeds at a reasonable pace.
5.1.6. Dispute of Inventorship. In the event an individual or individuals believe they are inventors or creators of technological, scholarly, or technical works, but have not been acknowledged or included on reporting forms, they may petition the Director of the ORSP to correct this omission. The ORSP will provide the individual with a Determination of Rights Form, which must be completed and returned with any relevant attachments.

1. The ORSP will notify the creators or inventors acknowledged on previously submitted disclosure forms of the dispute, send them a determination of rights form, and solicit their written comments. The previously acknowledged creators shall have thirty (30) days to complete the form and return it with all information they believe is relevant. The ORSP shall forward the Determination of Rights Form with attachments and the written comments of the Director of the ORSP or record of the Director of the ORSP to the IPRB.

2. The IPRB shall review the record and prepare a written determination within sixty (60) calendar days, a copy of which will be sent to the creator(s) and those disputing the original submission. If any creator or disputing party disagrees with the determination, that person may appeal the determination in the following manner:

   a) Within ten (10) business days of receipt of the determination, the creator may request of the chair of the IPRB, in writing, the opportunity to make an oral presentation before the IPC. The IPRB shall schedule the earliest possible date available for the oral presentation and shall notify all parties concerned. All parties shall submit to the ORSP any supplementary documentary materials to be entered into the record prior to the date established by the IPC for the oral presentation. The ORSP may then add responsive written comments to the record;

   b) The IPRB, according to Section (b) above shall consider only the record and the proceedings of the hearing in making a final determination. The IPC shall make its final determination in writing, to include its rationale, within twenty (20) business days of the hearing and communicate it to all parties within a week thereafter; and

   c) Any of the parties may appeal the IPRB’s final determination to the Director of the ORSP by written request within ten (10) business days of receiving notice of the IPRB’s final determination. The Director of the ORSP shall notify the IPC, and meet with or solicit written arguments on the matter from all interested persons and the university. Within sixty (60) calendar days of receiving the appeal, the Director of the ORSP shall make a final decision.

3. Nothing in this section is in derogation of the Regents' discretionary right of review. If any party disagrees with the final determination made by the Director of the ORSP or President, as the case may be, they may appeal to the Board of Regents.
4. All materials produced by any of the parties under this section shall be retained as a permanent university record. This record shall be made available by the ORSP and any party upon consent of the owners of the intellectual property.

5.1.7. Mediation of Disputes Among Creators or Inventors
It is the university's policy that the creators share equally in division of royalties and other commercialization income unless otherwise agreed to by them in writing. In order to assist creators, the IPC may, at its discretion, provide creators with informal mediation and an advisory opinion about such matters. The research office will provide a co-inventors agreement form upon request.

5.1.8. Miscellaneous
1. If the university cannot or decides not to proceed with a patent and/or license in a timely manner, the invention may be reassigned back to the inventor(s) to the extent possible under the terms of agreement supporting the work.

2. When an invention occurs as a result of a government-sponsored project, and the university cannot or chooses to refrain from ownership, the rights of the invention would then be released to the government. The inventor(s) may request rights to the invention from the federal agency sponsoring the award, provided a well-conceived and detailed plan for commercial development accompanies the request.

3. A request to waive this policy may be granted by the President or the President’s designee on a case-by-case basis. During the waiver process, the following factors and others factors deemed pertinent by the President shall be used in each case:

   - the university’s obligation to research sponsors;
   - more than incidental use of the university resources;
   - best interest of the university;
   - best interest of technology transfer; and
   - avoidance of conflict of interest.

5.1.9. Disallowances. The university resources, including facilities, equipment, personnel, or confidential information may not be used for pursuing personal inventions and gains except in nonincidental ways. The term “nonincidental ways” refers to the occasional or infrequent use of the university resources such as office equipment and supplies; computers, software, reference materials and other resources collected at other the university locations.

5.2. Patents

The following sections highlight the essential information related to patents and patenting procedures.
5.2.1. Patent Definition. In accordance with 35 U.S.C. § 102, a patent is a grant issued by the United States Government through the U.S. Patent and Trademark Office allowing an inventor the right to exclude others from making, offering to sell, or selling the invention throughout the United States or importing into the United States the subject matter that is within the scope of protection granted by the patent. The patent is valid only in the United States, its territories and possessions for a period of 20 years. After a patent application is submitted to the U.S. Patent and Trademark Office, it is reviewed to determine if the invention is novel, useful, and non-obvious. This review takes two to five years for completion. Other countries also grant similar patents. Not all patents are necessarily valuable or impervious to challenge. NMHU adheres to all US Patent and Trademark law and rules.

Based on Public Law 96-517 (H.R. 6933), the university legally holds all rights to patents and copyrights to inventions created in whole or part at the university. As a result, all personnel or visiting faculty engaged in research must follow the patent policies described in NMHU’s patent policies, which are summarized in the following Section 5.2.2. These policies apply to all faculty, staff, graduate students, visiting scholars, and post doctoral affiliates.

5.2.2. Procedures. All faculty, staff, student employees, graduate students and postdoctoral fellows must sign NMHU’s University Patent and Copyright Agreement Form. In addition, non-employees who participate or intend to participate in research projects at NMHU must also sign a patent and copyright agreement. A variation of this agreement has been created for individuals with prior obligations regarding the disclosure and assignment of intellectual property. See patent and copyright agreement for personnel at NMHU who have a prior existing and conflicting intellectual property agreement with another employer, which includes the following agreements:

- assigns the university all right, title, and interest to patentable inventions and ensures the university that personnel will follow proper procedures relating to patents and copyrights;
- allows inventions to be placed in the public domain if it does not violate the university’s terms of agreement with the sponsored projects;
- allows all copyrights to remain with the creator unless it is “work for hire” as defined under the Copyright Act, supported by a direct allocation of funds, commissioned by the university, or subject to contractual obligations; and
- obligates each personnel not to enter into any agreement creating copyright or patent obligations in conflict with the agreement.

In cases where personnel and non-employees (e.g., consultants or contractors) have a prior existing and conflicting patent agreement with another employer, the NMHU’s Patent and Copyright Agreement for Personnel With Prior Existing and Conflicting Agreements with Another Employer shall be completed. This alternative form includes the following agreements:
• ensures all personnel will disclose all potentially patentable inventions conceived or first reduced to practice in whole or in part at the university or in other university locations;
• assigns joint ownership to the university and to non-university employers of all rights, titles, and interest in patentable inventions or copyrights;
• allows inventions to be placed in the public domain if it does not violate the university’s terms of agreement with the non-university employer and/or sponsored project;
• allows all copyrights to remain with the creator unless it is “work for hire,” supported by a direct allocation of funds, is commissioned by the university, or is subject to contractual obligations;
• protects confidentiality or proprietary information defined by the non-university employer; and
• obligates each person not to enter into any agreement creating copyright or patent obligations in conflict with the agreement.

5.2.3. Loss of Patentability. An invention may lose its patentability if a formal application is not filed with the U.S. Patent Office within 12 months of disclosure in a publication or of any other action where details of the invention become generally available. Other circumstances that may impair patentability include lack of diligence and a record of interrupted, discontinued, and or abandoned activity during the completion of the invention by the inventor. A patent may not be accepted in a foreign country unless a patent application is filed before publication.

Ownership of the invention may be transferred from NMHU back to the inventor if the University does not apply for a patent within nine months of the date of disclosure. The invention can lose its patentability if a formal application is not filed within 12 months. A formal request is required from the inventor for reassignment nine months after disclosure if the NMHU has not made a positive determination on how to proceed with the patent. Within 30 days from the date of the request for reassignment, NMHU through the ORSP will determine whether to file or reassign rights in the invention back to the inventor. The inventor will have approximately 60 days to file an application if the University decides not to proceed.

5.2.4. Process for Filing and Obtaining a Patent. The inventor seeking to file a patent must first file an Invention Disclosure form (IDF) with the ORSP. The ORSP will review the IDF and meet with the inventor to obtain any additional information needed and to make a determination if a patent application is warranted.
• If the ORSP determines that a patent application should be filed then the university attorney will be contacted by the ORSP.
• The university attorney will meet with the inventor to learn more about the invention and to work with the inventor to determine whether a patent is appropriate.
• A provisional patent application may be filed with U.S. Patent and Trademark Office (USPTO) before filing a full U.S. patent application.
• Obtaining a patent can take two or more years and may involve filing clarifying documentation by the university attorney.

5.2.5. Patent Costs and Royalties. The distribution of royalties for patents is the same as for Licensing (see Section 5.4.1.), unless other agreements are reached between the University and the inventor(s). Patent costs are regulated by §200.448 Intellectual Property described below.

A. Allowable Patent Costs. (1) The following costs related to securing patents and copyrights are allowable:

   (i) Costs of preparing disclosures, reports, and other documents required by the Federal award, and of searching the art to the extent necessary to make such disclosures;
   (ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and
   (iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also §200.459 Professional service costs).

   According to §200.449, January 1, 2016 has been established as the date that the nonFederal entity may be reimbursed for financing costs associated with patents and computer software.

B. Unallowable Patents and Copyrights Activities
   (i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award;
   (ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

C. Royalties and Other Costs for Use of Patents and Copyrights. (1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:

   (i) The Federal Government already has a license or the right to free use of the patent or copyright.
   (ii) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.
   (iii) The patent or copyright is considered to be unenforceable.
   (iv) The patent or copyright is expired.

D. Royalty Reasonableness. Special care should be exercised in determining
reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the non-Federal entity.
(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.
(iii) Royalties paid under an agreement entered into after a Federal award is made to a non-Federal entity.

E. Formerly Owned Patents. In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed must not exceed the cost which would have been allowed had the non-Federal entity retained title thereto.

5.3. Copyrights

The purpose of the university’s policies and procedures for copyright materials is to foster free and creative expression and exchange of scholarly work, to protect the tradition of scholarly publications, and to clarify procedures for sharing income derived from copyright material produced at the university. To this end the following information clarifies the term of copyright and outlines agreement procedures to be followed by all faculty, staff, students, and individuals associated with the university.

5.3.1. Copyright Definition. A copyright is the control and ownership of the intellectual property in original works of authorship, which are subject to copyright law. The policy of the university honors all rights in copyright with the creator unless the work is a work for hire (and copyright vests in the university under the Copyright Law), is supported by a direct allocation of funds through the university for the pursuit of a specific project, is commissioned by the university, makes significant use of university resources or personnel, or is otherwise subject to contractual obligations.

According to the U.S. Copyright Office, protection subsists from the time the work is created in fixed form. The copyright in the work of authorship immediately becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright. In the case of works made for hire, the employer and not the employee is considered to be the author. Section 101 of the copyright law defines a “work made for hire” as:

- a contribution to a collective work
- a part of a motion picture or other audiovisual work
- a translation
- a supplementary work
- a compilation
- an instructional text
• a test
• answer material for a test
• an atlas

Authors of a joint work are considered co-owners of the copyright in the work, unless there is an agreement to the contrary. Copyright in each separate contribution to a periodical or other collective work is distinct from copyright in the collective work as a whole and vests initially with the author of the contribution.

In accord with academic tradition, except to the extent set forth in this policy, NMHU does not claim ownership to pedagogical, scholarly, or artistic works, regardless of their form of expression. Such works include those of students created in the course of their education, such as dissertations, papers and articles. The university claims no ownership of popular nonfiction, novels, textbooks, poems, musical compositions, unpatentable software, or other works of artistic imagination which are not institutional works and did not make significant use of university resources or the services of university non-faculty employees working within the scope of their employment.

The university shall retain ownership of works created as institutional works. Institutional works include works that are supported by a specific allocation of university funds or that are created at the direction of the university for a specific university purpose. Institutional works also include works whose authorship cannot be attributed to one or a discrete number of authors but rather result from simultaneous or sequential contributions over time by multiple faculty and students. For example, software tools developed and improved over time by multiple faculty and students where authorship is not appropriately attributed to a single or defined group of authors would constitute an institutional work. The mere fact that multiple individuals have contributed to the creation of a work shall not cause the work to constitute an institutional work.

5.3.2. Procedures. All faculty, staff, student employees, graduate students and non-employees who participate or intend to participate in university teaching and/or research scholarship projects and NMHU are required to sign the NMHU Patent and Copyright Agreement. Personnel or non-employees with a prior existing and conflicting copyright agreement with another employer, shall complete the NMHU Patent and Copyright Agreement for Personnel with Prior Agreements.

1. Copyright Statement. To protect the copyright, the following statement should be used. The name and address of the center or institute may be listed below the copyright in order to direct inquiries from any individuals and/or groups.

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Copyright (year) The Board of Regents at New Mexico Highlands University.
All Rights Reserved.
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No other institutional or departmental name is to be used in the copyright notice, although the name and address of the department to which readers can direct inquiries may be listed below the copyright notice. The date in the notice should be the year in
which the work is first published, i.e., distributed to the public or any sizable audience. Additionally, works may be registered with the U.S. Copyright Office using its official forms.

2. Works Of Non-Employees. Under the Copyright Act, works of non-employees such as consultants, independent contractors, etc., generally are owned by the creator and not by the university, unless there is a written agreement to the contrary. In such cases, the university shall retain ownership of such works and generally require a written agreement from non-employees that ownership of such works will be assigned to the university. Examples of works which the university may retain non-employees include:

- Reports by consultants or subcontractors;
- Computer software;
- Architectural or engineering drawings;
- Illustrations or designs; and
- Artistic works.

3. Videotaping And Related Classroom Technology. Courses taught and courseware developed for teaching at NMHU belongs to the university. Any courses, which are videotaped or recorded using any other media, are NMHU property, and may not be further distributed without permission from the appropriate academic dean. Blanket permission is provided for evanescent video or other copies for the use of students, or for other university purposes. Prior to videotaping, permission should be obtained from anyone who will appear in the final program (see Section 7: Research on Human Subjects).

4. Contractual Obligations Of The University. This copyright policy shall not be interpreted to limit the university's ability to meet its obligations for deliverables under any contract, grant, or other arrangement with third parties, including sponsored research agreements, license agreements and the like. Copyrightable works subject to sponsored research agreements or other contractual obligations of the University shall be owned by the university, so that the university may satisfy its contractual obligations.

5. Use Of University Resources. NMHU resources are to be used solely for university purposes and not for personal gain or personal commercial advantage, nor for any other non-university purposes. Therefore, if the creator of a copyrightable work makes significant use of the services of university non-faculty employees or university resources to create the work, he or she shall disclose the work to the ORSP and assign title to the university. Examples of non-significant use include ordinary use of desktop computers, university libraries and limited secretarial or administrative resources. Questions about what constitutes significant use should be directed to the appropriate school dean or the ORSP.

6. Reconveyance Of Copyright To Creator. When copyright is assigned to NMHU because of the provisions of this policy, the creator of the copyrighted material may
make a request to the ORSP that ownership be transferred back to the creator. Such a request can, at the discretion of the Director of the ORSP, be granted if it does not:
   a) violate any legal obligations of or to the university;
   b) limit appropriate university uses of the materials;
   c) create a real or potential conflict of interest for the creator; or
   d) otherwise conflict with university goals or principles.

7. **Determination Of Ownership And Policy In Unclear Cases.** Questions of ownership or other matters pertaining to materials covered by this policy shall be resolved by the ORSP (or designee) and in consultation with the Director of the ORSP and legal counsel.

### 5.4. Licensing Agreements

Creating a licensing agreement with faculty members, private organizations, and/or sponsored projects is under the authority of the university. Licensing ensures the most effective means of transferring the use of a patent and/or copyright invention for public use and benefit. A license also may be needed as an incentive to encourage a company or organization to further the development of a patent or copyright in terms of personnel and financial resources.

This policy permits such participation only in a manner that avoids conflict of interest, safeguards the mission of the university, and does not adversely affect the reputation of the university. An ad hoc committee comprised of the Director of the ORSP, the dean impacted by the licensing, and other faculty and staff assigned by the President, will be responsible for the evaluation and negotiation of licensing agreements with the particular agency and/or organization.

#### 5.4.1. Costs and Royalties

To provide incentives to an inventor, the school/college of the inventor, and the university, royalties from licensed inventions will be generally distributed as follows.

<table>
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<tr>
<th>Administrative Overhead</th>
<th>15% of gross royalty income followed by deductions for any assigned expenses or fees (e.g., filing fees)</th>
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</thead>
<tbody>
<tr>
<td>Inventor(s)</td>
<td>One third after administrative overhead</td>
</tr>
<tr>
<td>Inventor’s School/College</td>
<td>One third after administrative overhead</td>
</tr>
<tr>
<td>Inventor’s Department</td>
<td>One third after administrative overhead</td>
</tr>
</tbody>
</table>

In cases where the invention is created in whole or part at a University Independent Laboratory, Center or Institute, the following distribution is applicable.

Royalties, after administrative costs and other deductions, may be distributed to more than one school/college or department if multiple inventors are named in the copyright or patent. The distribution of royalties will be based on support of work defined by the inventors. In cases when disagreements arise over the distribution of royalties, the ORSP will make the final decision regarding distribution.
In instances when it is desirable to license an invention in exchange for equity, the university may approve such action. These equity exchanges must not pose a conflict of interest to the university, must safeguard the mission of the university, and must not adversely affect the reputation of the university. All equity arrangements must be approved by the ORSP.

The university shall be responsible for the cost of seeking patent, copyright, or any other form of intellectual property protection, and commercializing NMHU’s intellectual property. In the event royalties are represented by shares of stock or other intangible assets, these assets shall be held in the university’s name and managed by it. At the university’s discretion, such stock or other intangible assets may be divided prior to liquidation and distributed in the proportions described above in this section (5.4.1).

### 5.5. Confidentiality Agreements for Licenses and Patents

Occasionally, university personnel are requested or required to execute what are generically referred to as confidentiality agreements in order to: (1) have a potential or pending patent reviewed by a third party; or (2) gain access to a third party's facilities, proprietary information or both. When this occurs, the following procedures are required.

- When an agreement is between an outside entity and the university or a university investigator, **only** the Director of the ORSP is authorized to sign a confidentiality agreement (see Confidentiality Agreement Template). All agreements must be with the university, and not with the university researcher/employee as an individual, unless determined otherwise.

- Agreements are clearly enforceable and the university, as most companies, is extremely serious about protecting its confidential information. Once an agreement is signed the investigator(s) named in the agreement are bound by the secrecy provisions of the agreement and shall be able to use the information in scholarly activities at NMHU without permission from the third party. The same is true of agreements signed by a third party to review NMHU’s proprietary information.

- Propriety Information in this case means any information relating directly or indirectly to the creation or technology not generally known to the public, which is provided to a company or third party by NMHU or its representatives and conveyed in written, oral or visual from including, but not limited to scientific knowledge, know-how, processes, inventions, techniques, formulae, products, business operations, customer requirements, data, plans, samples, data, or other records and or software, and if provided orally, reduced to writing within 30 days of oral disclosure.

- Confidentiality agreements should be for a relatively short time period; three (3) years is typical; a confidentiality period of more than five (5) years should be resisted. Either party may terminate an agreement upon 30 days written notice.
and require the return of all proprietary information provided under the agreement.

- The university investigator(s) involved in a confidentiality agreement should take care to have a clear demarcation between the university-based project(s) and the project to which the confidentiality agreement applies. At a minimum, the confidentiality agreement should designate the full title of the project to which the agreement applies, and should contain a detailed description of the project.
- All disclosures should be marked confidential. The agreement should require the disclosing entity to identify any information that it deems to be confidential with a mark or legend such as "confidential" or "proprietary" at the time of disclosure. Any use of proprietary information by a NMHU investigator or third party must be specifically listed under “restrictions” in the Confidentiality Agreement Template.
- There are generally accepted exceptions to what may be accorded confidential treatment. These should be specifically listed in the confidentiality agreement. The following are typical of such standard exceptions. Information which:
  - is already known to the recipient or the public at the time of the disclosure;
  - becomes publicly known without the wrongful act or breach of the confidentiality agreement by the recipient; and,
  - is rightfully received by the recipient from a third party on a non-confidential basis.
- All agreements shall be governed and construed under the laws of the state of New Mexico. Any action arising out of an agreement shall be subject to the jurisdiction of the 1st Judicial State District Court in Santa Fe, NM, and the Federal District Court in Albuquerque, NM.

5.6. Authorship

Authorship is defined as an individual claiming authorship of a scholarly publication based on the following criteria:

- Substantial participation in conception and design of the study, or in analysis and interpretation of data;
- Substantial participation in the drafting of the manuscript or in the substantive editing of the manuscript;
- Final approval of the version of the manuscript to be published;
- Ability to explain and defend the study in public or scholarly settings.

The following general guidelines should also be used to maintain quality coauthorship of publications or dissemination of work produced as a result of research activity sponsored by the university:
• All authors at the outset of a project should establish senior authorship, preferably in a written memorandum of understanding. The senior author is generally the person who leads a study and makes a major contribution to the work. The memorandum should outline the work and a tentative order of authorship. The memorandum is then submitted to the Department Chair. As the project proceeds, it is the responsibility of the senior author to assure that the contributions of all authors are properly recognized.
• Inform all research team members of the scope and the anticipated publications and/or products of the project;
• As part of the mission of the university to promote student learning, maximize opportunities for student research team members to co-author; if student(s) contribute significantly to ideas and the research effort, co-authorship should be justified;
• Co-authors may refer to the research in a separate work of sole authorship if joint origin is prominently acknowledged and the opportunity for regular co-author publication is not preempted;
• As a matter of professional courtesy, co-authors should be consulted, reasonable requests be accommodated, and permission obtained for separate publications;
• All individuals involved in authorship have a shared responsibility for the published results and should have the opportunity to review all aspects of the report (e.g., review of literature, methodology, data analysis, and conclusions) during the writing process and before it is submitted for publication;
• All persons involved in a project should identify appropriate practices for maintaining data; and
• PIs/PDs and participating faculty are responsible for ensuring the overall soundness and validity of the publications of which they may appear as co-authors.

5.7. Other Research Property

In the following sections are additional policies associated with ownership and distribution of research property. These policies are subject to the University’s contractual obligations and are consistent with other policies affecting research property in Section 5.

5.7.1. Tangible Research Property (TRP). Tangible research property owned by the university is generally defined as discernible or corporeal items produced during the course of research projects at the university or by external sponsors. Examples of tangible research property include biological materials, equipment, computer databases and software, and prototype devices. Tangible research property is distinct from “intangible” or intellectual property such as inventions, patents, copyrights, and trademarks, which are subject to particular university policies and procedures set forth in this section.

To remain consistent with NMHU’s policy on Openness in Research and promote an
open exchange of TRP, it is the university’s policy to:

- encourage the open exchange of tangibly related research property;
- stimulate potential commercial value;
- promote the public use of university produced property; and
- protect the university and employees from liability claims arising from the use of such property.

5.7.2. Ownership of TRP. Ownership of TRP rests with the University unless subject to the ownership and other provisions of contracts and grants. The PI is responsible for controlling the development, storage, use, and distribution of tangible research property during the course of the project and is subject to university policies. While tangible research property may not be sold for profit unless licensing agreements include provision for royalty income, costs for distribution of materials may be recovered from the recipient with the income returned to the account that funds the expense.

5.7.3. Commercial Considerations. Because TRP may have potential commercial value as well as scientific value, the investigator may wish to make TRP broadly available for others' scientific use by means which do not diminish its value or inhibit its commercial development or public use. Although valid non-commercial reasons may exist for the temporary delay of TRP distribution outside the laboratory for others' scientific use (e.g., safety factors or the need to more fully characterize the TRP prior to distribution, etc.), scientific exchanges should not be inhibited due to potential commercial considerations.

5.7.4. Income From TRP

1. Recoverable Costs. TRP may not be sold for profit, although licensing agreements which include provision for royalty income may be negotiated for commercial use of the intangible property rights associated with the TRP. When distributing TRP to research colleagues outside the laboratory, costs of the raw materials and handling may be recovered from the recipient, with the income returned to the account which funded those costs.

2. Contractual Obligations. If any of the initial costs were funded from sponsored agreements, the ORSP should be advised on the contractual obligations regarding distribution of the TRP and disposition of the recovered costs. If any costs are charged for TRP distribution, adequate documentation must be maintained for audit purposes.

5.7.5. Purpose Of TRP Procedures. The following procedures for identification and distribution of TRP are designed to aid the traditional open distribution and exchange of TRP for research purposes, preserve the potential commercial value of TRP, assist the further development of TRP for public use, and protect the university and its employees from liability claims arising from the use of NMHU TRP by others.

1. Identification Of TRP

   A. Identification System. Each item of TRP should have an unambiguous
identification code and name sufficient to distinguish it from other similar items developed at NMHU or elsewhere. The ORSP should be consulted for assistance in developing appropriate identification systems and for information regarding use of existing university systems (e.g., Biological TRP Registry, Trademark Registry, etc.).

B. Ownership Marks. Where applicable (e.g., computer software), each item should also carry the name of the TRP owner and such other marks and legends as may be required to meet NMHU's contractual obligations and administrative needs, including notice of copyright, trademark, government rights, etc. Information regarding identification, marks, and legends required under research contracts and grants can be obtained from the ORSP.

C. Distribution Of TRP For Research Purposes

(1) Biological TRP
   (a) Transmittal Letter. Each distribution for non-commercial research purposes should be accompanied by a letter of transmittal which includes the following, or equivalent, wording:

   "For NMHU's records, please indicate your agreement: (1) to accept (insert Biological Registry No.) to be used only for non-clinical research by you in your research laboratory; and (2) to not distribute (insert Biological Registry No.) to any other individual or entity, by signing and returning a copy of this letter to me."

   (b) Precautionary Language. If there is a possibility of biohazard or other risk associated with the transport, storage or use of a particular TRP, or if the recipient is likely to use the TRP for clinical research, (the ORSP should be consulted for advice regarding appropriate precautionary language in the TRP distribution agreement).

(2) Software TRP. Distribution, for research purposes only, of computer software owned by NMHU may be made without restrictions if control of subsequent use by the PI is not desired. For example, a PI may wish recipients to follow a specific research protocol. Any such distribution is subject to the applicable contract or grant provisions and an agreement by the recipient that commercial development of the software is not to be undertaken.

   (a) Distribution Agreement. If software owned by NMHU has commercial value or if it is considered desirable to control subsequent use, distribution for research purposes must be coordinated with the ORSP and must be accompanied by an appropriate agreement with the recipient. The ORSP will arrange for trademark and copyright registration as needed. The ORSP will also provide wording for the distribution agreement as necessary to preserve commercial value and
provide coordination with existing or prospective commercial licensing activities. The Office will charge recipients only the cost of distribution. In addition to attending to any legal and other details, including mailing, etc., The ORSP also makes arrangements for collecting departmental costs associated with providing software for non-commercial use and returning these to the department.

(b) **Contractual Obligations.** When software results from sponsored research, the ORSP should be consulted regarding contractual obligations and regulations affecting ownership, disposition of various rights, and restrictions on the distribution and use of TRP and any associated income.

(c) **Other Forms of TRP.** Distribution of TRP other than biological products should normally follow these software TRP distribution procedures.

### D. Distribution of TRP for Commercial Purposes

1. **Distribution Agreement.** If TRP developed by NMHU as a result of research activities is to be distributed to outside users for commercial purposes, the distribution agreement must contain provisions negotiated by the ORSP covering the terms under which the property may be used, limits on the university's liability for the property or products derived therefrom, and disposition of any royalty income to NMHU from the licensing of intangible property rights associated with the use of the tangible property.

2. **Income Distribution.** Distribution of any TRP-related royalty income other than patent royalties will be similar to the patent royalty income distribution policy (see inventions, patents, and licensing, Section 5) except that the "inventor's share" will normally be distributed to a research account in the laboratory which produced the TRP (subject to any contractual obligations regarding distribution of income). Questions regarding distribution of any royalty income to individuals should be referred to the ORSP. Any distribution to individuals is subject to prior approval of the Director of the ORSP.

3. **Contractual Obligations.** If the TRP results from sponsored research, the ORSP should be consulted regarding contractual obligations and regulations affecting ownership, notices, acknowledgments, disposition of various rights, and restrictions on the distribution and use of the TRP and any associated income.

### 5.7.6. Trade and Service Marks

Trade and service marks are distinctive words or graphic symbols identifying the sources, product, producer, or distributor of goods or services. The University shall own trade or service marks relating to goods or services distributed by the University. Examples include names and symbols used in conjunction with computer programs or University activities and events. Consult the ORSP for information about registration, protection, and use of marks.
Trade or service marks relating to goods or services distributed by the university shall be owned by the university. Examples include names and symbols used in conjunction with computer programs or university activities and events. Consult the U.S. Patent and Trademark Office(pdf) or the Office Research and Sponsored Projects for information about registration, protection and use of marks.

5.7.7. Proprietary Information. Proprietary information arising out of university work (e.g., actual and proposed terms of research agreements, financial arrangements, or confidential business information) shall be owned by the university. "Trade secret" is a legal term referring to any information, whether or not copyrightable or patentable, which is not generally known or accessible, and which gives competitive advantage to its owner. Trade secrets are proprietary information.

NOTE: All research involving proprietary information owned by others is subject to the university's policy guidelines on Openness in Research in NMHU’s Research Handbook, Section 3.6

5.8. Export Controls

5.8.1. Definitions.
(a) "Export" means the sending or taking of controlled tangible items, software or information out of the United States in any manner, including to transfer ownership or control of controlled tangible items, software or information to a foreign person, or to disclose information about controlled items, software or information to a foreign government or foreign person. The controlled tangible item, software or information being sent or taken out of the United States is also referred to as an "export."

(b) “Deemed Export" means the term used by the U.S. Commerce Department to describe the situation where a foreign national on U.S. soil may be exposed to, or have access in any manner to, an export-controlled item or export-controlled software or information. In such cases, the U.S. Commerce Department must issue an export license or provide an exception to or exclusion from license requirements before any controlled tangible item, software or information in the U.S. on the Commerce Control List (CCL) may be exported or reexported.

(c) “Re-export" means the actual shipment or transmission of controlled tangible items, software or information from one foreign country to another foreign country. The export or re-export of controlled tangible items, software or information that will transit through a country or countries, or will be unloaded in a country or countries for reloading and shipment to a new country, or are intended for re-export to the new country, are deemed to be exports to the new country.

(d) "US Person/Foreign National" means a US Person is a citizen of the United States, a lawful permanent resident alien of the US (Green Card holder), or a refugee of someone
here as a protected political asylee or under amnesty. Organizations and entities incorporated in the US, such as universities, shall also be US Persons. The general rule is that US Persons are eligible to receive controlled items, software or information without first obtaining an export license from the appropriate agency unless a license exception or exclusion is available. A Foreign National is anyone who is not a US Person. A Foreign National also includes any foreign corporation, business association, partnership or any other entity or group that is not incorporated to do business in the US. Foreign Nationals may include international organizations, foreign governments and any agency or subdivision of foreign governments, such as consulates.

(e) "Fundamental Research" means the concept of 'fundamental research' established by National Security Decision Directive 189 (NSDD 189), which establishes a national policy with regard to how such research shall be treated for purposes of the various export control regimes. NSDD 189 defines fundamental research as basic and shared broadly within the scientific community. NSDD 189 provides that the conduct, products, and results of fundamental research are to proceed largely unfettered by deemed export restrictions. It also states that the government must determine - before releasing a research opportunity - whether the research should be classified or otherwise kept secret. Research that carries access, participation, or dissemination restrictions will not qualify as fundamental research for purposes of the export control regulations. Because export regulations expressly recognize that fundamental research is excluded from deemed export controls, no export license or other authorization is needed to involve Foreign Nationals in fundamental research activity at the University. However, such research may give rise to export issues if the primary research is to be conducted outside of the US or if it requires exposure of Foreign Nationals to proprietary or confidential export controlled information provided by third parties such as corporations, commercial vendors or government collaborators.

5.8.2. Compliance with Federal Regulations. NMHU further complies with all applicable export controls and definitions, as established by federal regulations, including:

**Commerce Department** - Export Administration Regulations (EAR) 15 CFR 700-799 - The U.S. Department of Commerce, Bureau of Industry and Security (BIS), has export jurisdiction over every thing in the United States, although BIS does not require a license for every export. BIS controls goods and information having both civilian and military uses by including them on the Commerce Control List, 15 CFR 774, also known as the "Dual Use List." BIS uses the term "technology" when referring to information about the goods on the Commerce Control List;

- **State Department** - International Traffic in Arms Regulations (ITAR) 22 CFR 120-130 - The U.S. Department of State, Directorate of Defense Trade Controls (DDTC), is responsible for items and information inherently military in design, purpose, or use. Referred to as "defense articles," such items are found on the U.S. Munitions List, 22 CFR 121. Spacecraft and satellites, even if not for military use, are on the munitions list, along with their associated systems and related equipment. Information related to defense articles is referred to as "technical data"; and
• **Treasury Department** - [Office of Foreign Assets Control](https://www.treasury.gov) (OFAC) CFR 500-599 - The U.S. Department of the Treasury oversees U.S. economic sanctions and embargoes through its Office of Foreign Assets Control (OFAC). Empowered by the Trading with the Enemy Act and the International Emergency Economic Powers Act, OFAC enforces trade, anti-terrorism, narcotics, human rights and other national security and foreign policy based sanctions prohibiting the provision of anything of value, either tangible or intangible, to sanctioned countries, organizations or individuals. The pertinent regulations provide OFAC with broad authority to block or interdict vaguely defined "prohibited transactions" involving restricted destinations or parties.

5.8.3. **Penalties.** The export control regulations summarized in this section each impose severe monetary and criminal penalties for failure to comply with their requirements. In the following is a detailed description of the penalties for export violations from various agencies.

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<td><strong>Willful Violations:</strong></td>
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<td>A fine of up to the greater of $1,000,000 or five times the value of the exports for each violation.</td>
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<td>A fine of up to $250,000 for each violation, or twice the value of the transaction, whichever is greater.</td>
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<td>A fine of up to $500,000 for each violation.</td>
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<td>A fine of up to $1,000,000 or imprisonment for up to twenty years, or both, for each violation.</td>
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<td>For any violation of the OFAC regulations, seizure and forfeiture of goods may result.</td>
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Additional Civil Administrative Sanctions:
The imposition of a fine of up to $12,000 for each violation, except that the fine for violations

For any violation of the IEEPA, any or all of the following may be imposed:

For any violation of the ITAR either or both of the following may be imposed:

For any violation of the OFAC regulations, seizure and forfeiture of goods may result.
5.8.4. Export Licenses. In the shipment of certain tangible items, software or information outside the U.S., NMHU has the responsibility to either:

1. Obtain an export license;

2. Document an express determination that an exception to export licensing requirements applies; or

3. Document an express determination that no license is needed.

Of primary concern are transactions involving proprietary or confidential export-controlled information provided to NMHU researcher by third parties, such as corporate vendors, subcontractors, or government collaborators. These may generate disclosure restrictions that may only be acceptable if they fall within the narrow exceptions provided by NMHU’s policy on Openness in Research Policy and qualify for treatment under an exemption (ITAR) or license exception (EAR) in the export control regulations (see Accepting A Third Party’s Controlled Items or Data in Section 5.7.6.).

5.8.5. Recordkeeping Requirements. In all export cases, the following related recordkeeping requirements must be observed:

1. Export control regulations requirements of specific items;

2. NMHU’s required recordkeeping of its commitment to, and compliance with, export control regulation;

3. Departments or programs must keep soft or hard copies of all export documentation, including financial records, shipping documentation (commercial invoices, shipper's export declarations), and appropriate NMHU certifications in their research project files for a period of five years from the date of the export, reexport or controlled deemed export; and
4. Original NMHU certification must be retained in the ORSP. For assistance in determining which certifications apply to a proposed shipment or transfer, contact the ORSP.

5.8.6. Export Licenses for Overseas Shipments. While the U.S. Commerce Department has export jurisdiction over almost all goods and all "technology" in the United States, this does not mean that a license must be obtained before any item or piece of information can be shipped. To determine the necessity for an export license from a relevant federal agency for sending tangible items or transferring or transmitting software code or information outside the United States, the researcher needs to consider:

1. Whether the software code or information is proprietary or disclosure-restricted and thus possibly export controlled, or whether it resulted from fundamental research to which export controls do not apply;

2. The description of the tangible item, software or information;

3. The technical characteristics and specifications of the item, software or information;

4. Its intended end-use and end-user; and

5. Its destination.

All tangible items, software code and information not on a U.S. export control list may be shipped or transmitted to any country, individual or entity that is not sanctioned, embargoed or otherwise restricted for export. Such items, code and information may be exported under "No License Required" (NLR) provisions. Questions about the applicability of NLR to a proposed export should be directed to the ORSP.

Certain overseas shipments or transmissions being handled on a "no license required" basis will require an explanation and justification for that classification. The ORSP offers Certification Templates for such justifications, and other required Export Certifications. Original copies of both should be retained in the ORSP.

Note: Current federal law requires all persons who ship (this includes the actual packing of the material and filling out of assorted forms) chemicals, biologicals or other dangerous materials to be trained and certified prior to shipping. NMHU currently does not offer training in this area, but companies such as Federal Express do offer this training. In addition, the DOT currently mandates that shippers retain a copy of each dangerous material shipping paper, or an electronic image, for a period of 375 days after the date of shipping. Shipping paper means shipping order, bill of lading, manifest or other documents containing required information.

Other useful links related to shipping include: IATA – for Declaration forms, QICSTAT – for useful information, Saf-T-Pak Inc. – for information and supplies,
FedEx – for information and supplies, All-Pack – for supplies.

5.8.7. Accepting Third Party Controlled Items or Data. Based on NMHU’s policy on openness in research and by the National Security Decision Directive 189 (NSDD 189), the conduct and results of “fundamental research” may proceed openly and be shared freely with foreign nationals in the United States without concern for deemed export restrictions. However, export-controlled items, software code or information provided by a third party may not be openly shared with certain foreign nationals, even though those individuals may be important contributors to the performance of the fundamental research. Proprietary or restricted information required for the development, production or use of export-controlled equipment is itself export-controlled and carries with it export control requirements that must be honored by the researcher who agrees to be a recipient of such information.

Before determining to accept such information, a researcher must review the conditions of the university's policy in Section 3.6. Openness in Research and contact the ORSP for guidance on certifying the handling and use of third party export control information. If the researcher plans to share export-controlled information with others, he or she must also notify the ORSP before it is shared in order to ensure proper determination of export control eligibility. If the proposed recipient is determined to be a foreign national, and eligible to receive the export-controlled information, the primary researcher must document the available license exclusion or license exception (see Section 5.7.4. Recordkeeping Requirements).
Section 6: Environmental Health and Safety

This section describes the policies and procedures related to biohazardous agents and hazardous chemicals in the workplace or laboratory as documented in Working Safely at NMHU, NMHU Chemical Hygiene Plan for Laboratories and Studios, and Hazardous Communication Program. The University is committed to the goals of the safety and health of all personnel and students involved with hazardous material. Any individual involved with research who willfully or negligently violates university, federal or state regulations governing the use of biohazards may be suspended or have her or his research revoked pending a review by the Environmental Health and Safety Committee and the Office of Research and Sponsored Projects (ORSP).

6.1. University Commitment

6.1.1. NMHU Commitment. The health and safety of all individuals on campus and at affiliated locations are central to the university. To comply with all State and Federal environmental, health, and safety laws and regulations related to research, the university is committed to making all reasonable efforts to carry out the following functions.

1. Review Federal and State legislation regarding environmental and health and safety policies and regulations;

2. Provide a healthy and safe workplace for faculty, staff, students, and visiting scholars;

3. Offer preventative training and emergency materials to ensure the health and safety of faculty, staff, students, and visiting scholars;

4. Place responsibility for compliance of health and safety policies and procedures at each level of management including:
   - supervisors (e.g., principal investigators, laboratory directors, faculty or class instructors) in the workplace, laboratory or classroom;
   - academic supervisors (e.g., deans, chairpersons, independent laboratory directors;
   - administrative supervisors (e.g., vice presidents); and
   - final responsibility regarding health and safety policies rests with the President.

5. Offer guidance and technical assistance to supervisors and managers in identifying, evaluating, and correcting health and safety hazards in laboratories and studios;
5. Provide emergency guidelines and services for every laboratory and studio on how to respond to incidents involving hazardous materials including evacuation and assembly procedures, reporting and communicating practices, training and drills (see Working Safely at NMHU and Chemical Hygiene Plan for Laboratories and Studios);

7. Inform the community of any environmental hazards arising from operations at the university;

8. Oversee hazardous waste disposal services;

9. Determine when danger has passed, mitigated, or rescinded due to a health or safety shutdown;

10. Investigate complaints or emergencies related to environment and health and safety issues at the main campus and affiliated NMHU laboratory and studio sites; and

11. Evaluate and monitor the health of university faculty, staff, and students who are exposed to identified hazardous materials and situations.

The university delegates the responsibility of these practices to the ORSP, which will work with the Research Committee and Environmental Health and Safety Committee in carrying out these services.

6.1.2. Definition of Laboratory or Studios. Laboratory or studio use of hazardous chemicals means handling or use of such chemicals in which all of the following conditions are met:

- The handling or use of chemicals involves containers which can easily and safely manipulated by one person;
- Multiple chemical procedures or chemical substances are used; and
- Protective practices and equipment are available and in common use to minimize potential for employee or student exposures to hazardous chemicals.

This definition covers employees (including student employees, technicians, supervisors, researchers, and artists) who use chemicals in teaching and research or creative endeavors at NMHU. Certain nontraditional laboratory or studio settings may be included at the option of individual departments within the university. Also, it is the policy of the university that laboratory or studio students, while not legally covered under this standard, will be given training commensurate with the level of hazard associated with their laboratory or studio work.

Where the use of hazardous chemicals provides no potential for employee exposure, such as in procedures utilizing chemically impregnated test media and commercially prepared test kits, a chemical hygiene plan is not required.
6.2. Environmental Health and Safety (EHS) Committee

6.2.1. Membership.

Content Under Revision. For more information contact ORSP.

6.2.2. Membership Terms. The terms of membership for faculty shall be for three years and for all other members one year, effective October 1 of the year of appointment and ending September 30 of the year in which the term expires.

6.2.3. EHS Responsibilities. EHS shall (1) advise the President on the adequacy of NMHU's health and safety programs, policies and organization; (2) recommend needs, priorities and strategies to promote good health, safety and environmental practices on campus that are in alignment with the university’s mission, vision and strategic goals and comply with all state and federal guidelines; (3) recommend to the President University-wide policies with respect to those health and safety matters which are not addressed by the existing administrative panels; and

Content Under Revision. For more information contact ORSP.

6.3. Responsibility of Building Supervisors, Laboratory or Studio Supervisors

6.3.1. Building Supervisor. According to NMHU’s Chemical Hygiene Plan for Laboratories and Studios, the building supervisor has responsibility for the safety and upkeep of instructional and laboratory building spaces assigned to them. The building supervisor, in collaboration with laboratory and studio supervisors, ensures that all employees and students follow NMHU environmental health and chemical safety policies within the building; including the chemical hygiene practices and documentation for laboratories and studios that utilize chemicals.

Specifically, the building supervisor shall:
- Ensure that appropriate training is being provided to employees and students;
- Ensure that regulatory compliance practices are being adhered to in the building;
- Oversee pertinent documentation on chemical hygiene, make sure it is up-to-date and followed; and
- Perform periodic inspections.

6.3.2. Laboratory or Studio Supervisors. The laboratory or studio supervisor is the faculty member who is the sole or primary faculty member responsible for operations in the studio or laboratory space(s). The laboratory or studio supervisor has ultimate responsibility for chemical hygiene throughout their workspaces. The laboratory or studio supervisor supports the chemical hygiene efforts of laboratory or studio workers, with the assistance of the NMHU Environmental Health and Safety Committee.

Specifically, the lab or studio supervisor shall:
• Develop and implement appropriate chemical hygiene policies and practices specific to the operations of the workspaces they are responsible for;
• Perform regular, formal chemical hygiene inspections, including inspections of emergency equipment. The lab or studio supervisor will set the frequency of these with concurrence of the building supervisor. Weekly housekeeping and monthly equipment inspections are strongly urged, particularly where there is a lot of workspace use by undergraduate or graduate students;
• Develop standard operating procedures specific to tasks in their lab or studio operations;
• Determine the proper level and type of personal protective equipment for operations;
• Ensure that appropriate training has been provided to employees and students in the labs or studios, and, that the training has been documented;
• Maintain a current knowledge of the legal requirements of hazardous and regulated materials in their workspaces; and
• Review and improve laboratory or studio Chemical Hygiene Plan on an annual basis.

6.4. Fire Emergency Action and Evacuation Procedures

This section is an expansion of the current procedures on emergency responses currently provided in the Chemical Hygiene Plan and the Hazardous Communication Program. The following procedures cited from the University of New Mexico (UNM) Safety and Risk Services Manual, include requirements for general and specific fire evacuation plans. Similar to UNM, these plans are designed to protect NMHU employees, students, visitors and contractors from the hazards associated with a fire-related emergency which may occur on NMHU property.

6.4.1. Definitions

Area of Refuge. A specified room, area or stairway, which has been designed to withstand the passage of smoke or fire for a required time period. Such a room should have a two-way communication device to call for help.

Fire Evacuation Plan. A written plan, specific to the facility which provides guidelines and requirements for the safe evacuation of all occupants and reporting of an emergency situation.

Fire-Related Emergency. Any unusual situation which may cause an immediate fire or the hazardous products of fire, which in turn will create an unsafe environment. Such examples of a fire emergency are:
• The smell of smoke (regardless of how small an amount)
• The sight of smoke (regardless of how small an amount)
• The smell of gas or other hazardous chemical
• Electrical equipment which is sparking
A fire, REGARDLESS OF HOW SMALL, EVEN IF IT HAS ALREADY BEEN EXTINGUISHED

Evacuation Diagram. A pictorial drawing of the building layout, showing the closest evacuation route from any point in the building.

Fire Alarm Pull Station. A device, normally placed at or near the exits, that when activated will sound a general alarm throughout the building. This alarm signifies that all occupants must leave the building via the most direct and safe route.

6.4.2. Fire Evacuation Plan Requirements. The following requirements shall be adhered to across the NMHU campus. Note: When in doubt of your safety or the safety of others, evacuate and report the emergency.

A. Each facility shall have a written evacuation plan. This plan will be available to all staff, employees, contractors, students etc. The plan shall define the procedures to take in an emergency. Dormitories, residential student housing and fraternities shall, in addition to the written plan, develop and maintain a pictorial fire evacuation plan posted in conspicuous areas within each residents living/sleeping area. The plan shall be posted on the inside of the door to each living area, dorm room and common areas. The plan shall not be posted higher than 5 ½ feet from the bottom of the door.

B. Each full-time and part-time individual who works at the facility shall be trained on the plan when they are first hired and periodically thereafter (at least once per year and more often as deemed necessary by the hazards associated with the building). Training will include evacuation routes, location and proper use of fire extinguishers and fire alarm pull stations, procedures for evacuation of students, patrons, patients, etc., and fire reporting procedures and special operational procedures needed to shut down, secure or make safe, certain critical equipment.

C. The plan will include a pictorial diagram of the facility (if required, as noted in paragraph one) to show the routes to be taken from any point in the facility. This should be done by highlighting routes with dotted lines, color coded lines, etc., which terminate at the nearest exit. Two (2) evacuation routes must be shown for any area in the facility.

D. The plan will state that employees and staff are responsible for evacuation of the general public. Procedures will specify responsibilities for employees when dealing with evacuation of handicapped or other persons with special needs.

E. The plan will include the location of fire extinguishers. Each staff member should know the location of the two (2) nearest extinguishers in relation to their work area.

F. The plan will state the procedures for responding to and reporting a fire (see section D below). In most cases, the plan will be general enough to cover all concerns. Where there are special hazards, the plan will include the appropriate procedures specific to each hazard.
G. The plan will be reviewed on an annual basis to update or remove any item which may require modification due to changes in occupancy, construction, use of the space, or other changes which would invalidate the plan.

6.4.3. General Procedures. All situations which may cause a fire will be considered an emergency. This includes any fire which has already been extinguished, regardless of the size or nature of the fire. When a fire-related emergency is discovered, the following actions must be taken:

A. Rescue, Alert, Contain and Extinguish (R.A.C.E.) When noticing a fire-related emergency, be it the sight or smell of smoke, any electrical equipment sparking, or the assumption that there may be a fire-related emergency, the individual noting the emergency must evacuate the immediate area and initiate the following procedure(s). A method of remembering the procedure of responding to a fire is the use of the acronym **R. A. C. E.** Use this acronym for general fire response and evacuation procedures. This acronym can be used as a training aid for faculty, staff and students. The RACE poster may also be displayed (see Attachment A) in conspicuous areas of the building as a reminder of safety procedures.

**Rescue** people from the immediate area if trained and safe to do so. NOTE- This part of the acronym is to be used ONLY in health care settings by trained staff personnel.

**Alert** all people in the immediate area, pull the fire alarm (if available), and dial 9-911 to report the smoke or fire. Other emergency contacts include:

| NMHU Campus Security (24 hours): 5555 (on campus) or 454-3378 (off campus) |
| Campus Safety Officer: 426-2059 |
| Chemical/Biological Hygiene Safety Officer : 426-2035 |
| Poison Control Center: 9-1-800-222-1222 |
| In the event of a life threatening illness or injury dial 9-911 and request an ambulance. |

- The individual noting the emergency, or someone designated to do so, will activate the nearest fire alarm pull station. (Should the alarm not function, a verbal evacuation procedure must be activated. This is commonly done via a public address system or by calling out "FIRE, FIRE, FIRE!").
- The individual noting the emergency, or someone designated to do so, will call for emergency responders. NOTE: The call must be made from a safe location.
- The person calling must inform the dispatcher of the building number, name and/or street address, if known. Additional information should include:
  - Type of emergency (smoke, fire, electrical arcing, vehicle accident, smell of gas, etc.).
  - Location of the emergency within or near the facility.
  - The extent of the emergency (one room, a vehicle, the first floor, etc).
  - Whether or not the building is being, or has been, evacuated.
If there are any known persons who cannot evacuate on their own for whatever reason.
- If the fire is spreading, contained or if it has been extinguished.
- If the fire alarms are sounding or if the sprinkler system has activated.

Any other notable information that would help emergency responders, such as:
- Color of smoke,
- What started the fire, if known,
- Any known injuries,
- Any suspicious people or objects in the area of the emergency, or
- Any other information which you feel would be helpful.

An individual who is knowledgeable of the situation should be designated to stand outside and advise the first emergency responder of the location and current situation regarding the emergency.

**Contain** Close all doors to contain the fire and smoke. NOTE- Contain may also mean shutting off gas valves or electrical equipment to contain or slow the fire spread if it is safe to do so.

- When evacuating, it is best to close all doors on your way out. Do not lock them except under security-required conditions. The fire department may have to forcibly open the door to check for fire spread. Closing doors will aid in containing the fire to a smaller area.
- Turn off any gas, oxygen or other valve which may control a hazardous substance.
- Secure all fire doors leading to rooms with high value items.
- Remove or shut down any experiment which may be affected by smoke or fire.

**Extinguish** small fires. DO NOT ATTEMPT TO EXTINGUISH LARGE FIRES. If necessary evacuate the building/area. NOTE- The phrase "if necessary", relates to the safety of the person who is attempting extinguishment of a fire. It is assumed that at this point the building occupants have been alerted and are evacuating. If the fire becomes too large to continue extinguishment or it becomes too dangerous to stay in the area, evacuate the building with the rest of the occupants.

- If it is safe to do so without personal injury and the fire is small enough, attempt to extinguish the fire with the nearest appropriate type of fire extinguisher. It is HIGHLY recommended that a "buddy system" be used when fighting fires. If any of the following conditions exist, DO NOT ATTEMPT TO FIGHT THE FIRE:
  - If the fire is too large for an extinguisher to handle (this is a judgment call).
  - If the heat of the fire is such that you cannot get close enough to use the extinguisher safely without inhaling dangerous levels of smoke.
• If there is not an emergency escape route available. Do not allow the fire to get between you and your escape route.

A method of remembering the procedures is the use of the acronym **P.A.S.S.** Use this acronym for the use of fire extinguishers.

**Pull** the pin from the extinguisher handle. Twist the pin to break the plastic seal and pull the pin out. NOTE- The extinguisher will not operate with the pin in the handle. The pin is used to keep the extinguisher from being accidentally discharged.

**Aim** at the base of the fire. NOTE- Point the nozzle towards the base of the fire. Discharging agent at the flames in the air seldom extinguishes the material on fire. When you are not sure where this is, aim at the most intense part of the flames.

**Squeeze** the discharge handle to release the agent. NOTE- Short bursts of agent can be used to extinguish small fires. Short bursts, rather than discharging the entire extinguisher for a small fire can prevent the clean up of excess agent afterwards.

**Sweep** from side to side. NOTE- It is important to sweep the agent across the base of the fire to insure proper agent distribution until the fire is out. Discharging agent without sweeping it across the fire can in some cases actually spread the fire.

• Everyone should be trained in the use of extinguishers at least annually.
• Always remember to stand at least 5-8 feet back from the fire before discharging an extinguisher.
• Fight the fire only as long as it is safe to do so.

A flyer summarizing both R.A.C.E. and P.A.S.S. is available.

**B. Additional procedures** to follow in an emergency are:

(1) When the building has been evacuated, do not allow anyone to re-enter until directed by the responding emergency personnel. The only agencies authorized to allow re-entry is the Senior Fire Officer, Campus Police or an authorized representative of Safety, Health and Environmental Affairs.

(2) Plans should be developed and modified as necessary to include the shut down or securing of any critical equipment, experiments, cash drawers, high value items, etc. The plan shall state that this may be done ONLY in cases where time and safety permits. Such procedures include, but are not limited to:

Securing all cash drawers, either by locking them or taking the drawer with you and having at least one other individual with you during the evacuation for security is recommended. Notify the first Campus Police Officer to arrive on the scene that you have high value items. This does not include personal items such as purses, jewelry, etc.
(3) **DO NOT:**
- Spend time collecting papers or personal items or wait for others who are doing so.
- Go back into the building once you have evacuated because you forgot something.
- Try to evacuate through smoke or fire. Use a second exit or an area of refuge until assistance.

(4) Develop a location for all occupants to meet outside. This area should be away from the building, not in the path of emergency vehicles and not blocking access to emergency equipment. When possible, take a count of all persons known to be in the building. Report any people missing to the first arriving emergency responder.

**C. Procedures for Special Concern Areas.** All procedures listed in Section 6.4.3 (A and B) above apply, plus any of the following, if applicable. This section is directed primarily at those facilities which have significant hazards specific to their operation. Coordination with SHEA is highly encouraged in these facilities.

(1) **Laboratories.** It should be noted that chemical handling and spill response are regulated by the specific programs in the SHEA Manual. This section deals specifically with chemicals when involved in a fire-related emergency. Of course, a combined spill and fire would entail a more serious hazard than either on its own.

   a. Procedures for the special handling of chemical spills must be developed with the understanding that any spill determined to be more than "simple" should be handled by the Albuquerque Fire Department's Hazardous Materials Response Team in accordance with SHEA's Chemical Spill Response Program (see section 4.02 in the SHEA manual).
   b. Spill response must be handled only by properly equipped and trained personnel to the appropriate level by SHEA or by an approved agency.
   c. All persons (instructors, staff, student, custodial, contractors, etc.) who may work in or around or may frequent a laboratory, must be briefed on the spill response procedures for that laboratory.
   d. A fire-related emergency (within a lab or in an adjacent area) will require the immediate shut down of all gases, chemical experiments or other hazardous operations. (EXCEPTION: A hazardous operation in which an immediate shutdown outside of normal procedures will cause an additional hazardous situation. Also, any operation/experiment in which shutting down will cause severe adverse effects/results to the experiment. Special procedures must be developed for securing the area/room. Where approved by SHEA, Fire Guards may be posted.)
   e. Fire Guards must understand that when fire or smoke conditions impinge on their safety to the extent they cannot control the situation, they must evacuate immediately.
   f. Procedures will require that someone take note of the Fire Guard(s) and their
location(s) and report this information to the first emergency responder. 
g. Special procedures should be developed for the handling and/or evacuation of 
laboratory animals. This is to be initiated only if there is no immediate danger 
to the safety of humans.

(2) Medical Facilities. Procedures for medical facilities are detailed in the National 
Fire Protection Association Standard 99, Standard for Health Care Facilities. All 
procedures in Section D of this program apply, in addition to and with the exceptions 
noted below:

a. In the case of medical facilities, evacuation to another level or behind fire/smoke 
rated barriers is given special consideration. The plans must reflect these 
specific areas where they apply.
b. Special precautions must be taken for patients who cannot be readily evacuated. 
Such patients include those on respirators, bed-ridden, persons in operating 
rooms and patients in therapy or treatment in which they cannot be immediately 
moved without adverse affects.
c. All non-essential personnel will immediately evacuate the facility.
d. Hospital staff will develop a procedure (such as a fire brigade) which calls for 
medical personnel, trained in special evacuation techniques and use of fire 
extinguishers, to stand by outside patient rooms, treatment or operating rooms, 
or other strategic areas as Fire Guards.
e. Fire guards will standby while other trained staff members prepare patients for 
possible evacuation.
f. At the first sign that smoke, flame or toxic gases present a danger, the brigade 
members will IMMEDIATELY initiate evacuation of the patients.

(3) Automotive and Parking Garages
a. Standard evacuation procedures for staff and patrons apply.
b. Evacuation procedures for vehicles must be developed and all personnel must be 
trained.
c. Evacuation of vehicles from automotive areas will be permitted ONLY if time 
and safety permit. Vehicles will not be moved through smoke or flame under 
any circumstances.
d. Vehicles on lifts should be lowered if safe and possible to do so.
e. Welding operations should be stopped and all valves shut off.
f. Fuel dispensing systems must be shut off via the emergency shut off switch 
regardless of the fire location.
g. Evacuation of vehicles in parking structures is not recommended due to the lack 
of control by the staff over any patrons in the structure. A panicky removal of 
vehicles could cause additional hazardous situations, slow the evacuation of 
people, cause bottle necking of the exits and prevent quick entry by fire 
department personnel.
h. Parking structure staff should concentrate on evacuation of patrons on foot and 
direct the fire department to the appropriate level and area of the emergency.
(4) Residential Dormitories, Family Housing Units and Fraternity Houses. All procedures in Section D apply. Additionally, special evacuation procedures listed below must be developed:

a. Each dormitory, housing unit and fraternity must develop an evacuation plan which requires the positive notification of each resident and visitor. This plan includes staff and/or residents who are designated to notify each room by knocking on the doors and calling out "FIRE, FIRE, FIRE!" This is to ensure that sleeping persons are awakened. This is done ONLY when safety and time permit. These persons are not expected to enter a smoke-filled corridor or housing unit to attempt evacuation.

b. A designated individual or number of individuals should ensure that all evacuees report to a designated location to ensure an accounting of all known residents. Such duties would fall upon Residential Advisors, fraternity presidents or house managers, Housing Maintenance, or in the case of married student housing, an adult member of the family.

c. Due to the rapid spread of fire and smoke traditionally related to this type of occupancy, a selective evacuation is not permitted. The entire dormitory, fraternity house or connected housing group must be evacuated regardless of the size of fire.

(5) Public Assembly Buildings. This section applies to theaters, sports arenas, gymnasiuums, classrooms or any facility used for a public or private function of 50 people or more. The procedures in Section D apply. Additionally, the following special considerations are required.

a. Special procedures must be developed to evacuate patrons of public events quickly with minimum panic. In certain situations, an automatic evacuation delay system may be incorporated into the fire alarm panel. This must be approved by SHEA. The system must incorporate an alarm system which is constantly manned and provides a silent warning delay of no more than two (2) minutes. This is required for crowds of more than 1,000 patrons.

b. The procedures must include staff personnel who are trained in evacuation of large crowds. The Life Safety Code requires a provision of one (1) crowd manager for every 250 patrons. The procedures must be approved by SHEA and all staff, including volunteers, must be trained on these procedures.

c. Delay of evacuation will be permitted ONLY if the situation can be quickly brought under control and evacuation could cause an additional and unnecessary hazard. Delay of evacuation WILL NOT BE PERMITTED when used so as to not interrupt a performance or game, if a clear hazard to the patrons exists.

d. Provisions for the mobility impaired must be included in the written plan. The evacuation of able bodied persons must not interfere with mobility impaired patrons. Equally important, the evacuation of mobility impaired patrons must not interfere with the normal flow of traffic. All patrons must have equal access to the exits.

(6) Child Care Centers. This section pertains to any facility used either permanently
or temporarily for the purpose of providing short or long-term care for children, regardless of the number of children cared for. The procedures in Section D apply. Additionally, the following special considerations are required.

a. At no time during the care provided will children be left without supervision by an adult, trained in evacuation procedures.

b. An appropriate number of adults will be on hand at all times to ensure a safe evacuation of the children. It is recommended that this number be one adult for every 15 children over the age of 6 years, one adult for every 10 children between the ages of 3-5 years, one adult for every 5 infants from newborn to age 2.

c. Special carrying devices or evacuation cribs will be on hand and the staff trained in the proper and safe method of transferring and evacuating all children to the evacuation cribs or carrying devices.

d. The evacuation plan will include notification of all parents (from a safe phone).

e. The evacuation plan will include transferring the children to an alternate building location in case of inclement weather.

f. The evacuation plan will ensure that children are not evacuated into the parking lot due to possible injuries incurred from emergency response vehicles arriving at the scene.

D. Special Functions. Any special function not covered above will be evaluated separately, and a specific Fire Evacuation and Safety Plan will be prepared for that function. The plan for special functions will be approved for that function only. It will be re-evaluated as necessary should the function occur on another occasion.

6.5. Major Procedures of Chemical Hygiene Plan

This section summarizes the major operations and procedures detailed in NMHU’s Chemical Hygiene Plan for Laboratories and Studios.

A. Training Requirements and Responsibilities It is essential that laboratory and studio employees have access to information on the hazards of chemicals and procedures for working safely in a laboratory or studio. Supervisors must ensure that laboratory and studio employees are informed about, and, have access to the following information sources:

- The contents of the Occupational Safety and Health Administration (OSHA) laboratory standard (see Occupational Exposure to Hazardous Chemicals in Laboratories and appendices);
- The NMHU Chemical Hygiene Plan and local laboratory or studio Standard Operating Procedures (SOPs);
- OSHA regulated substances (see Permissible Exposure Limits (PELs); and Limits for Air Contaminants
- Material Safety Data Sheets (MSDSs) for laboratory and studio chemicals.
Each laboratory supervisor is responsible for ensuring that laboratory employees are provided with training about the hazards of chemicals present in their laboratory work area, and methods to control exposure to those chemicals. Each employee shall receive training at the time of her or his initial assignment to the laboratory, prior to assignments involving new exposure situations, and at a regular frequency.

Training is available in the form of literature that describes proper lab practices and group and individual training, conducted by lab or studio personnel, or EHS Committee staff. Employee training programs shall include, at a minimum, the following subjects:

1. Methods of detecting the presence of hazardous chemicals (observation, signage and labeling, odor, real-time monitoring, air sampling, etc.);
2. Symptoms associated with exposure to hazardous chemicals;
3. Good laboratory or studio practice, including general techniques designed to reduce personal exposure and to control physical hazards, as well as specific protective mechanisms and warning systems used in individual laboratories or studios;
4. Emergency response actions appropriate to individual laboratories or studios;
5. Applicable details of the departmental Chemical Hygiene Plan, including general and laboratory- or studio-specific standard operating procedures; and
6. An introduction to hazardous waste management procedures at NMHU.

B. Implementation of Control Measures. Laboratory or studio workers must not be exposed to substances in excess of the permissible exposure limits (PELs) specified in OSHA rule 29 CFR 1910 Subpart Z (Toxic and Hazardous Substances), or, Threshold Limit Values (TLVs) set by the American Conference of Governmental Industrial Hygienists (ACGIH). Additional controls measures described in NMHU’s Chemical Hygiene Plan for Laboratories and Studios include:

- monitoring of regulated substance in the work place;
- detailed information on professional judgment and air sampling; and
- specific guidance for use and maintenance of the following items:
  - fume hoods;
  - safety shields or containment device; and
  - personal protective equipment.

C. Management of Engineering Controls. The engineering controls installed in the laboratory are intended to minimize employee exposure to chemical and physical hazards in the workplace. These controls must be maintained in proper working order for this goal to be realized.

No modification of engineering controls will occur unless testing of the modification indicates that worker protection will continue to be adequate. Improper function of engineering controls must be reported to the laboratory or studio supervisor immediately. The system shall be taken out of service until proper repairs have been executed. A list of procedures for the use of the following items is detailed in NMHU’s
Chemical Hygiene Plan for Laboratories and Studios.
- Local exhaust ventilation
- Fume hoods
- Chemical storage Cabinets
- Biosafety cabinets, glove boxes and isolation rooms
- Cold rooms and warm rooms
- Emergency equipment

D. Standard Operating Procedures. Standard operating procedures (SOPs) are generally accepted practices for use of chemicals in particular situations. The SOPs can be overridden in specific instances when appropriate. It is advisable to document the reasons for such modifications. When SOPs are not available for a specific laboratory or studio situation, the lab supervisor and chemical/biological hygiene officer will develop them, in consultation with the references cited below and the EHS Committee. Appendix B in NMHU’s Chemical Hygiene Plan for Laboratories and Studios provides general standard operating procedures for laboratories and studios. However, laboratory or studio activities that involve unique procedures will need to develop specific SOPs.

In addition, the hygiene plan includes a detail description of general principles for controlling chemical exposure, handling laboratory equipment and laboratory emergencies, as well as general references for standard operating procedures.

E. Particularly Hazardous Procedures. NMHU follows all OSHA Laboratory Standard (PDF) and the National Research Councils guidelines for Handling and Disposal of Chemicals when using chemicals or procedures with particular hazards. Each requires either the development of special operating procedures or prior approval of the laboratory supervisor as indicated by a written permit describing the conditions for the work to be done. In addition, specific instructions are provided for the following three areas:

- Work with particularly hazardous substances;
- Pre-approval of particularly hazardous work; and
- Working alone - unattended operations

Note: Currently, NMHU does not utilize radionuclides in research. Radiation and safety policies and procedures will be required before any planning in this area can occur.

F. Emergency Response. Telephone numbers of emergency personnel, supervisors and other workers as deemed appropriate are posted on the lab or studio entrance. These signs will be checked quarterly for accuracy.

- Telephone numbers of emergency personnel, supervisors, and other workers as deemed appropriate are posted on the lab or studio entrance. These signs will be checked quarterly for accuracy.
• In case of fire, see Section 6.4: Fire Emergency Action and Evacuation Procedures. Note: Fire extinguisher training is available from the campus Safety Officer.

• In event of a chemical spill, release, or other accident lab or studio workers will respond as outlined in the NMHU Emergency Response Plan. If there is any doubt about the lab worker’s ability to safely clean up the spill, call Campus Security (5555). A campus wide inventory of the hazardous chemicals in the labs and studios is conducted annually.

• In case of personnel exposures, all employees shall be instructed in the location and proper usage of emergency showers and eyewashes. In case of a medical emergency phone Campus Security at 5555. A person can seek a medical consultation after an exposure at NMHU expense. More details are provided in Section 8 of NMHU’s Chemical Hygiene Plan for Laboratories and Studios.

G. Medical Consultations and Examinations. All employees who work with hazardous chemicals will have an opportunity to receive medical attention, including any follow-up examinations that the examining physician determines to be necessary under the circumstances specified in Section 8 of NMHU’s Chemical Hygiene Plan for Laboratories and Studios. In addition, the following procedures will be applied.

• All medical examinations and consultations will be performed by or under the direct supervision of a licensed physician and will be provided through the NMHU EHS Program, without loss of pay, and at a reasonable time and place.

• In the case of an accident, the lab or studio supervisor will submit the following information to the examining physician and NMHU EHS Program.
  (1) The identity of the hazardous chemical(s) to which the employee may have been exposed.
  (2) A description of the conditions under which exposure occurred including quantitative exposure data, if available.
  (3) A description of exposure symptoms a employee is experiencing, if any.

• The examining physician will provide to the lab or studio supervisor and NMHU’s EHS Program a written report solely on the results from the occupational exposure, including other information relating to follow-ups, medical condition of the employee as a result of exposure to a hazardous chemical found in the workplace, and a statement that the employee is informed of these results.

• The Federal Health Information Portability and Accountability Act of 2002 requires that any medical information remain confidential. Information from medical examinations will not be released either in print or verbally to anyone other than NMHU employees that are authorized to review the information. An employee can file a written request to receive a copy of records of consultations or medical examinations from NMHU. Records will be held for periods described in Section 9 of NMHU’s Chemical Hygiene Plan for Laboratories and Studios.

H. Recordkeeping. NMHU policy is to maintain safety records as required by OSHA.
The following records shall be stored in fireproof lockable filing cabinets and retained for the years indicated.

- Accident reports (5 years)
- Exposure evaluations (30 years)
- Medical consultation and examinations (30 years)
- Individual training records (5 years)
- Equipment inspection (5 years)

I. Annual Chemical Hygiene Plan Review. The laboratory supervisor and chemical/biological hygiene officer will annually review every June the laboratories or studios Chemical Hygiene Plan. Results will be provided to the NMHU Environmental Health and Safety Program and the building supervisor. Laboratory supervisors are responsible for taking corrective action for any deficiency noted.

6.6. Major Procedures of Hazardous Communication Program

The New Mexico Highlands University Hazard Communication Program (HCP) is intended to comply with the federal Occupational Health and Safety Administration (OSHA) Hazard Communication Standard (HCS) (29 CFR 1910.1200) and the New Mexico State Occupational Safety and Health Act (PDF) and associated regulations.

The purpose of this section is to ensure that the hazards of all chemicals produced or imported are evaluated, and that information concerning their hazards is transmitted to employers and employees. This transmittal of information is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets and employee training. This section describes and summarizes the major operations and procedures detailed in NMHU Hazard Communication Program.

Hazard communication is employees’ right-to-know about the chemical hazards of the substances they use in the workplace. Use includes packaging, handling, reacting, or transferring pure chemicals, mixtures or formulations of chemicals, compressed gases, and other materials or substances that pose a health or physical hazard to employees. This section describes and summaries the major operations and procedures detailed in NMHU Hazard Communication Program.

6.6.1. Definitions

Use means to package, handle, react, emit, extract, generate as a byproduct, or transfer.

Chemical means any element, chemical compound or mixture of elements or compounds.

Container means any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel,
storage tank, or the like that contains a hazardous chemical. For purposes of this section, pipes or piping systems, and engines, fuel tanks, or other operating systems in a vehicle, are not considered to be containers.

**Distributor** means a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers.

**Employee** means a worker who may be exposed to hazardous chemicals under normal operating conditions or in foreseeable emergencies. Workers such as office workers or bank tellers who encounter hazardous chemicals only in non-routine, isolated instances are not covered.

**Exposure or exposed** means that an employee is subjected in the course of employment to a chemical that is a physical or health hazard, and includes potential (e.g. accidental or possible) exposure.

**Subjected** means, in terms of health hazards, any route of entry (e.g. inhalation, ingestion, skin contact or absorption). "Hazardous chemical" means any chemical which is a physical hazard or a health hazard.

**Importer** means the first business with employees within the Customs Territory of the United States which receives hazardous chemicals produced in other countries for the purpose of supplying them to distributors or employers within the United States. "Work area" means a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

**Workplace** means an establishment, job site, or project, at one geographical location containing one or more work areas.

Any other undefined terms used in this section are based on terminology applied by the OSHA HCS.

### 6.6.2. Hazard Communication Responsibilities and Program Coverage

The building supervisor, in collaboration with laboratory and studio supervisors, ensures that all employees and students follow NMHU environmental health and chemical safety policies within the building, including hazard communication and documentation about chemicals and training.

Specifically, the **building supervisor** has overall responsibility for the safety and upkeep of instructional and laboratory building spaces assigned to them including:

- Ensure that appropriate training is being provided to employees and students;
- Ensure that regulatory compliance practices are being adhered to in the building.; and
- Perform periodic inspections.
The laboratory or studio supervisor is the faculty member who is the sole or primary faculty member responsible for operations in the studio or laboratory space(s). The laboratory or studio supervisor has ultimate responsibility for hazard communication throughout his or her workspaces. Specifically, the lab or studio supervisor shall:

- Maintain inventories of chemicals, formulated products, and hazardous wastes;
- Ensure appropriate training for all employees and students in the labs or studios, and that the training has been documented;
- Maintain a current knowledge of the legal requirements of hazardous and regulated materials in employee workspaces; and
- Review and improve the laboratory’s or studio’s hazard communication portion of the chemical hygiene plan on an annual basis.

Employees have the responsibility to follow all procedures outlined in this program; report hazardous conditions and work related injuries or exposures to their supervisors; and wear/utilize personal protective equipment when recommended and provided.

The EHS program at NMHU includes a Campus Safety Officer and a Campus Chemical-Biological Hygiene Officer. The EHS Program can direct supervisors to information resources and provide training and services in assistance with meeting environmental and safety regulatory concerns. The EHS Program provides technical and policy oversight of laboratory and studio activities that involve the use of hazardous chemicals.

6.6.3. Chemical Inventory. It is NMHU policy that all chemicals and formulated products (chemicals hereafter), with the exclusion of over-the-counter consumer products, shall be entered into a chemical inventory when they arrive on the main campus. The ultimate destination of a material shall also maintain an inventory. Disposition of the chemical shall be recorded, along with the volume of waste that contains the chemical. The ultimate idea is to maintain a “cradle-to-grave” tracking of chemicals on campus.

The chemical inventory is utilized in training to notify workers of the hazards of all chemicals in their workplace. A permanent file of material data safety sheets (MSDSs) shall be available to workers at a specific workplace. There must be MSDSs for all chemicals in the inventory at a workplace (For more detail see Section 2 and 3 of NMHU Hazard Communication Program). Included in Section 2 of the NMHU Hazard Communication Program are:

- Pure Chemical Inventory Form and Instructions; and
- Formulated (Industrial) Chemical Inventory Form and Instructions

6.6.4. Material Safety Data Sheets, Hazard Determination, and Labeling. The university will rely on the hazard evaluation performed by the distributor, manufacturer or importer of the chemical as the official hazard assessment for commercially acquired chemicals. NMHU employees who develop new chemical mixtures must perform a
hazard assessment as outlined in Appendices A and B of the Chemical Hygiene Plan and must submit that plan to EHS.

Detailed information on the following hazard evaluations and procedures are provided in Section 3 of the Chemical Hygiene Plan:

- Material safety data sheets;
- Chemicals synthesized on-campus;
- Process hazards, hazards of mixtures, and particularly hazardous chemicals;
- Labeling of hazardous material delivered to NMHU, used at or shipped from NMHU;
- Personal protection and equipment use based on the Personal Protection Index; and
- Labeling of pipes.

6.6.5. Exposure Reduction Practices. Exposure reduction practices are the set of techniques utilized in minimization of worker exposure. Techniques are selected on the basis of processes and substances in tasks. Exposure reduction practices are important elements in training employees for specific tasks and preparation of chemical hygiene plans. The following practices are detailed in Section 4 of Chemical Hygiene Plan:

- Chemical substitution;
- Engineering controls;
- Administrative controls;
- Personal protective equipment;
- Hygiene; and
- Emergency eyewash and shower.

6.6.6. Required Training Elements. NMHU requires that all employees who use chemicals receive a basic orientation to the Hazard Communication program and annually thereafter. In addition to the general hazard communication training, employees must be provided with area-specific, on-the-job training as new hazardous materials are introduced into the work area. This training will be provided by EHS during New Employee Orientation and annually thereafter. Specific content is provided in Section 5 of NMHU Hazard Communication Program.

Supervisors must also provide employees with the hazard information for non-routine tasks before they are performed. This includes reviewing the MSDSs and explaining the appropriate work practices to be followed. Standard Operating Procedures should be developed for hazardous activities that are not included in Appendix B of the Chemical Hygiene Plan.

6.6.7. Contractors. Contractors must show evidence of personnel training and follow environmental health and safety practices and regulations. Contractors must notify EHS when they plan to use paints, glues or similar chemicals in the vicinity of university employees. Upon request, the contractor is to provide EHS with a list of the hazardous...
chemicals and MSDSs for those chemicals that they are bringing into the university. The contractor may also be asked for a copy of their Hazard Communication Program and training documentation.

Likewise, NMHU personnel must notify contractor if chemicals are to be used in the same area that contractor employees are assigned, EHS and the appropriate NMHU Supervisor have the responsibility of informing the contractor employees of the potential hazards in the work area. For more detail see NMHU Hazard Communication Program.

6.6.8. Recordkeeping. Individual employee training will be recorded. The record will be kept in the individual’s departmental file for 5 years. A copy of the record will be held by EHS for 5 years. EHS records will be kept in lockable, fireproof filing cabinets. In addition, records of inspections of equipment will be maintained for 5 years. NMHU EHS will keep data on annual fume hood monitoring. Fume hood monitoring data are considered maintenance records; as such, raw data will be kept for one year, and summary data for 5 years.

6.7. Crosswalk of All Environmental Health and Safety Plans for Faculty in Science Labs and Art Studios

NMHU offers a supplemental document to assist faculty supervising science labs and art studios in preparing and complying with three environmental health and safety plans: (1) Chemical Hygiene Plan; (2) Hazard Communication Plan; and (3) Personal Protective Equipment Plan.

The following documents and forms can be found in the Crosswalk for Faculty in Science Labs and Art Studios.

Appendix 1: Chemical Inventory Forms
- Pure Reagent Chemical Inventory Form
- Industrial Chemical Inventory Form

Appendix 2: Work Area Hazard Assessment and Selection of Personal Protective Equipment Form

Appendix 3: Particularly Hazardous Chemical List

Appendix 4: Health Hazard Definitions

Appendix 5: Guidelines for Choosing Personal Protective Equipment

Appendix 6: General Standard Operating Procedures including:
- Administrative Procedures
- General Chemical Safety Procedures
Appendix 7: Examples of Chemical Hygiene Plans


The NMHU Waste Management Plan (NMHU WMP) is designed for university operations to comply with federal and state regulations such as those promulgated by the U.S. Environmental Protection Agency. In addition, the federal Resource Conservation and Recovery Act (RCRA) in 40 CFR 260 series requires that hazardous wastes are identified, isolated/stored, transported, and ultimately disposed of in a manner that prevents waste discharges to the environment. Furthermore, regulations require an on-going program of waste minimization be in place at each facility.

To this end, the chemical/biological Hygiene Officer, and, the Environmental Health and Safety Committee (EHS) will assist “generators” (or producers of hazardous waste) to manage their own waste in accordance with RCRA regulations. However, it is the generator who is ultimately responsible for assuring that waste generated is managed in a safe and appropriate manner. Any waste material that may, upon contact, present a hazard to one's health or surrounding environment should be treated as a potentially hazardous waste. This includes spent or unused chemicals, cleaning solutions, oils, etc. If there is any doubt whether a material should be treated as hazardous, contact EHS. Only non-hazardous wastes may be disposed in the sewer or trash. For an explanation of terminology described in this section, a list of definitions is provided in the Hazardous and Potentially Infectious Wastes Management (HPIWM) Plan.

The following information is referenced from NMHU’s HPIWM Plan.

A. Hazardous Waste Management Responsibilities
   On-site Generator - The on-site generator is the person, or activity, that generates a hazardous waste on the campus. Laboratory and studio supervisors are the academic side on-site generators. Various Facilities Management units are also hazwaste generators. The person that supervises a facilities management unit is the on-site generator and responsible for:

   • Maintaining adequate hazwaste/medwaste containers at the location where wastes are generated;
   • Ensuring hazwaste/medwaste containers are properly labeled;
   • Keeping incompatible hazardous wastes (e.g., solvent wastes, oxidizers, etc.) separate during generation and waste storage;
   • Supervising and training employees and students about the proper hazwaste/medwaste disposal procedures at the generation site; and
• Arranging for the removal of hazwaste/medwaste containers by the NMHU Hygiene Officer.

Chemical/biological Hygiene Officer responsibilities consist of:

• The storage of hazwastes/medwastes prior to disposal;
• The inspection of work areas for compliance with hazwaste/medwaste storage and labeling requirements;
• Arranging for the appropriate disposal of hazwastes/medwastes; and
• Designing and maintaining the cradle-to-grave materials tracking inventory for the main-campus.

Vice-President for Administrative Services and Finance (VPASF) is responsible for ensuring that funds are available for annual disposal of hazardous wastes from all units. The VPASF, or a designee, is the supervisor of the chemical/biological Hygiene Officer in regards to hazardous materials and hazwaste tracking.

B. Hazardous Waste Management Procedures. In general, the management process begins at the site of hazwaste generation; where hazwastes are separated according to the components and hazardous characteristics of a waste stream. This requires assessment of the waste stream(s) and the hazardous properties of wastes at a generation site. Segregation of wastes is important from 2 standpoints: 1) wastes that have mixed compositions are far more expensive to discard than segregated wastes, and, 2) waste mixtures can lead to serious health and safety consequences when a fire or detonation occurs. Hazwaste receptacles, with container inventory numbers, are conveniently located at each site of hazwaste generation. The containers are labeled with 1) “HAZARDOUS WASTE” in prominent letters, 2) the receptacle inventory number, 3) generator, 4) date of placement at location, 5) location of generation, and 6) the type or characteristic of waste that they receive. Once receptacles are full, the on-site generator contacts the chemical/biological Hygiene Officer or a disposal company directly, for collection.

Hazwastes may only be transported by a permitted hazwaste transporter. Transporters must have an EPA ID number, which NMHU must verify. Often the transporter is also a TSDF. Each shipment of hazardous waste must be accompanied by a standard hazardous waste manifest with a list of the various materials in a shipment and a designates specific transporter and TSDF.

Hazwaste Assessment must take place on all hazardous properties of wastes generated from a laboratory, studio, and facilities management operation. Material Safety Data Sheets (see NMHU Hazard Communication Plan) that accompany all initial shipments of pure and formulated chemicals can be used to identify hazards of components of hazwaste streams. Hazwastes are assigned to a specific container type depending on their contents. General types of substances that must be segregated and a standard assessment form (Appendix A) for listing and determining receptacle needs for a given facility/operation are provided in the HIPW Plan. Included are specifications for
assessing proper procedures for labeling hazwaste receptacles, storing waste, and transferring hazwaste to EHS.

Note: It is in the generator's and department's best interest to maintain meticulous data concerning the waste and strict control over its composition. When the generator does not have sufficient knowledge or information to make certification, the wastes must be analyzed at the department's (generator's) expense. The analysis must be performed by a laboratory acceptable to EHS and be sufficient to provide necessary data for the on-site generator to certify the waste. EHS can provide guidance on appropriate analyses, but a comprehensive analysis of an unknown waste can cost well over $1,000.

C. Potentially Infectious Material Wastes. Medical wastes consist of Potentially Infectious Material (PIM), Regulated Medical Waste (RMW), and Non-Regulated Waste (NRW) materials. These materials are clearly defined in the HPIWM Plan and all generators including faculty, staff and students working in laboratories with such materials should strictly adhere and understand the procedures included in the HPIWM Plan for identifying, isolating, storing, transporting, and disposing such wastes.

D. Hazardous and Medical Wastes Disposal Procedures. As defined in RCRA, 40 CFR § 261.5, NMHU is currently classified as a Conditionally Exempt Small Quantity Generator (CESQG) because it “generates less than 100 kg of hazwaste per month, or less than 1 kg of “acutely hazwaste per month; or which accumulates less than 1000 kg at any one time, or less than 1 kg “acutely hazwaste”. CESQGs are not required to undertake a permit process like larger quantity generators. However, NMHU is required to follow specific storage thresholds mandated by RCRA including:

- Permitted Transporters, and, Treatment, Storage and Disposal Facilities (TSDF). Hazwaste transporters and TSDFs are required to undergo a permitting process with U.S. EPA. Hazwastes may only be transported on public thoroughfares by a permitted transporter. The EPA transporter identification number must be obtained from a transporter at the time of contract bids, to verify that a transporter is authorized to convey hazwastes. Furthermore, a certification is required to ensure that the transporter has equipment approved to transport hazwastes by the U.S. Department of Transportation (DOT).

- Hazwaste Manifests. RCRA regulations require that generators, transporters, and TSDFs utilize a standard hazwaste manifest form (medwastes do not have the same requirements). The manifest is described in detail in the HPIWM Plan. It is the responsibility of the generator to ensure that hazwastes are actually delivered to a TSDF in a timely manner.

Medwaste Disposal Procedures. Potentially Infectious Material (PIM) can be disposed of by destroying the material through incineration. However, this requires that each department collect the PIM in appropriate containers, store the material, and contact EHS to pickup the material for incineration in an EPA approved incinerator.

If the material is rendered as non-infectious by such means as autoclaving, then the
material can be considered a non-regulated waste. Specific steps for autoclaving are required and specified in the HPIWM Plan. Generally, all autoclaving of PIM must be documented, the autoclaving process verified and inspected annually by a certified inspector.

Large volumes of PIM, which cannot otherwise be treated by autoclaving, must be transported by an EPA permitted medwastes transporter. Wastes must be packaged according to DOT regulations in containers that ensure no leakage of liquid contents, or emergence of sharps. Medwaste transporters are to provide their EPA identification number at the time of bids for services. Medwaste transporters are certified by EPA to have vehicles and procedures for the safe transport of medwastes to disposal sites.

Under no circumstances are any sharps to be discarded into the general trash.

E. Materials Tracking and Inventory (needs concurrence from Comptroller, Business Office, and Central Receiving). Pure chemicals, and formulated chemical products, shall be entered into a campus-wide inventory and tracked from arrival on campus to their final disposition by an academic or facilities management unit. This tracking is mandated by RCRA regulations as the “cradle-to-grave” materials inventory requirement. This information is also of use in determining waste generation locations and the disposition of materials on campus. Certain units (e.g., Facilities Management, Natural Sciences, and Fine Arts) may maintain their own internal inventories that are linked to the global inventory, particularly when materials are dispersed throughout a building, or, across campus. The HPIWM Plan offers detail information on the following actions:

1. Procedures for inputting information into databases on formulated and chemical product information
2. Role of Central Receiving in tracking materials and adherence to OSHA chemical storage requirements.
3. Responsibilities of the “consumer unit” or Facilities Management Department (e.g., academic unit) in receiving and, storing, disposing, and documenting of chemical or formulated product shipment.
4. Role of Campus Safety Officer in annually reviewing the database for consistency and completeness.

F. Waste Minimization. Waste minimization is the process of identification and implementation of ways to reduce the generation of solid and hazardous wastes from normal operations.

Waste minimization is achieved by:

- Proactively identify, at the beginning of a project, means to reduce hazardous waste generation
- Substitute less hazardous materials for materials that must be disposed of as hazardous wastes.
- Reduce the quantities of hazardous substances that lead to hazwastes utilized in processes.
• Internal recycling of certain materials (e.g., solvents that can be recovered and purified, metal recovery by precipitation from aqueous solutions, etc.).

To assist in the minimization of waste, the EHS Committee annually reviews the results of the inventory inspection and hazwaste generation levels reported from the hazwaste inventory. Campus units identified as generating large quantities of hazwastes will be asked to prepare a justification for the quantity generated; and plans for minimization of waste volumes. However, waste minimization may not be feasible in certain situations, and the committee will take this into consideration. On-site generators that are identified as not segregating wastes correctly, from analytical reports by the transporter or TSDF, will be requested to change their hazwaste disposal procedures at the generation site. This can be done with assistance from the Chemical/Biological Hygiene Officer. A hazwaste volume assessment is available for estimating hazwastes types that are likely to be produced from a research, construction, or other project in the HPIWM Plan.

G. General Training of Personnel. All faculty, students, and staff that routinely handle hazardous materials or potentially infectious materials shall be trained in the hazwastes/medwastes handling and disposal procedures for the unit they work within. Faculty will be trained by the Chemical/Biological Hygiene Officer in the appropriate hazwastes/medwastes disposal procedures for their specific classes, projects, and research. Laboratory and studio supervisors are responsible for assuring that personnel in their workspaces dispose of hazwastes/medwastes correctly. Consequently, students in classes, and those working on special projects must receive an appropriate level of training by the laboratory or studio supervisor. Facilities Management Department supervisors are responsible for providing training to employees in their units.

A record of the training with the employee’s signature must be kept on file by the employee’s supervisor. In laboratories and studios, the waste management training can be incorporated as part of the training to comply with the chemical hygiene plan.

H. Recordkeeping. Maintaining safety waste management records is part of NMHU’s policy and required by federal and state regulations. The following are records required on hazardous waste material.

• Hazardous Waste Manifests - kept on file by the Campus Safety Officer for 3 years;
• Hazardous waste assessment forms (see Appendix A of HPIWM Plan) - kept by the Chemical/Biological Hygiene Officer, until a process or operation at a location changes. When there is a change in project, operation, or process at a location a new assessment shall be completed and review by the Chemical/Biological Hygiene Officer;
• Hazwaste Pickup Forms - retained by the Campus Safety Officer with the manifest from a hazwaste shipment for 3 years; and
• Training Records - kept with the Chemical Hygiene Plan for a laboratory or studio. The director of Facilities Management will keep training records in
facilities management units. A copy of the training records also shall be retained by the Campus Safety Officer 3 years, or, the duration of a specific project.

### 6.9. Exposure Control Plan for Bloodborne and Other Pathogens

The purpose of the [Exposure Control Plan (ECP)](ECP) is to implement the requirements of OSHA Standard 29 CFR 1910.1030 Bloodborne Pathogens, and thereby reduce the risk of student and/or employee infection with bloodborne pathogens such as, but not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV) which results in AIDS. In addition, this plan implements certain aspects of RCRA Medical Waste Regulations (40 CFR 259; URL: EPA website)

According to these policies, all employees and students shall adhere to universal precaution practices. Universal precaution is an infection control approach that assumes all human blood and certain human body fluids, and, any cultures obtained from humans or animals infected with human pathogens, are treated as infectious materials. Any material derived from humans, microbiological cultures from humans or animals that potentially contain human pathogens, or environmental samples that potentially contain human pathogens (e.g., Giardia in water and sediments, sewerage materials, etc.) shall be considered infectious materials.

The following information is referenced from NMHU’s ECP.

**A. Responsibilities of Personnel.** All personnel including: research laboratory supervisors; teaching laboratory instructors; Chemical/Biological Hygiene Officers; employees; and students are assigned specific responsibilities. These responsibilities are detailed in the [ECP](ECP).

**B. Exposure Determination.** All students, graduate teaching assistants, or faculty who may come in contact with blood, or infectious agents through classroom activities are at risk for possible exposure.

All faculty, graduate students, or undergraduate research assistants who may be conducting research projects using human blood or human body fluids, experiments with infected animals that involve blood, body fluid contact, infectious agent cultures, or possible infected animal bites are at risk of possible infectious disease exposure.

Employees who are responsible for first response to medical emergencies, such as cuts or wounds from a laboratory accident, are considered potentially exposed to pathogens. This potential exposure includes employees responsible for disposing of wastes from teaching or research laboratory with blood borne pathogens or other infectious agents.

**C. Methods of Compliance.** Universal precautions shall be observed in all settings to prevent contact with blood or potentially infectious materials. All body fluids, contaminated instruments and other materials shall be considered potentially infectious materials. The following methods detailed in the ECP Plan shall be strictly adhered to...
by all supervisors, instructors, employees, and students involved with bodily fluids or potentially infectious materials.

**General Practice**

- Wash hands immediately after removal of gloves or other personal protective equipment, and after direct skin/hand contact with such materials
- Eating, drinking, smoking, applying cosmetics or lip balm, and handling of contact lenses are prohibited in work areas where there is a reasonable likelihood for occupational exposure.
- Food and drink shall not be kept in refrigerators, freezers, shelves, and cabinets or on counters or bench tops where blood or other potentially infectious materials are present.

**Engineering and Work Practice Controls**

- Hypodermic needs shall not be sheared, bent, broken, recapped, or removed by hand. Any exception must comply with 29 CFR 1910.1030 (d)(2)(vii). Syringes and other sharps (e.g., scalpels, forceps) shall be disposed in containers clearly labeled “Infectious Sharps”.
- All procedures involving blood or other potentially infectious materials shall be performed in such a manner as to minimize splashing, spraying, splattering, and generation of droplets.
- Mouth pipetting/suctioning of blood or other potentially infectious materials is prohibited.
- Specimens of blood, or other potentially infectious materials, shall be placed in a container which prevents leakage during collection, handling, processing, storage, transport or shipping. The container shall be clearly labeled “Infectious Materials” and bear a universal biohazard symbol.
- Equipment that could become contaminated with blood or other potentially infectious material shall be decontaminated as necessary unless decontamination is not feasible.
- Laminar flow hoods and biosafety cabinets will be selected by the laboratory supervisor as appropriate to the level of biohazard associated with infectious materials. The chemical/biological hygiene officer will annually inspect laminar flow hoods and biosafety cabinets for proper operation and servicing. Hoods and cabinets must bear a universal biohazard symbol.

**Personal Protective Equipment**

- Personal protective equipment (PPE) shall be selected according to the NMHU Personal Protective Equipment Plan.
- All PPE shall be removed before leaving the work area.
- Equipment shall be placed in an appropriately labeled container for storage, washing, decontamination or disposal.
• When exposure to infectious materials is possible, employees shall use appropriate personal protective equipment such as: gloves, aprons, disposable lab gown, head and foot coverings, face shields.

• The appropriate personal protective equipment shall be discussed with each employee and shall be required based upon the tasks involved and the hazards of the job duty.

• The supervisor shall provide appropriate PPE to employees for the tasks in the workspace. If deemed appropriate, non-disposable multi-use equipment may be assigned to individual employees.

• The employer shall provide facilities and equipment for cleaning or disposal of personal protective equipment.

• Gloves shall be worn whenever it can reasonably be anticipated that hands may make contact with blood, other potentially infectious materials, mucous membranes, wounded skin, and when touching or handling contaminated items or surfaces.

• Masks and eye protection or chin-length face shields shall be worn whenever splashes, spray, spatter, droplets, or aerosols of blood or other potentially infectious materials may be generated. This policy applies whenever eye, nose, or mouth contamination can be reasonably anticipated.

• Gowns, aprons and other protective body clothing (e.g., gowns, aprons, lab coats, clinic jackets or similar outer garments) shall be required whenever exposure to infectious materials can reasonably be anticipated. It is strongly recommended that disposable lab gowns be used.

Housekeeping

• The work site is to be maintained in clean and sanitary condition. The employer shall designate the method of decontamination based on the location within this facility, type of surface to be cleaned, type of infectious material likely to be present, and tasks and procedures being performed in the area.

• A designated cleaning and disinfecting area shall be provided at for the cleaning and disinfecting of PPE, portable equipment, and contaminated articles. This cleaning area shall have proper ventilation, lighting and drainage connected to a sanitary sewer system.

• All disinfectants utilized in research and teaching laboratories shall be registered with the U.S. Environmental Protection Agency. The disinfectant must be registered as tuberculocidal. Care shall be taken in the use of all disinfectants. Disinfectants are a form of pesticide. Disinfectants must be included in the Chemical Hygiene Plan for laboratories. Employees and students shall wear cleaning gloves while disinfecting equipment and environmental surfaces.

• All equipment and environmental working surfaces shall be properly cleaned and decontaminated after contact with blood or other potentially infectious materials.

Regulated Infectious Wastes (Medwastes)
Contaminated sharps containers shall be kept upright throughout use. The label must say “Sharps – Infectious Waste” and bear a universal biohazard symbol. Contaminated sharps containers shall be easily accessible to employees and students; and, located as close as feasible to the immediate area where sharps are used. Contaminated sharps shall not be allowed to overfill and shall be discarded immediately or as soon as feasible in closeable, puncture resistant, leak-proof containers and labeled properly. Sharps containers shall not be reused.

Other regulated waste shall be placed in containers that are closable, constructed to contain all contents and prevent leakage of fluids during handling, storage, transport or shipping and labeled properly. If outside contamination of the regulated waste container should occur, it shall be placed in a second container meeting the same requirements. Regulated waste shall be disposed of in accordance with New Mexico Environment Department Solid Waste Regulations. Contact may be made with Solid Waste Bureau (505) 827-2853.

Immunizations

- The university shall offer vaccinations free to all employees who are exposed to blood or other infectious materials as part of their duties. Vaccinations are primarily targeted at hepatitis B.
- Vaccination will be offered within 10 days of initial employment in a job where exposure to blood or other potentially infectious materials can be "reasonably anticipated". Employees who choose not to accept the vaccine must sign a declaration form but can request to be vaccinated at a later date if they change their mind.

D. Training and Hazard Communication. It is essential that laboratory employees and students have access to information on the hazards of infectious agents and procedures for working safely. Supervisors must ensure that laboratory and studio employees are informed about, and, have access to the following information sources:

- The contents of the OSHA Bloodborne Pathogen Standard, Occupational Exposure to Bloodborne Pathogens, and its appendices.
- The NMHU Exposure Control Plan For Bloodborne and Other Pathogens In NMHU teaching and research laboratories.
- The NMHU Chemical Hygiene Plan and local laboratory standard operating procedures (SOPs).
- The NMHU Hazard Communication Plan.

Each laboratory supervisor is responsible for ensuring that laboratory employees are provided with training about the hazards of infectious agents present in their laboratory work area, and methods to control exposure to potential pathogens. Each employee shall receive training at the time of their initial assignment to the laboratory, prior to assignments involving new exposure situations, and at a regular frequency. Training is available in the form of:
• Literature describing proper lab practices.
• Group and individual training, conducted by lab personnel, or EHS staff.

Employee training programs shall include, at a minimum, the following subjects:

• Methods of detecting the presence of infectious agents (observation, signage and labeling, culturing, air sampling, etc.);
• Symptoms associated with exposure to infectious agents;
• Good laboratory practice, including general techniques designed to reduce personal exposure, as well as specific protective mechanisms and warning systems used in individual laboratories;
• Emergency response actions appropriate to individual laboratories;
• Applicable details of the Bloodborne Pathogen and Infectious Agent Plan, including general and laboratory-specific standard operating procedures; and
• An introduction to Infectious Waste Management Procedures at NMHU.

E. Emergency Response. The procedures for exposure to bloodborne and other pathogens is the same as for chemical exposures. This section is a duplicate of the information provided in Section 6.4.2.

• Telephone numbers of emergency personnel, supervisors, and other workers as deemed appropriate are posted on the lab or studio entrance. These signs will be checked quarterly for accuracy.
• In case of fire, refer to Section 6.4: Fire Emergency Action and Evacuation Procedures. Note: Fire extinguisher training is available from the Campus Safety Officer.
• In the event of a spill, release, or other accident where infectious agents may be present lab workers will respond as outlined in the NMHU Emergency Response Plan. The size of the spill and its hazards will guide the appropriate response. If there is any doubt about the lab worker’s ability to safely clean up the spill, call campus security (5555). Note that proper emergency response depends upon knowledge of the hazards present in the lab.
• In case of personnel exposures, all employees shall be instructed in the location and proper usage of emergency showers and eyewashes. Furthermore, training shall include information on proper decontamination procedures. In case of a medical emergency phone Campus Security at (5555) or if emergency is life threatening (9-911). A person can seek a medical consultation at NMHU expense after an exposure.
• Phone contacts
  o NMHU Campus Security (24 hours): 5555 (on-campus) or 454-3378 (off-campus)
  o Campus Safety Officer: 426-2059
  o Chemical/Biological Hygiene Officer (Chemical Safety Officer): 426-2035
  o Poison Control Center: 9-1-800-222-1222
In the event of a life threatening illness or injury dial 9-911 and request an ambulance.

F. Medical Consultations and Examinations. All employees who work with infectious agents or are potentially exposed to bloodborne pathogens will have an opportunity to receive medical attention, including any follow-up examinations that the examining physician deems necessary under the following circumstances:

- Whenever an employee develops symptoms associated with an infectious agent to which the employee may have been exposed in the laboratory or studio; and
- Whenever an event takes place in the work area, such as spill, leak, explosion, or other occurrence resulting in the likelihood of a hazardous exposure.

The Campus Safety Officer will be contacted whenever the need for medical consultation or examination occurs, or when there is uncertainty as to whether any of the above criteria have been met. In addition, the following procedures will be applied:

- All medical examinations and consultations will be performed by or under the direct supervision of a licensed physician and will be provided through the NMHU Environmental Health and Safety Program, without loss of pay, and at a reasonable time and place;
- NMHU will provide the examining physician with the identity of the infectious agent(s) to which the employee may have been exposed; a description of the conditions under which exposure occurred including quantitative exposure data, if available; and a description of the symptoms of exposure an employee is experiencing, if any. This same information will transmitted by the lab supervisor and will be submitted to the NMHU Environmental Health and Safety Program, as well as to the examining physician;
- The examining physician will provide to the lab supervisor and NMHU Environmental Health and Safety Program a written report including: any recommendation for further medical follow-up; results of the medical examination and any associated tests; any medical condition which may be revealed in the course of the examination which may place the employee at increased risk as a result of exposure to a infectious agent found in the workplace; and a statement that the employee has been informed by the physician of the results of the consultation or medical examination and any medical condition that may require further examination or treatment. The written opinion will not reveal specific findings or diagnoses unrelated to occupational exposure.
- The Federal Health Information Portability and Accountability Act of 2002, requires that any medical information remain confidential. Information from medical examinations will not be released either in print or verbally to anyone other than NMHU employees that are authorized to review the information. An employee can file a written request to receive a copy of records of consultations or medical examinations from NMHU.
G. Recordkeeping. NMHU policy is to maintain safety records as required by OSHA. Records shall be stored in fireproof lockable filing cabinets. In addition:

- Accident investigations will be conducted by the lab supervisor with assistance from the NMHU Environmental Health and Safety Program as deemed necessary. Accident reports will be written and retained for 5 years by the NMHU EHS Program.

- Any records of exposure evaluation carried out by NMHU Environmental Health and Safety Program will be filed. Raw data will be kept for one year. Summary data will be kept for the term of employment plus 30 years.

- The NMHU Environmental Health and Safety Program will keep results of medical consultation and examinations for a length of time specified for the appropriate medical records standard. This period will be at least the term of employment plus 30 years.

- Individual employee training will be recorded. The record will be kept in the individual’s departmental file for 5 years.

- Records of inspections of equipment will be maintained for 5 years. NMHU Environmental Health and Safety Program will keep data on annual fume hood monitoring. Fume hood monitoring data are considered maintenance records; as such, raw data will be kept for one year, and summary data for 5 years.
Section 7: Research on Human Subjects

This section provides assurances of the University’s compliance with federal and state regulations for the protection and ethical treatment of human subjects in research.

7.1. Use of Human Subjects

7.1.1. Definitions. The U.S. Department of Human Services regulations defines a human subject as a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information CFR 46 Section 46.102.

Research refers to a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities. Other examples of systematic investigations may include:

1. Surveys and questionnaires;
2. Interviews and focus groups;
3. Analyses of existing data or biological specimens;
4. Epidemiological studies;
5. Evaluations of social or educational programs;
6. Cognitive and perceptual experiments; and
7. Medical chart review studies.

Research results do not have to be published or presented at a professional meeting to qualify the experiment or data gathering as research. The intent to contribute to "generalizable (scholarly) knowledge" makes an experiment or data collection research, regardless of publication. Research that never is published is still research. Participants in research studies deserve protection whether or not the research is published.

7.1.2. Human Subject Principles. The University must be assured that any research including human subjects must follow general principles of research with human subjects including:

- Respect for persons (e.g., applied by obtaining informed consent, giving consideration to privacy and confidentiality, and adding protections for vulnerable populations).
- Beneficence (e.g., applied by weighing risks and benefits).
- Justice (e.g., applied by the equitable selection of subjects).

In addition, all parties involved in the conduct of research are expected to adhere to the principles of expertise (“competent to do the work”) and integrity (“faithfully adhere to..."
professional principles”). Ethical principles from other sources (e.g., International Conference on Harmonization) may also be applied to research on human subjects.

Additional principals and regulations followed by NMHU include:

| Code of Federal Regulations and HHS Policy for Protection of Human Research Subjects in Title 45, Part 46.102 | Standards for Privacy of Individually Identifiable Health Information (HIPAA Privacy Rule) in 45 CFR Parts 160 and 164 (PDF) |
| Federalwide Assurance for the Protection of Human Subjects | Applicable NM law |
| Common Rule (45 CRR Part 46) | Food and Drug Administration Regulations for the Protection of Human Subjects (21 CFR Parts 50 and 56) |
| Belmont Report | Provisions in contracts with other institutions engaged in research or entities providing funding for research |
| Department of Veteran Affairs regulations in 38 CFR Part 16 and VHA Handbook 1200.5 (PDF) | |

### 7.2. Responsibilities of the Faculty Research Committee for Human Subjects

The Institutional Review Board (IRB) (see Section 1.5.2.5.) and Institutional Review Board reviews each application for research involving human subjects. It has the authority to approve, modify, and reject proposed research activities targeting human subjects. Additional responsibilities of the IRB include:

1. Review and formulate policies and procedures for the use of human subjects in research;
2. Ascertain compliance with applicable public law, governmental guidelines, and professional standards and provide any required reports or statements of assurance of compliance;
3. Review and approve/disapprove all research studies proposing to use human subjects;
4. No research involving human subjects may be undertaken on the NMHU campus or with university supplies, equipment or facilities, unless it is approved by this committee. This policy is interpreted broadly and includes the use of questionnaires and other materials or activities that might not always be associated with a formal research project;
5. Convene at least once each semester to review applications and research activities, as needed;
6. Make determinations based on the Federal Regulation 45 CFR 46 and other state and University regulations to assure proper compliance of research projects;
7. Provide written notification to PIs and the ORSP of approval, modifications, or rejections of applications;
8. Maintain adequate documentation of its activities and forward this information in no less than 10 days after each meeting to the ORSP. Include any findings or
actions related to injuries, problems involving risks to subjects or others, noncompliance with the regulations, and any suspension or termination of research;

9. Identify activities that require a review more than every 12 months or that need verification that no changes occur after the review process; and

10. Require additional information to ensure that protection is adequate for fetuses, pregnant women, HIV individuals, prisoners, and children as defined in the: Code of Federal Regulations, Title 45, Part 46:

1. Subpart A: Basic HHS Policy for Protection of Human Research Subjects
2. Subparts B: Additional Protections for Pregnant Women, Human Fetuses and Neonates Involved in Research
3. Subparts C: Additional Protection to Biomedical and Behavioral Research Involving Prisoners as Subjects and research involving vulnerable populations
4. Subparts D: Additional Protections for Children Involved as Subjects in Research

7.2.1. Criteria for Review. The IRB will determine the quality of all applications based on the following criteria.

1. Risks to participants are minimized by insuring that procedures are consistent with sound research design as they pertain to minimizing risk to human subjects, and, when appropriate, by utilizing procedures that are already being performed on the subjects for diagnostic or treatment purposes and that are in compliance with 45 C.F.R. § 46.111 (a)(1)(ii) – Criteria for IRB Approval of Research
2. Risk, if any, to subjects and the importance of the knowledge that may reasonably be expected to result. The IRS shall evaluate risks and benefits in compliance with 45 C.F.R. § 46.111 (a)(2);(PDF)
3. Selection of participants is equitable. In determining whether selection was equitable, the IRS shall refer to 45 C.F.R. § 46.111(a)(3);(PDF)
4. Informed consent is sought and documented in accordance with and 45 C.F.R. §§ 46.116 and 46.117;
5. Consideration is given to confidentiality of participant-specific data and privacy of participants a plan for the maintenance of which is articulated in the proposal.
6. A plan for debriefing of participants upon completion of their involvement is documented;
7. Permission from any appropriate agency or school is documented;
8. All IRB proposals from graduate students must be signed by an appropriate member of the faculty. For students submitting proposals for their field project, thesis, or professional paper requirement, the application must be signed by the graduate committee chairperson of the student’s committee. For students submitting proposals for a class assignment, the application must be signed by the instructor teaching the class for which the assignment is assigned; and
9. The application must be complete and the proposal must provide sufficient information for the IRB to make a fair decision.
10. When appropriate, the research plan will make adequate provision for monitoring the data collected to ensure the safety of the subjects in accordance with 45 C.F.R. § 46.111.(PDF)

11. When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards shall be included in the study to protect the rights and welfare of these subjects in accordance with 45 C.F.R. § 46.111(PDF).

7.2.2. Required Procedures for Acquiring an Informed Consent from Human Subjects. In accordance with 45 CFR 46.117, 45 C.F.R. § 46.108(b) and 45 C.F.R § 46.116, no investigator may involve a human being as a subject in research unless the investigator has obtained the legally effective informed consent of the subject or the subject’s legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject’s legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence. The basic elements that should be provided to a human subject for informed consent includes, at a minimum:

1. A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject’s participation, a description of the procedures to be followed, and identification of any procedures which are experimental;
2. A description of any reasonably foreseeable risks or discomforts to the subject;
3. A description of any benefits to the subject or to others, which may reasonably be expected from the research;
4. A disclosure of appropriate alternative procedures or courses of treatment, if any that might be advantageous to the subject;
5. A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;
6. For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;
7. An explanation of whom to contact for answers to pertinent questions about the research and research subjects’ rights, and whom to contact in the event of a research-related injury to the subject; and
8. A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and
the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled."

### 7.3. Responsibilities of Principal Investigator for Human Subjects

The Principal Investigator is responsible for complying with all regulations that apply to the research project including:

1. Complete all assurances to the satisfaction of the granting agency as required by 45 C.F.R. § 46.103.
2. Receive approval from the IRB to conduct research (see NMHU’s Human Subject Committee Screening Form – Expedited and Full Review). The use of human subjects in research is guided by the ethical principles set forth in The Belmont Report published by the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research and the included in the requirements set forth in Title 45, Part 46 of the Code of Federal Regulations (45 CFR 46).
3. Conduct or support research as reviewed and approved by NMHU’s IRB and submit to continuing review by the IRB as required by 45 C.F.R. § 46.103.
4. Maintain confidentiality of all subjects during and after the research project, unless the subjects have given their consent to have their names released. Inform all personnel related to the project of the confidentiality policy
5. Promptly report changes, injuries, or other unanticipated problems in human subject research activities to the IRB in accordance with 45 C.F.R. § 46.101(b); and
6. Report progress on modifications required by the IRB based on timelines set by the IRB.

### 7.4. Training Requirements for All Investigators Involving Human Subjects

**Procedure.** NMHU requires that all investigators and other study personnel, including all persons who are responsible for the design, conduct, data analysis or reporting of research that involves human subjects must receive and complete training on Human Subject Research Protection. Training must be completed before the University will approve a project protocol or release project funds. In accordance with procedures set forth by the National Institutes of Health (Office of Extramural Research), NMHU’s is committed to the protection of the rights and welfare of human subjects in research.

**Resources.** While available to all investigators, all NIH project staff and other NIH employees who conduct or support research involving human subjects are required to complete NIH’s on-line tutorial on Protecting Human Subjects on the protection of human research subjects (see NOTICE: OD-00-039, June 5, 2000). This free, web-based course presents information about the rights and welfare of human subjects in research. The two-hour tutorial is designed for those involved
in conducting research involving human subjects. It satisfies the NIH human subjects training requirement for obtaining Federal Funds. You will have the option of printing a certificate of completion from your computer upon completing the course. Other resources available include:

- On March 1, 2008, the NIH Office of Extramural Research (OER) on-line tutorial Protecting Human Research Participants replaced the NCI Human Participant Protections Education for Research Teams course. The NCI course will no longer be available as of March 1, 2008. Like the previous course, the OER tutorial is a free, web-based course that presents information about protections for human participants in research. The tutorial is designed for those involved in the design and/or conduct of research involving human participants. It satisfies the NIH human subjects training requirement for obtaining NIH awards, but it is not the only way to satisfy this requirement. Information on satisfying the requirement and answers to commonly asked questions about the education requirement may be found on OER’s FAQs on the ;Requirement for Education on the Protection of Human Subjects.

- NIH’s website on bioethics is replete with resources on a broad range of relevant topics, including human subjects in research, medical and healthcare ethics, and the implications of genetics and biotechnology. This website also contains a broad set of annotated web links, including some attached to training programs. In addition, the University of Rochester has made available its training program for individual investigators. Their manual can be obtained through CenterWatch, Inc.; and

- The primary objectives of the T15 program are to increase knowledge among investigators regarding research ethics and to protect human subjects in clinical protocols. The second announcement supports career development of individuals who are committed to a career in research ethics. These individuals will be able to serve as resources in the institutions and as catalysts in discussions of critical ethical issues in research (see http://grants.nih.gov/grants/guide/pa-files/PA-99-050.html).

### 7.5. Types of Research Requiring Involvement of IRB

Any research or scientific investigation that involves human subjects and which may be intended to contribute to generalizable knowledge or used for publication shall submit a request for review and approval of the study to the IRB. Following are several types of studies that require such approval. If an individual does not realize the value of the study until later, they shall submit the project for IRB review as soon as possible.

- **Feasibility Studies.** In preliminary investigations generally conducted with small groups (less than 10 subjects), the PI will need to judge the likelihood that the feasibility data will be used for research and contribute to generalizable
knowledge or used in a publication. If the data will be used for publication or contributes to generalizable knowledge, approval shall be sought from the IRB.

- **Pilot Studies** are a preliminary exploratory or investigation of the feasibility of a study (usually on a small scale of fewer than 10 subjects) designed to help the investigator refine data collection procedures and instruments or improve a research design. When pilot studies are considered or used for research purposes (i.e., publication), an IRB review and approval is required before data collection commences.

- **Clinical Investigation** as defined by FDA regulations is any experiment that involves a test article and one or more human subjects and that either is subject to requirements for prior submission to the FDA, or is not subject to requirements for prior submission to the FDA under these sections of the Federal Food, Drug, and Cosmetic Act, but the results of which are intended to be submitted later to, or held for inspection by, the FDA as part of an application for a research or marketing permit. A test article means any drug (including a biological product for human use), medical device for human use, human food additive, color additive, electronic product, or any other article subject to regulation under the Federal Food, Drug, and Cosmetic Act. Examples of clinical investigations include:
  - Investigational drug clinical trials;
  - Medical treatment with investigational device study; and
  - Medical outcomes study comparing approved drugs/devices.

- **Student Projects.** NMHU supports a wide variety of undergraduate and graduate student research projects using human subjects. If an instructor determines that there is a possibility that a student's proposed research project may result in a formal presentation or publication, he/she should recommend that the student submit the project for IRB review before beginning the study.

There also may be instances when a student or instructor wishes to use data for research that was previously collected for educational purposes. An application should be submitted to the IRB when a student or instructor wishes to analyze the data with the intent of contributing to generalizable knowledge. In the following are two categories in which student projects with human subjects may be conducted.

- **Research Practicums-No Approval Needed.** A course of study that involves a supervised practical application of approved research methods in which other people are interviewed, observed or serve as participants in a course project.
- **Research Projects-Approval Needed.** Any student project that does not fall under the heading of a research practicum and which uses human beings and is undertaken with the intent to contribute to generalizable knowledge and/or intends to publish requires prospective review and approval by the IRB. This includes, but is not limited to, undergraduate and graduate thesis and dissertation research.
• In either case, instructors are strongly urged to discuss and make sure students understand the research methodologies and protocols for interacting with courtesy and how to avoid unnecessary discomfort to subjects or how to avoid invasion of subjects’ privacy.


In accordance with 45 C.F.R. § 46.101, precedent and practice have established the principle that certain types of research that might be called 'human subjects research' do not require review for the protection of human subjects, including, but not limited to: (a) accepted and established service relationships between professionals and clients where the activity is designed solely to meet the needs of the client; (b) research using only publicly accessible materials; (c) research using only historical documents; (d) research using only archaeological materials or other historical or pre-historical artifacts; (e) research based on data tapes or other records which lack all personal identifiers; (f) research based on surveys or interviews with elected or appointed public officials or candidates for public office; (g) research based on pathological or diagnostic specimens which lack all personal identifiers; and (h) scholarly and journalistic activities (e.g., oral history, journalism, biography, literary criticism, legal research, and historical scholarship), including the collection and use of information, that focus directly on the specific individuals about whom the information is collected.

7.7. Expedited Review Procedures For Certain Kinds Of Research Involving No More Than Minimal Risk, And For Minimal Changes In Approved Research

• According to Federal Regulation 45 CFR 46, 46.110 (June 23, 2005) and 21 CFR 56.110 research activities that present no more than minimal risk to human subjects, and involve only procedures listed in one or more of the following categories, may be reviewed by the IRB through the expedited review procedure. The activities listed should not be deemed to be of minimal risk simply because they are included on this list. Inclusion on this list merely means that the activity is eligible for review through the expedited review procedure when the specific circumstances of the proposed research involve no more than minimal risk to human subjects. Note: The categories in this list apply regardless of the age of subjects, except as noted.

• Research activities involving no more than minimal risk and in which the only involvement of human subjects will be in one or more of the following categories may be reviewed by the IRB through the Expedited Review Process.

  a. Collection of hair and nail clippings, in a nondisfiguring manner, deciduous teeth; and permanent teeth if patient care indicates a need for extraction.

  b. Collection of excreta and external secretions, including sweat, uncannulated saliva, placenta removed at delivery, and amniotic fluid at the time of rupture of the membranes prior to or during labor.
c. Recording of data from subjects 18 years of age or older using noninvasive procedures routinely employed in clinical practice. These includes the use of physical sensors that are applied either to the surface of the body or at a distance and do not involve input of matter of significant amounts of energy into the subject or an invasion of the subject's privacy. It also includes such procedures as weighing, testing sensory acuity, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, diagnostic echography, and electroretinography. It does not include exposure to electromagnetic radiation outside the visible range (for example, x-rays, microwaves).

d. Collection of blood samples by venipuncture, in amounts not exceeding 450 milliliters in an 8-week period and no more often than 2 times per week, from subjects 18 years of age or older and who are in good health and not pregnant.

e. Collection of both supra- and subgingival dental plaque and calculus, provided the procedure is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with accepted prophylactic techniques.

f. Voice recordings made for research purposes such as investigations of speech defects.

g. Moderate exercise by healthy volunteers.

h. The study of existing data, documents, records, pathological specimens, or diagnostic specimens.

i. Research on individual or group behavior or characteristics of individuals, such as studies or perception, cognition, game theory, or test development, where the investigator does not manipulate subjects' behavior and the research will not involve stress to the subjects.

j. Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.

- Expedited review can be requested by the PI in a written memo along with a completed form of NMHU Application Procedures for Approval of Research Involving Human Participants.

- The expedited review procedure may not be used where identification of the subjects and/or their responses would reasonably place them at risk of criminal or civil liability or be damaging to the subjects: financial standing, employability, insurability, reputation, or be stigmatizing, unless reasonable and appropriate
protections will be implemented so that risks related to invasion of privacy and breach of confidentiality are no greater than minimal.

- Research activity may be disapproved only after review in accordance with the non-expedited procedure set forth in 46.108(b).

### 7.8. Special Considerations

This section presents requirements for the participation of women with potential risk, laboratory personnel volunteering as subjects, and individuals volunteering for drug-related research.

#### 7.8.1. Women.

In compliance with regulations from the Federal Drug Agency (FDA) and National Institutes of Health (NIH), special considerations are made to women with child-bearing potential due to the potential risk of harm to the fetus and nursing infants during the research project. The following policies are based on or taken directly from federal regulations and shall be adhered to by all involved in research projects. Any changes to these policies can only be made based on direction from federal regulations on women as research subjects.

The PI is responsible for following all regulations set forth by the FDA and NIH. Copies of the regulations and references mentioned in this section are available at the ORSP.

- Women should not be excluded from research unless the health of her fetus or nursing infant is compromised. For specific information on practices for recruiting women see the NIH Guideline on the Inclusion of Women and Minorities as Subjects in Clinical Research – Amended October, 2001. Additional current policy documents and references can be located at the Inclusion of Women and Minorities as Participants in Research Involving Human Subjects – Policy Implementation Page.
- In accordance with 45 C.F.R. § 46.207, no pregnant woman may be involved as a subject in a human clinical research project unless: (1) the purpose of the research is to meet the health needs of the mother and the fetus will be placed at risk only to the minimum extent necessary to meet such needs; or (2) the risk to the fetus is minimal."
- Women shall be clearly informed (verbally and in writing) about potential risks to their fertility, fetus, and nursing infant as a consequence of the proposed study intervention. All available information regarding toxicity and results from previous studies shall be provided with an explanation of their significance to any potential health risks.
- Both the mother and father shall be legally competent and give their informed consent after being fully informed regarding any potential impact on the fetus or nursing infant. The father’s consent does not need to be secured if the research meets the health needs of the mother, his identity or whereabouts cannot be reasonably ascertained, or the pregnancy resulted from rape.
• Pregnancy testing may be used to detect unsuspected pregnancy prior to any treatment that may pose a potential risk to the fetus. Female subjects must be informed about employing a reliable method of contraception or abstinence for the duration of the treatment within the study.

7.8.2. Employee or Laboratory Personnel as Volunteers. Several important policies shall be followed in relationship to using laboratory personnel as volunteer subjects:

• All personnel including faculty, staff, students, and non-university visitors, shall agree to and sign the same oral and written informed consent as any other subject;
• Principal investigators and research directors shall avoid any coercion in recruiting laboratory personnel;
• If compensation is allowed, it should go to all subjects. However, compensation of individuals who are full-time members of the academic staff or regular exempt staff may not be allowed;
• If there is any question as to the appropriateness of utilizing employees or laboratory personnel in research, the PI should contact the IRB and the University's Human Resources Director for guidance.

7.8.3. Volunteers Receiving Addicting Drugs. PIs shall use a confidential consent form and, where applicable, urine tests whenever drugs used in the study hold a significant potential for addiction. In addition, volunteer subjects must be informed (orally and in writing) when the drug(s) they receive has a significant potential for addiction including but not limited to opiates, cocaine, and alcohol.

Risk addictions that are significant to particular populations must be carefully explained to subjects prior to participation in the study. Furthermore, persons with known histories of addiction shall be excluded from research projects that use drugs with potentially significant addiction properties. An exception to this policy may occur when the participation of addicted subjects is part of the scientific inquiry and is approved by the IRB.

7.8.4. Research Involving Children. Children are considered a vulnerable research population because their physical and intellectual capacities are limited and as a result special ethical, policy and guidelines mandates must be followed when PI’s design and IRB’s review research that involve children. To this end, NMHU upholds both Title 45 CFR Part 46, Subpart D and the NIH Policy and Guidelines on the Inclusion of Children as Participants in Research Involving Human Subjects in any research involving children.

Generally, the federal regulations and thus NMHU permit four categories of research involving children including:

Category 1 – research that does not involve greater than minimal risk to children. According to OHSR, minimal risks to healthy children may include “urinalyses, small amounts of blood obtained by venipuncture, electroencephalography, allergy scratch tests, minor changes in diet or daily routine, and/or use of standard psychological or education tests”. However, the assessment of the probability and magnitude of harm or
discomfort may be different in sick children and may vary depending on the diseases or conditions that the children may have.

**Category 2** – research involving greater than minimal risk, but presenting the prospect of direct benefit to the individual child subjects.

**Category 3** – research involving greater than minimal risk and no prospect of benefit to the individual child-subject. In order to approve research in this category, the IRB must determine that the risk of the research represents no more than a minor increase over minimal risk; that the intervention or procedures presents experiences to the child-subjects that are reasonably commensurate with those inherent in their actual, or expected medical, dental, psychological, social or educational situations; and the intervention or procedure is likely to yield generalizable knowledge about the subject’s disorder or condition which is of vital importance for understanding or amelioration of the disorder or condition.

**Category 4** – research not otherwise approvable under one of the above categories but the IRB determines that the study presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children. In these cases the IRB will forward the research for review by the Deputy Director for Intramural Research (DDIR). If he/she agrees, the study will be forwarded to the Secretary of HHS who may approve the research after consultation with a panel of experts. The panel must determine that the research presents a reasonable opportunity to further the understanding, prevention or alleviation of a serious problem affecting the health or welfare of children, and the research will be conducted in accordance with sound ethical principles.

In all cases, the IRB must determine that adequate provisions have been made for soliciting permission of the parents or legal guardians and the assent of the children. In some cases, the IRB must consider the extent to which research procedures are appropriate for a child-subject. For additional guidance, refer to the following federal policies:

- HHS’s Additional Protections for Children Involved as Subjects in Research (Title 45 CFR Part 46, Subpart D)
- Requirements for permission by Parents or Guardians and for Assent by Children (45 C.F.R. § 46.408)
- Waiver of the Consent Requirements [45 C.F.R. § 46.408(c)]
Section 8: Research on Laboratory Animals

This section summarizes the policies and procedures required for conducting research on laboratory animals. Included in this section are the responsibilities of the Institutional Animal Care and Use Committee, the principal investigator, faculty, staff, visiting scholars and students. Procedures for qualifying and chaperoning visitors in laboratory settings are also provided in this section.

NMHU assumes full responsibility for complying with all federal and state regulations pertaining to the use and care of animal subjects in research, teaching, and related activities. This includes compliance with the assurances, accreditation process, and regulations set forth by:

1. Office of Laboratory Animal Welfare
2. American Association for Accreditation of Laboratory Animal Care
3. Animal Welfare Act
4. U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training; and
5. Policies and laws set forth by the U.S. Office of Extramural Research, including:
   - Public Health Service (PHS) Policy on Humane Care and Use of Laboratory Animals;
   - Guide for the Care and Use of Laboratory Animals, Public Law 99-158;
   - Animals in Research, Public Law 103-43;
   - Plan for Use of Animals in Research; and
   - International Guiding Principles for Biomedical Research Involving Animals of the Council for International Organizations of Medical Sciences (CIOMS)

As part of its responsibility, NMHU will make a reasonable effort to ensure that all individuals involved in the care and use of laboratory animals understand their individual and collective responsibilities for compliance all applicable laws and regulations pertaining to animal care and use. This section provides a summary description of the responsibilities of those involved in carrying out the policies and procedures for proper care and use of laboratory animals.

8.1. Responsibility of Institutional Animal Care and Use Committee (IACUC)

As outlined in Section 1.5.3, the IACUC is authorized and responsible for administering the following functions.
• Review and approve applications including required modifications related to the care and use of laboratory animals with policies established by the United States Public Health Service (PHS) and OLAW. Meetings will be held at least once a month if necessary. As part of the review process the IACUC will examine each application for actions such as the following:
  o Protocols for purchasing and ordering laboratory animals
  o Standards for housing, feeding, and providing veterinary care
  o Procedures for handling laboratory animals
  o Conditions for laboratory animals that minimize hazard to public health and safety
  o Procedures for reporting inhumane treatment of laboratory animals
  o Procedures for transporting laboratory animals to or from the University

• Notify principal investigators or project directors and the ORSP Office of Research and Sponsored Projects (ORSP) in writing of the committee's approvals, modifications, and disapproved activities related to the care and use of laboratory animals;
• Provide training and guidance in laboratory care for PIs and staff;
• Monitor at least every six months all laboratory facilities affiliated with the university;
• Suspend activities for noncompliance of PHS regulations and/or other federal, state, and university policies or regulations related to the humane treatment of laboratory animals;
• Prepare reports of the committee’s approvals, findings and required modifications or recommendations based on laboratory observations, to the ORSP.
• Assist the ORSP in preparing an annual report to the PHS or OLAW offices for protection from research risks or to other representatives. Also, assist in preparing reports on laboratory animals related to any suspensions and/or noncompliance with the PHS or OLAW, and university policy. IACUC minority views shall be included in the reports if applicable;
• With assistance from the ORSP maintain records of applications, protocols, changes in on-going activities, reports for duration of each research project and for at least a three year period after the completion of the project; and
• Recommend policy changes on any aspects of the policies related to animal use and care at the university to the ORSP.

8.2. Responsibility of Principal Investigator for the Laboratory Animals

Principal Investigators involved with laboratory animals must adhere to the following responsibilities:

1. Maintain an understanding of federal, state and university regulations pertaining to the humane care and use of laboratory animals.
2. Each year, file an Approved Animal Study Protocols Yearly Update Form with the IACUC for a review.

3. Prepare a one year approval of research activities involving laboratory animals and complete the Animal Study Proposal.

4. Purchase laboratory animals from businesses approved by the university;

5. Ensure that staff, visiting scholars and students are trained in the humane care of animals as they perform their duties and obligations set forth by external regulations and university policy.

6. Maintain documentation on staff and student training as requested by regulatory and accrediting agencies.

7. Seek prior approval to bring laboratory animals to the university campus from outside institutions or collaborating agencies.

8. Seek prior approval from the IACUC to move and/or transport animals out of the animal facility.

8.3. Responsibility of Faculty, Staff, Visiting Scholars, and Students

- All faculty, staff, visiting scholars and students involved in animal research are required to comply with all relevant regulations and policies related to the humane care and treatment of laboratory animals. As a result, attendance at training orientations for the care and use of laboratory animals is mandatory for all individuals engaged in animal research. Training will be held annually for individuals new to animal research. Additional training may be provided to others as updates on policies and procedures on animal care, and treatment is identified by the IACUC.
- After each training and thereafter, attendees will be asked to sign the Approved Animal Study Protocols Yearly Update Form to verify an understanding of the policies and procedures for humane care and treatment of laboratory animals.
- Complaints (anonymity accepted) regarding the mistreatment or abuse of laboratory animals may be filed with the IACUC or the ORSP.
- The ORSP can also provide information on how to contact the IACUC Committee Chair and University Veterinarian.

8.4. Visitors in Animal Facilities
For purposes of this document, "visitors" may be defined as persons who fall under the following categories:
• Inspectors
• Site review staff
• Tour guests

• Workshop participants
• Contractor service personnel.

• Individuals recovering from surgery or otherwise immuno-suppressed may want to consider that certain areas pose an increased risk to personal health.

Visitors entering animal facilities must be chaperoned by NMHU personnel who are participating in an animal occupational health program or study and have attended the animal care and use training session. The university personnel should assist the visitors in complying with all procedures and precautions that have been established based on the species and activity that will take place, such as donning masks, gloves, eye protections, etc. Questions regarding the appropriate precautions can be directed to the PI or members of IACUC

Note: This visitation policy is applicable to exposure to animals from the general housing areas only. Entry into quarantined areas or those containing known biological, radiological, or chemical hazards should be evaluated on a case-by-case basis by the PI and members of IACUC.
Section 9: Financial Conflict Of Interest
and Code of Ethic

This section primarily focuses on policies and procedures intended to minimize Financial Conflict of Interest (FCOI) and provide a means for managing them when they arise. Included in this section are descriptions of NMHU’s philosophy regarding conflict of interest, the responsibility of faculty, staff, and the dean, FCOI procedures for annual certification, and a description of the institutions’ code of ethics for consulting and other professional activities.

9.1. NMHU’s Philosophy

In committing to a full-time faculty or professional staff position, the university expects primary allegiance to the university with time and intellectual activities focused on the institutions’ role in education and research. FCOI in research may occur when an investigator's private interests (such as outside professional or financial relationships) compete with his or her professional obligations to NMHU. It is the belief of the university that by establishing requirements on conflict of interest, which is also within the institution’s responsibility of public trust, that an environment of ethics, respect and academic freedom can prevail (Also see Section 2.2.2 of the Handbook).

NMHU further recognizes that Financial Conflicts of Interest (FCOI) are inevitable and practically unavoidable in a modern research university. FCOI’s can arise out of the fact that a mission of the university is to promote public good by fostering the transfer of knowledge gained through university research and scholarship to the private sector. In a research university these interest can compromise or be perceived as compromising important academic values, research integrity, and the protection of human subjects or the university mission. It is thus essential that all NMHU faculty, staff, and students understand how these divergent interest can become problematic. To that end, the purposes of this policy are to educate faculty about situations that generate FCOI’s, to provide means for faculty and the university to manage FCOI’s, to promote the best interests of students and others whose work depends on faculty direction, and to describe situations that are prohibited.

If policies regarding conflict of interest appear difficult to interpret or apply to any individual situation, university faculty or staff should contact the Office of Research and Sponsored Projects (ORSP) or the dean of their relevant school.

9.2. Definition for Terms

An Investigator is defined as the Principal Investigator/Principal Director (PI/PD), the PI/PD and any other person, regardless of title or position, who is responsible for the design, conduct, or reporting of research funded by the U.S. Department of Public Health and Human Services (PHS), or proposed for such funding, such as collaborators or
Financial Conflict of Interest (FCOI) arises when an investigator diverges from the university’s professional obligations to a private interest involving actions which are determined by significant personal gain, financial gain or interests. Such behavior calls into question the professional objectivity and ethics of the individual and also compromises the integrity of the university.

NMHU implements its' policy and procedures on FCOI for all research proposals, funded research, all protocols involving animals or human subjects, and all internal competitions pursuant to regulations issued by the National Science Foundation (NSF), The U.S. Department of Public Health and Human Services (PHS), National Institutes of Health (NIH), the Centers for Disease Control and Prevention (CDC) and the U.S. Department of Defense (DoD). This policy also is consistent with the final rule issued by the U.S. Department of Health and Human Services in 2012 on amended regulations regarding an investigators’ disclosure of reimbursed or sponsored travel under “Responsibility of Applicants for Promoting Objectivity in Research” in 42 CFR Part 50, Subpart F and “Responsible Prospective Contractors” in 45 C.F.R. Part 94.

**Significant Financial Interests.** The term "significant financial interest" means:

1. A financial interest consisting of one or more of the following interests of the Investigator (and those of the Investigator's spouse and dependent children) that reasonably appears to be related to the Investigator's institutional responsibilities:

   a. With regard to any publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure and the value of any equity interest in the entity as of the date of disclosure, when aggregated, exceeds $5,000. For purposes of this definition, remuneration includes salary and any payment for services not otherwise identified as salary (e.g., consulting fees, honoraria, paid authorship); equity interest includes any stock, stock option, or other ownership interest, as determined through reference to public prices or other reasonable measures of fair market value;

   b. With regard to any non-publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure, when aggregated, exceeds $5,000, or when the Investigator (or the Investigator's spouse or dependent children) holds any equity interest (e.g., stock, stock option, or other ownership interest); or

   c. Intellectual property rights and interests (e.g., patents, copyrights), upon receipt of income related to such rights and interests.

2. Investigators must disclose the occurrence of any reimbursed or sponsored travel (*i.e.*, that which is paid on behalf of the Investigator and not reimbursed to the Investigator
so that the exact monetary value may not be readily available), related to their institutional responsibilities; provided, however, that this disclosure requirement does not apply to travel that is reimbursed or sponsored by a Federal, state, or local government agency, an Institution of higher education as defined at 20 U.S.C. 1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an Institution of higher education. NMHU’s FCOI policy will specify the details of this disclosure, which will include, at a minimum, the purpose of the trip, the identity of the sponsor/organizer, the destination, and the duration. In accordance with NMHU’s FCOI policy, the institutional official(s) will determine if further information is needed, including a determination or disclosure of monetary value, in order to determine whether the travel constitutes a FCOI with the PHS-funded research.

As defined by the PHS and NSF (see 42 CFR Part 50, Subpart F), the term "significant financial interest" does not include:

a) Salary, royalties, or other remuneration paid by the Institution to the Investigator if the Investigator is currently employed or otherwise appointed by the Institution (including intellectual property rights assigned to the Institution and agreements to share in royalties related to such rights);

b) Income from investment vehicles, such as mutual funds and retirement accounts, as long as the Investigator does not directly control the investment decisions made in these vehicles;

c) Income from seminars, lectures, or teaching engagement sponsored by a Federal state, or local government agency, an Institution of Higher Education as defined in 20 U.S.C 1001(a), an academic hospital, a medical center, or a research institute that is affiliated with an Institution of Higher Education; or

d) Income from service on advisory committees or review panels for a Federal, state, or local government agency, an Institution of Higher Education, as defined in 20 U.S.C 1001(a), an academic hospital, a medical center, or a research institute that is affiliated with an Institution of Higher Education

9.3. Disclosure Requirements

Disclosure is applicable to all investigators, including faculty, staff and students. Investigators are defined as anyone responsible for a task that could have a significant effect on the design, conduct or reporting of the research. It is the responsibility of the PI to identify the investigators and inform them of the policy requirements.

9.3.1. Disclosure Procedures. It is the responsibility of NMHU to determine how any potential conflict will be managed, reduced or eliminated. To this end, all investigators are required to adhere to the following disclosure procedures before an award can be
accepted:

1. All new faculty or investigators are required to attend training on policy review regarding financial conflicts of interest and the Investigators’ responsibilities regarding disclosure of significant financial interests.

2. All faculty are required to complete training regarding the same topics as new faculty prior to engaging in research related to any funded grant and at least every four years, and immediately when any of the following circumstances apply:
   - The Institution revises its financial conflict of interest policies or procedures in any manner that affects the requirements of Investigators;
   - NMHU finds that an Investigator is not in compliance with the Institution's financial conflict of interest policy or management plan.
   - If the Institution carries out the PHS-funded research through a subrecipient (e.g., subcontracts, or consortium members), the awardee Institution must take reasonable steps to ensure that any subrecipient Investigator complies with the the regulations set forth in the Federal Registrar Title 45-Public Welfare, Part 94.4.

3. For each proposal submitted to an agency, the investigator must certify that he or she has appropriately disclosed any significant financial interests related to that proposal by completing the Investigators Annual FCOI Disclosure Form. If more than one investigator is engaged in the sponsored project, the PI must also complete the Investigators’ Annual Project Disclosure Certification Form. These documents: (1) identify all investigators participating in the project; and (2) certify that all requirements related to conflict and financial of interest are met.

4. Each School /College will handle this responsibility for its own PIs, relying on the PI to complete the NMHU Investigators Annual FCOI Disclosure Form. In addition, Investigators who are planning to participate in PHS-funded research must disclose their Significant Financial Interests (SFIs) over the previous twelve-month period to their School Dean no later than at the time of application for PHS-funded research. As with other SFIs defined in 42 CFR 50.603, the Investigator must disclose his/her interests, as well as those of the Investigator’s spouse and dependent children, that reasonably appear to be related to the Investigator’s institutional responsibilities.

5. Non-NMHU investigators participating in a sponsored project must initially complete the NMHU Subrecipient Commitment Form thereafter during the research project period.
   - If Investigators from sub-award institutions are required to follow their institutions FCOI policy, the subrecipient shall certify that its policy complies with 42 CFR Part 50, Subpart F.
• If none exist, they must use the NMHU Subrecipient Commitment Form.

6. All disclosures will be submitted to and reviewed by the Faculty Research Committee and the Director of the ORSP (see role and responsibilities of FRC in Section 1.7).

   i. For Investigator’s participating in PHS-funded research, they must submit an updated disclosure of significant financial interests form at least annually during the period of an award. The disclosure shall include any information that was not disclosed initially to NMHU or in a subsequent disclosure of significant financial interests (e.g., any financial conflict of interest identified on a PHS-funded project that was transferred from another Institution), and shall include updated information regarding any previously disclosed significant financial interest (e.g., the updated value of a previously disclosed equity interest).

   ii. When entering into a new relationship with an organizational entity or discovering or acquiring (e.g., through purchase, marriage, or inheritance) a new significant financial interest while in a PHS-funded research project, an Investigator must submit an updated disclosure of significant financial interests within thirty days of entering into such a new relationship. The form shall be submitted to the Faculty Research Committee to determine whether an Investigator’s significant financial interest is related to PHS-funded research and if so related, whether the significant financial interest is a FCOI. A personal financial interest with a company, organization or other entity would be considered related to an investigator’s research study in circumstances such as when an entity has:

   a) financial interests that could reasonably be considered to have a potential influence on the design, conduct or reporting of an Investigators’ research (e.g., materials transfer agreement);

   b) a reasonable possibility of being financially affected by an Investigators’ research;

   c) made a gift to NMHU that benefits the Investigator’s research (e.g., equipment gifts or loans);

   d) made a product that is under study in research in which an Investigator is involved;

   e) a license on NMHU’s intellectual property in which investigator has a financial interest; and

   f) a product that is under study in human subjects in which an investigator is directly or indirectly involved.
iii. Where applicable, NMHU will notify the sponsoring institute or agency, prior to any expenditure of project funds. In addition, if a potential conflict is identified subsequent to the initial award of the project, the school/college must notify the sponsoring institute or agency within sixty days of that identification.

The school/college dean must prepare a notification with an *Investigator’s Management Plan* (completed by the Faculty Research Committee) for the administrative officer of the awarding agency describing the potential conflict of interest in regard to the subject proposal, and the appropriate action(s) to be taken to manage, reduce or eliminate that conflict. The notification should be signed and transmitted by the ORSP. A copy of the notification must be kept with the project records.

According to 42 CFR Part 50.605 on *Management and Reporting of Financial Conflicts of Interest*, the following information must be included in the preparation of a FCOI notification.

I. Project number;
II. Project Title;
III. Name of PI or PD or contact PD/PI if a multiple PD/PI model is used;
IV. Name of investigator with the FCOI;
V. Nature of the financial interest (e.g., equity interests, intellectual property, invest vehicles, payment for services, reimbursed or sponsored travel, salary not from awardee institution);
VI. The amount or value of the FCOI by any one of the following two categories:
   - Monetary value ranges from $0 to $4,000, $500-$9,999, $10,000-$19,999, amounts between $20,000-$100,000 by increments of $20,000, amounts above $100,000 by increments of $50,000; >$599,999; >$600,000 specify amount; and/or;
   - A statement that the interest is one whose value cannot be readily determined though reference to public prices or other reasonable measures of fair market value;
VII. A description of how the FCOI relates to funded PHS-funded research and the basis and the basis for the institution’s determination that the financial interest conflicts with such research;
VIII. A description of the key elements of the Institution’s management plan, including:
   (a) the role and principal duties of the conflicted Investigator in the research project;
   (b) conditions of the management plan;
   (c) how the management plan is designed to safeguard objectivity in the research project;
(d) confirmation of the Investigator’s agreement to the management plan; and
(e) other information as needed.

IX. A summary of annual updates on the status of any previous financial conflict previously reported with regard to an ongoing PHS-funded research project.

9.3.2. Additional Certifications and Ongoing Reporting Requirements. On an annual basis all faculty members must certify to their school/college deans their compliance with NMHU’s policies related to conflict of interest and commitment. They must also disclose information about their (and their immediate family members’, as described below) financial relationships with outside organizations that are sponsors of their teaching or research programs or are otherwise involved in current, proposed or pending financial relationships with the university that involve the faculty member. In addition, faculty must disclose to their school/college dean on an ad hoc basis current, proposed or pending situations that may raise questions of conflict of commitment or interest, as soon as such situations become known to the faculty member. In addition:

- Investigators have an ongoing duty throughout the period of their research projects to update conflict of interest disclosures as new financial interest arise that would reasonably appear to affect their research projects. A conflict of interest disclosure expires one year after submission;
- If an updated disclosure is submitted prior to the expiration date due to a significant change in financial status, then the one year period would commence upon submission of the new disclosure. Investigators are responsible for tracking the expiration dates of their disclosures and for submitting updated disclosures; and
- FCOI disclosures are also required at the time of a grant renewal application, and the time of any protocol renewal or amendment. The forms must be submitted to the ORSP no later than 30 days prior to the expiration date of the project.

9.3.3. Review Process. The Faculty Research Committee is a peer review committee whose role and responsibility are detailed in Section 1.7 and requirements for submitting disclosures are provided in Section 9.3.6 of the Handbook. The committee may establish a FCOI Subcommittee to consider disclosures associated with all research projects on a case-by-case basis. The committee or subcommittee will conduct the review process in a manner that is intended to foster, not hinder research relationships at NMHU.

The subcommittee must be composed of senior faculty representing the diverse disciplines and colleges on campus, a senior administration staff with responsibility for sponsored projects, as well as two outside community members. Committee meetings are conducted by the chair and require a quorum for formal actions. All FCOI Subcommittee actions require the approval of a majority of a quorum. If the FCOI Subcommittee determines that the disclosed interest could directly and significantly affect the design, conduct or reporting of the funded research, it will propose a resolution strategy to manage the conflict.
Examples of conditions or restrictions included in 42 CFR Part 50.605 that might be imposed to manage a FCOI include:

- Public disclosure of financial conflicts of interest (e.g., when presenting or publishing the research);
- For research projects involving human subjects research, disclosure of FOCI directly to participants;
- Appointment of an independent monitor capable of taking measure to protect the design conduct, and reporting of the research against bias resulting from the FCOI;
- Modification of the research plan;
- Change of personnel or personnel responsibilities in all or a portion of the research;
- Disqualification of personnel from participation in all or a portion of the research;
- Reduction or elimination of the financial interest (e.g., sale of an equity interest); or
- Severance of relationships that create financial conflicts

Where a conflict has been identified, the investigator must agree to and follow the management plan. As part of the continuing review process, the committee will perform ad hoc checks to ensure compliance with the directives laid out in the management plan. Where a monitor is assigned to a particular management plan, he or she is required to submit a written report in June and December of each year throughout the duration of the study to the committee for review.

ORSP will also establish a case file for each FOCI Management Plan and monitor compliance. ORSP will thereafter review annual disclosures, management plan procedures, and additional information related to the Investigator’s potential FCOI. Management Plans may be amended as necessary. The investigator, department chair, dean/director may participate in the annual review.

In addition, if the failure of an Investigator to comply with the FCOI policy of NMHU has biased the design, conduct, or reporting of a PHS-funded research, the University will promptly notify the PHS Awarding Component of the corrective action taken or to be taken. The PHS Awarding Component will consider the situation and, as necessary, take appropriate action, or refer the matter to NMHU for further action, which may include directions to the University on how to maintain appropriate objectivity in the funded project.

NMHU will respond to any HHS inquires into the University’s procedures and actions regarding conflicting financial interests in the PHS-funded research, including a requirement for submission of, or review on site, all records pertinent to compliance with this subpart. To the extent permitted by law, HHS will maintain the confidentiality of all records of financial interests. On the basis of its review of records and/or other information that may be available, the PHS Awarding Component may decide that a particular conflict of interest will bias the objectivity of the PHS-funded research to such
an extent that further corrective action is needed or that the Institution has not managed, reduced, or eliminated the conflict of interest in accordance with CFR 42, Part 50, Subpart F, Sec 50.606. The PHS Awarding Component may determine that suspension of funding under 45 CFR 74.62 is necessary until the matter is resolved. Moreover, if the HHS determines that a PHS-funded project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment has been designed, conducted, or reported by an Investigator with a conflicting interest that was not disclosed or managed as required by this subpart, the Institution must require the Investigator(s) involved to disclose the conflicting interest in each public presentation of the results of the research.

9.3.4. Appeal Process. Should an investigator wish to appeal a decision made by the Faculty Research Committee, he or she may present the appeal to the VPAA who will consider the case in consultation with the Director of the ORSP (See Section 9.7 for exceptions). For more information on the roles and responsibilities of the Faculty Research Committee see Section 1.7. For more information on the submission of disclosures see Section 9.3.6.

9.3.5. Institution Responsibility on PHS Awards. Prior to the NMHU’s expenditure of any funds under a PHS award, the ORSP will report to the PHS Awarding Component the existence of a conflicting interest (but not the nature of the interest or other details) found by the NMHU’s FCOI and assure that the interest has been managed, reduced or eliminated in accordance with this subpart and, for any interest that the University identifies as conflicting subsequent to the NMHU’s initial report under the award. The report will be made and the conflicting interest managed, reduced, or eliminated, at least on an interim basis, within sixty days of that identification. NMHU will make information available, upon request, to the U.S. Department of Human Health Services (HHS) regarding all conflicting interests identified by the Institution and how those interests have been managed, reduced, or eliminated to protect the research from bias in compliance with 45 CFR, Subpart 50.

The University is also responsible for reporting FCOI reports to the PHS Awarding Component regarding all financial conflicts of interest of all subrecipient Investigators prior to the expenditure of funds and within sixty days of any subsequently identified FCOI.

The Institution shall within 120 day of the Institution’s determination of noncompliance, complete a retrospective review of the Investigator’s activities and the PHS-funded research project to determine whether any PHS-research, or portion thereof, conducted during the time period of the noncompliance, was biased in the design, conduct, or reporting of such research if a FCOI is not identified or managed in a timely manner, including:

(a) failure by the Investigator to disclose a significant FCOI that is determine by the Institution to constitute a FCOI;
(b) failure by the Institution to review or manage such a FCOI; or
(c) failure by the Investigator to comply with a FCOI management plan;

The Institution is required at a minimum to document the retrospective review based on the following key elements:

1. Project number;

2. Project Title;

3. Name of PI or PD or contact PD/PI if a multiple PD/PI model is used;

4. Name of investigator with the FCOI;

5. Name of entity with which the Investigator has a FCOI;

6. Reason(s) for the retrospective review;

7. Detailed methodology used for the retrospective review (e.g., methodology of the review process, composition of the review panel, and documents reviewed);

8. Findings of the review;

9. A summary of annual updates on the status of any previous financial conflict previously reported with regard to an ongoing PHS-funded research project.

10. Conclusions of the review including whether a mitigation report was completed and if bias was found.

Remedies for PHS-Awarding Component to take in appropriate correcting or not correcting actions are specified in 42 CFR Part 50.606. For more information on the roles and responsibilities of the Faculty Research Committee see Section 1.7. For more information on the submission of disclosures see Section 9.3.6.

9.3.6. Mandatory Disclosures. In accordance with §200.113, an applicant for a Federal award must disclose in writing and in a timely manner all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award to the Federal awarding agency, including the term and condition outlined in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM. Failure to make required disclosures can result in any of the remedies described in §200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

9.4. Additional Responsibilities of Faculty and Professional Staff
Every faculty and professional staff member should consider themselves as persons in positions of trust and conduct themselves accordingly. As part of their responsibility, faculty and staff must be particularly aware of situations where a conflict between the private interests of a person and her or his official university position may exist. To implement this understanding, the following key policies are established.

9.4.1. Presence on Campus. While on full-time active duty, faculty and professional staff are required to:
- maintain a significant presence on campus or on affiliated locations each semester;
- be accessible to students; and
- be available to interact with university colleagues, unless the dean, department head, or VPAA has granted specific prior approval for extended or frequent absences from the university sites.

9.4.2. Faculty and Staff Consulting and Professional Activities.
Consulting (i.e., fee-for-service or equivalent relationship with a third party) is considered a privilege at the university. As such, the following policies shall be followed.

1. Code of Conduct. Faculty and professional staff are permitted to consult under the following code of conduct (Policy 700, NMHU’s Personnel Policies and Procedures Manual, 1990, including:

- All university employees are required to report, in writing, to the President any outside employment, research and consulting activities, controlling interest (greater than 20%) in a business; and any financial interest that an employee has reason to believe may affect the university.
- All university employees shall disqualify themselves from any university proceedings that involve a business in which they have financial interest.
- No university employee shall acquire a financial interest in a business at a time when he/she has a reason to believe that it will be directly affected by his/her official action.
- No university employee shall use confidential information or university employment for their own or another’s private or personal gain.
- No employee shall request or accept a gift or loan for him/herself or another 1) if it tends to influence him/her in the discharge or his/her official duties or 2) if he/she, within two years
- , has been involved in any official action directly affecting the donor or lender.
- No employee shall purchase or influence the purchase or services, equipment, instruments, materials, or other items for the university or its programs from any firm in which the employee has an interest.
- No employee shall make unauthorized use of privileged information acquired in connection with the university’s activities.
• No employee shall permit transmission to a private firm, or make other use for personal gain, of university productions, research results, materials, records, or information that are not made generally available.
• No employee shall let an outside activity interfere with his/her primary obligation to the university. This does not mean that the employee may not enter into an outside consulting activity, but if he/she does, it must not be allowed to interfere with university assignments.
• The vice president’s or President’s designee are available to advise staff members on matters relating to possible conflicts of interest.
• The university recognizes that as a public institution it has an obligation to the citizens of the state and a legal mandate from the legislature of the state to disclose upon written and justified request the salary paid to any employee of the university.
• The university also recognizes its obligation to its employees not to disclose information maintained in the university or personnel files that is protected by the law.
• Employees may not be solicited, not solicit, any time during working hours.
• For the purpose of this policy, solicitation includes electioneering of any kind. For further information related to general research policies and procedures for conducting research see Section 2 and 3 of the handbook. For information on research property see Section 5 of the handbook.

2. Time Restrictions. According to the Faculty Senate Manual, Section 8 (PDF), the general guideline for time spent on professional consulting activities will be not more than the equivalent of one work day (eight hours) per five day week while classes are in session.

If a faculty member is awarded a grant through NMHU, release time may be give from her or his teaching duties. Faculty members participating in grant proposals should include provisions for release time in the proposal, if appropriate, to ensure reimbursement to the university, and to allow for faculty participation in that release time from normally assigned teaching duties. Where release time from teaching duties is not feasible, the faculty member may be provided an administrative overload supplemental contract. (For more detail see the Faculty Senate Handbook (PDF), Section VIII, I, #3. Work Under Fund Grant).

9.4.3. Students. Advising students must be independent of personal commercial interests and of influence from outside, non-university obligations. In addition, the work of students and others shall not be exploited in the course of a faculty or staff’s outside obligations. To this end, faculty and staff shall disclose their involvement with outside, non-university parties who could benefit from the work or ideas of the students or their colleagues.

9.4.4. Resources. University resources (including, but not limited to, confidential information, equipment, facilities, or personnel) may not be used for personal use or for
outside consulting except in purely incidental ways.

9.4.5. Inventions. Faculty and professional staff must disclose each year the creation or discovery of all potentially patentable inventions occurring during the course of their university activities or with more than incidental use of university resources (for more detail on inventions see Section 5 on Research Property). The report must receive a recommended approval from the dean and submitted to the Director of the ORSP for final approval.

9.4.6. Violations. Faculty and professional staff should report suspected violations of applicable policies related to conflict of interest as well as suspected violation of other regulations, including those applicable to government contracts and grant requirements. This reporting should be made initially through standard management channels, beginning with an immediate supervisor. Employees may go to a higher level of management to report suspected violations.

In situations in which the objectivity of a faculty member could reasonably be questioned, the dean of a School/College may establish an independent oversight committee to take steps including (but not limited to) the following: to review the appropriateness of the proposed research to be conducted at NMHU, to oversee the conduct of the research, and to ensure open and timely dissemination of the research results. Such oversight committees will be required for all clinical trials raising questions of conflict of interest.

9.5. Responsibility of Deans

A summary of the specific policies for college/school deans on procedures for handling issues related to FCOI is described in this section.

1. Deans may review and file requested exceptions to the policy on FCOI to the ORSP. The review process shall include participation from representatives of the school’s/college’s faculty, professional staff, and the Faculty Research Committee.

2. Deans shall be responsible for disseminating and submitting their faculty and professional staff annual disclosure forms to the ORSP.

3. Deans shall submit an annual FCOI disclosure to the ORSP. Unless the school/college has filed an alternative disclosure form, deans shall use the university’s form supplied by the ORSP.

4. Deans shall establish procedures to ensure timely review of their faculty's annual and ad hoc disclosures of potential or apparent conflicts, and to ensure (in consultation with the Director of the ORSP) the appropriate management of such conflicts. Such procedures may involve representatives from the school's faculty as part of a reviewing body.
5. The Director of the ORSP shall approve each school dean's plans for implementing this policy, interpret policy provisions in consultation with school/college deans, and respond to faculty wishing to appeal their school/college deans' decisions.

### 9.6. Prohibited Activities and Exceptions

The following prohibited actions are listed to further clarify the boundaries of conflict of interest to faculty and professional staff.

#### 9.6.1. Negotiations

Participation in negotiating or giving final approval to agreements between the university and other entities in which the individual or an immediate family member has a significant financial relationship or with which the individual or an immediate family member has an employment or consulting arrangement and is prohibited by the university.

#### 9.6.2. Business Relations

Acceptance of employment, an official relationship, or a consulting arrangement with another entity which has business relations with the university is prohibited.

#### 9.6.3. Inordinate Consulting

Acceptance of outside consulting if full-time obligations to the university are not met is prohibited.

#### 9.6.4. Gratuities and Special Favors

Acceptance of gifts, other gratuities, or special favors from entities (e.g., private organizations) with which the university does or may conduct business is prohibited.

#### 9.6.5. Outside Commitment

Acceptance of non-university employment, consulting, public service, or pro bono work which can result in conflict regarding allocation of time and energies is prohibited. In addition, full-time faculty and professional staff must not have a significant outside management responsibility (including supervision of the work of others and/or day-to-day responsibility for operating decisions) nor act as a principal investigator on sponsored projects outside the University. This policy is not intended to limit faculty or staff from participating in multi-site training or research programs, nor does it apply to circumstances in which a faculty member’s research requires access to facilities not available at the University. However, in such cases, faculty and professional staff shall establish clear boundaries that separate the University and outside obligations so as to avoid questions about the appropriate use of resources and attributions of their work.

#### 9.6.6. Personal Gain

Providing non-university employees or outside entities with university supported materials, property records or information, work products or results is prohibited.

#### 9.6.7. Privileged Information

Agreement to use privileged information for personal
gain without authorization from the university is prohibited. Privileged information includes, but is not limited to use of medical, personnel, or security records; anticipated materials requirements or price actions; knowledge of new sites for university supported operations; knowledge of forthcoming programs or of selections of contractors or subcontractors in advance of official announcements.

9.6.8. University Resources. Use of university resources, including confidential information, equipment, facilities, or personnel except in purely incidental ways, except for performance of the individual’s university employment is prohibited.

9.7. Procedures for Submitting Exceptions

If a faculty or staff member is in a situation of potentially violating any polices related to conflict of interest, he or she should make a full, detailed disclosure in writing of the conflict and a justification for an exception. This disclosure shall be submitted to the dean or department head and the Research Committee for a review and recommended approval. Final approval rests with the Director of the ORSP.

Faculty and staff may appeal a decision made by the school/college to the ORSP. An appeal of the decision by the ORSP may be made to the university president..
Section 10: Non-Faculty Research Appointments

The policies and procedures on the appointment of non-faculty research appointments apply to all schools/college, departments, and independent centers or institutes. The intent of these policies and procedures is to simplify the appointment and hiring process of postdoctoral fellows, visiting researchers or scholars and consultants. For further detail refer to Policy #475 in NMHU’s Purchasing and Policies Manuel available at NMHU’s website in NMHU's Faculty Resources.

10.1. Postdoctoral Fellows

10.1.1. Definition of Postdoctoral Fellows. Postdoctoral fellows are individuals in residence at NMHU for a limited period of time to pursue advanced training under the mentorship of a faculty supervisor. Individuals appointed to this position must have earned a Ph.D. or terminal degree within the last three years. Exceptions to the length of time beyond the doctorate may be approved in cases of scholars who have been out of the field due to health or family responsibilities.

While not considered university employees, postdoctoral fellows typically receive a cost-of-living subsidy from single or multiple external funding sources while in residence. Appointments are normally at 100 percent time and based on fixed terms up to a maximum of three years. Requests for short extensions to complete specific research or training must be approved by the Office of Research and Sponsored Projects (ORSP).

10.1.2. Appointment Process. Application to the postdoctoral position is made directly to the department or school/college in which the scholar is seeking appointment. The following procedures shall be followed in approving a postdoctoral fellow.

- Faculty members are expected to respond to all correspondence regarding potential postdoctoral positions and in each instance, determine whether there is sufficient laboratory or office space and other resources needed to support the scholar.

- Faculty sponsors or deans are responsible for sending a letter of invitation to each fellow accepted to a postdoctoral position with the following information:
  - name of the faculty supervisor;
  - date of expected arrival;
  - agreement of the source of support, the level of duration of funding and the amount of expected support from the funding source;
  - details of duties, if applicable; and
  - information about health insurance and other relevant University policies and procedures.

- Faculty sponsors or deans must inform postdoctoral fellows to contact the Office of Human Resources for documents that may need to be completed, including a
NMHU Patent and Copyright Agreement form, social security number and a W-4 form (Employee’s Withholding Allowance Certificate). Postdoctoral fellows should be informed of their non-eligibility for vacation or sick leave benefits. However, fellows are eligible for student health insurance, use of the student health center, library privileges and other privileges offered to graduate students.

- Faculty sponsors or deans are expected to notify postdoctoral fellows that they are subject to income tax, Federal Insurance Contributions Act (FICA) - also known as Social Security, and other taxes where applicable. The exception is for international postdoctoral fellows who qualify for federal “tax treaty exemption.”

- Faculty sponsors or deans should inform postdoctoral fellows that health insurance is available for those who have at least a 50 percent appointment with the university.

- When appointing an international Postdoctoral Scholar, the department must request a visa. NMHU expects that international Postdoctoral Scholars will be appointed with a J-1 (Research Scholar) visa. J-1 Scholars who are transferring from another appointment must maintain continuous active status (breaks in J-1 program eligibility are not permitted). Individuals on J-2 visas are not eligible for postdoctoral appointments.

### 10.2. Visiting Researchers or Scholars

#### 10.2.1. Definition of Visiting Researchers or Scholars

Visiting scholars are typically individuals who hold a doctorate degree from an outside institution in a relevant field of study. Visiting researchers also are persons who may not hold a doctorate degree, but:

1. are recognized as experts in the field of study;

2. are engaged in research at the doctoral level and conducting research in a field of interest to a university faculty member; or

3. are employees of companies which are conducting research and need to use specialized equipment or facilities available only at the university.

While not considered university employees, visiting researchers and scholars typically receive stipends from single or multiple external funding sources. Appointments are typically at 100 percent time and based on fixed terms up to a maximum of three years. Requests for extensions to complete specific research or training must be approved by the school dean with notification to the ORSP.

#### 10.2.2. Appointment Process

An appointment to a visiting researcher or scholar position is made directly by the department or school/college seeking such a position. The department or school/college also is required to abide by the following procedures.
1. Faculty members are expected to respond to all correspondence regarding the visiting research or scholar position(s) and determine whether there is sufficient laboratory or office space and other resources needed to support the visitor.

2. Faculty supervisors or deans are responsible for sending a letter of acknowledgment to the researcher with the following information:
   a) name of the faculty mentor;
   b) date of expected arrival;
   c) agreement of the source of support, the level of duration of funding and the amount of expected support from the funding source;
   d) details of duties, if appropriate; and
   e) information about library privileges, auditing courses without fee, access to off-campus housing, and other relevant university policies and procedures. Visiting researchers and scholars should be informed of their non-eligibility for vacation or sick leave benefits.

3. Faculty supervisors or deans must inform visiting researchers and scholars to contact the Office of Human Resources for documents that may need to be completed, including a NMHU Patent and Copyright Agreement Form, social security number, and a W-4 form (Employee’s Withholding Allowance Certificate.) Visiting researchers and scholars should also be informed of non-eligibility for vacation or sick leave benefits.

4. Faculty supervisors or deans are expected to notify visiting researchers and scholars that they are subject to income tax, FICA (Social Security), and other taxes where applicable. The exception is for international visiting researchers and scholars who qualify for federal “tax treaty exemption.”

5. Faculty sponsors or deans should inform visiting researchers and scholars that health insurance is available for those who have at least a 50 percent appointment with the university.

6. Visiting Scholars may subsequently be appointed as Postdoctoral Scholars if they are employed to participate on NMHU research projects for which they receive salary and benefits (see Section 10.1).

10.3. Consultants

10.3.1. Definition of Consultants. Consultants are individuals who give professional or expert advice to the university on sponsored research or training projects. The qualifications of a consultant are a Ph.D. or recognition as an expert in the field of study or training area. The following list identifies the types of consultants generally employed in sponsored projects and the requirements for hiring the consultants.
1. **Faculty and Staff Consultants.** NMHU encourages internal consultation among faculty and staff in connection with sponsored research and training projects. Where consultation involves significant commitments of time or effort, an appropriate fraction of the individual's regular full-time salary must be allocated to the benefiting project by payroll distribution, or established department service charge (e.g., internal programming services). Depending on the extent of consultation and requirements of the research sponsor, prior approval of such charges may be required. Consult the ORSP.

   Supplementary compensation to university faculty and staff in connection with intra-university consultation is permitted only in exceptional circumstances and requires written approval of the VPAA in the case of faculty, and the director of the Human Resources Department in the case of staff employees.

2. **Outside Consultants.** It is university policy to conform to sponsor requirements governing outside consultants. For projects which anticipate the retention of a specified consultant as part of the project, a letter of commitment from the consultant must be included with the proposal.

3. **Foreign National Consultants.** Internal Revenue Service (IRS) and treasury regulations, respectively, impose certain limitations as to the term of a consulting engagement and the employment of foreign nationals. Consult with the Human Resources Department for further requirements.

10.3.2. **Appointment Process.** An appointment of a consultant is made directly by the department or school/college seeking such a position on an approved sponsored research or training project. The department or school/college also is required to abide by the following procedures.

   1. Faculty or project supervisors are responsible for sending a letter of acknowledgment to the consultant with the following information:
      a) name of the faculty or project supervisor;
      b) date of completion for expected work;
      c) details of scope of work; and
      d) information and forms required by NMHU policies including non-eligibility for vacation or sick leave benefits.

   2. Faculty supervisors are responsible for requesting a social security number from the consultant with any invoices for payment agreed upon with the faculty supervisor and the university.

   3. For projects that anticipate the retention of a consultant as part of the project, a letter of commitment from the consultant must be requested to include in the proposal.
4. Depending on the nature of the consultation, consultants may be required to sign a Patent and Copyright Agreement as a condition of working at the university. Consultants hired solely for training are excluded from having to sign this form.

5. As evidence that the consulting has occurred, copies of approved invoices and, where practicable, reports of the consultation should be retained in the investigator’s office.

10.4. Rights and Responsibilities for Postdoctoral Fellows, Visiting Researchers and Scholars and Consultants

All non-faculty research appointees are expected to work with the faculty sponsor or supervisor in developing a plan of research and goals for the period of time specified under the appointment. In addition, non-faculty research appointees are responsible for and protected by all NMHU policies and procedures in carrying out the study or research agreed upon with the faculty member. The non-faculty research appointees also will communicate on a regular basis with the faculty sponsor or supervisor and notify the appropriate faculty member of any change in plans.

All Postdoctoral Fellows, Visiting Researchers and Scholars, and Consultants shall abide with NMHU’s Intellectual Property policy as described in Section 5 of this Handbook. To that end, all Postdoctoral Fellows, Visiting Researchers and Scholars, and Consultants must sign NMHU's Patent and Copyright Agreement Form.


10.5.1. Definitions

Research Associates. Research Associates are considered university employees during the term of the grant. They hold a Ph.D. or its equivalent and have the research skills and subject knowledge required of the sponsored research project. In this capacity, the RA assists the PI in attaining the goals of the project, may participate in the preparation of proposals and reports, and may co-author or sole author research results. The RA also may assist in guiding graduate students.

Senior Positions (e.g., Senior RA, Senior Research Scientist, Senior Research Engineer, Senior Research Scholar). Senior positions are individuals whose accomplishments reflect professional achievement and recognition considerably greater than that of a research associate may be appointed as senior research scientist, senior research engineer, or senior research scholar, whichever is most appropriate to the nature of the individual's work. Note: Individuals appointed to a senior position prior to Spring 2000 should have their position title changed accordingly. Individuals with senior research positions may serve as co-investigators on a research sponsored project with permission from the PI.
Visiting Research Associates. Visiting Research Associates are persons whose primary purpose is to collaborate with a PI on research projects of mutual interest, rather than provide regular staff assistance normally associated with a sponsored research project. These appointments are short-term and appointed by the PI.

10.5.2. Appointment Process for Research Associates. The appointment process is initiated with a written vacancy announcement in a relevant professional journal or other publications. Solicitation also can occur through contact with other universities, or at professional meetings. In all cases, a serious attempt must be made to identify affirmative action candidates prior to the selection of the final candidate. The final pool of candidates should, where possible, include top-qualified women and minorities.

The criteria for appointing research associates consist of a letter of recommendation for appointment written by the PI along with the finalist’s vita. These documents must be submitted to the department chair, the dean, Director of the ORSP and Vice President of Academic Affairs for final approval and prior to the date of anticipated employment. The approval process is designed to ensure that:

1. the work to be performed is commensurate with the what is required of a doctoral degree or equivalent research skill or subject knowledge;

2. the qualifications of the candidate has undergone careful examination;

3. a thorough affirmative action search has been conducted or if a search was not conducted, that the requirements for an exception have been met;

4. Exception to the search requirements are permitted if (1) the person is uniquely qualified for the position and (2) the person was previously identified by name on a written research proposal submitted by the PI to an external funding agency; and

5. Upon approval of the final candidate, the ORSP will forward an approval notification to the Human Resources Office for processing. The ORSP will send a written confirmation to the selected individual indicating the terms, length of employment, identify duration of funding source contributing to her or his salary. A copy of this letter of confirmation is sent to the dean of the school/college.

10.5.3. Appointment Process for Senior Research Positions. This appointment process typically arises from a promotion within the ranks of research associates. The PI submits the following documentation to the department chair, the Director of the ORSP and the Vice President of Academic Affairs for review:

1. Curriculum vitae;

2. Proof of completion of a minimum of five years experience as a research associate or scholar or equivalent experience;
3. Written evaluations from three judges who are in positions to determine the professional competence of the candidate; and

4. A letter to the department chair or Director of the ORSP justifying the appointment or promotion.

Types of qualifications for the senior position may include demonstration of depth of knowledge and theoretical understanding which surpasses that generally expected of RAs or RSs in the field. The individual can show record of recent publications, invited presentations at professional meetings, appointment to review committees in professional societies, and recognition of achievement by others in the field. Candidates for the senior position also should be capable of functioning independently at an advanced level in the field and able to skillfully handle supervisory responsibility for technical staff.

10.5.4. Appointment Process for Visiting Research Associates. Formal searches are not required for the visiting research associate, as the university does not recognize this position to be a primary employment commitment to the individual. Appointments for this position may be made only for 12-month periods for persons permanently employed by another institution with positions equivalent to the Research Associate (RA) or RS level at the university. If a person ceases regular employment elsewhere prior to or during the appointment, he or she is not eligible to continue as a visiting RA.

10.5.5. Rights and Responsibilities of Associates and Researchers

1. Research associates, senior researchers, and visiting research associates working a minimum of 50 percent time, for a length of six months or more, are eligible for staff benefits including annual and sick leave. Funding for all associate positions are obtained from sponsored research projects or from the individual’s home institution. In addition, salaries for visiting research associates and senior research staff are established each year by the ORSP to ensure parity across the university. Further, externally funded employees paid through externally funded grants/contracts with the university who are terminating their employment must either:

   a) take their accrued annual leave during the contract period in which they are terminating their employment; or

   b) terminate in sufficient time prior to the end of the contract period so that payment of unused annual leave accruals will not exceed the total monies provided in the contract (See Human Resources for more detail).

2. While active members at the university, associate members (including senior and visiting associates) are not eligible to act as PIs in sponsored projects (see Section 2.3.1. in the handbook for some exceptions). Generally, research staff may be considered as co-investigators with permission of the PI, but may not serve as co-PI. Associate and senior staff also are not eligible for sabbatical leave or in any way considered for tenure track.
3. All associate staff members are appointed for a fixed renewable term of up to five years, contingent on continued programmatic need or funding. Any requests for reappointment must be reviewed at the department level and approved by the ORSP.

4. Conclusion of a fixed term does not constitute layoff nor is it accompanied by layoff benefits. However, research and senior research associate or scholars are entitled to a 30-day written notice when terminated for unsatisfactory performance or other justifiable causes. In extreme cases of termination with just cause, advance notice of termination may be waived with the approval of the Director of the ORSP.

5. On occasion, when the PI chooses or is required by the sponsored research project to change the direction of research activities in ways that are not commensurate with the skills or research interests of associate members, layoff may be considered. When such an event occurs, associates should be given at least three months written notice. In this case, associate members are eligible for the same layoff benefits and re-employment preferences as are applicable for other exempt staff.

6. Standing rules of procedure governing the filing and appeal of grievance are located in the Faculty Senate Manual (Section V.H.6.)

10.6. Graduate Research and Project Assistants

1. Graduate research and project assistants (RAs and PAs) provide important services in the university’s multiple research activities. As well, students have excellent educational opportunities to learn new techniques and methods while expanding their awareness of developing areas of knowledge. In many cases, specific responsibilities within a department or center may be assigned by a director or principal investigator. In such cases, students’ research activities may be directly related to investigations germane to their field of specialization or to a thesis or dissertation topic. Some Graduate Research and Project Assistants may be employed by a research or administrative unit outside their departmental or disciplinary interest, but in a program of research to which the RA and PA bring certain knowledge or skills of value to the project. Regardless of employment placement within the university, these graduate students should be provided with a clear indication as to the duties which they are assigned to perform and the person(s) to whom they are responsible and by whom their performance will be evaluated.

Graduate teaching, research and project assistants, and teaching associates occupy a dual role in the university (i.e., they are students who also perform various faculty functions). Because of their dual role, assistants and associates in these positions share in the rights and responsibilities of both students and faculty. They
must adhere to established guidelines and to standards of ethical conduct; they
must also be accorded the right to freedom from arbitrary or capricious
suspension or dismissal from their assistantships.

2. As students, assistants and associates have all the rights and responsibilities of
students when acting in that capacity as defined by university regulations. As
teachers, assistants, and/or associates, these students have the responsibility of
adhering to the standards of faculty professional ethics and following the policies
and course guidelines of the department or supervisor for whom they act.

3. In accordance with the NMHU Graduate Student Handbook the following
enrollment regulations apply to a graduate assistant on a semester basis.
Ordinarlily, Graduate Assistants (GAs) are tenable for two years, since it is
expected that a student will make satisfactory progress toward the completion of
his or her master’s degree. This should be considered in planning the progress and
completion of the graduate program. The following are the enrollment
requirements:
a) The student should be enrolled full-time – nine (9) graduate hours – in his or
her graduate program. An enrollment of six (6) graduate credits is sufficient if
recommended by the department/school graduate coordinator.
b) A student may not enroll for more than twelve (12) graduate program credits
without approval from the advisor, department chair/dean, and the dean of
graduate studies. Overloads may be granted with the approval of the
college/school dean and the dean of graduate studies. If it is the student’s last
semester of graduate study, he or she may take as few as one (1) hour of
Thesis/Field Project. However, the department will be assessed fringe benefits
for FICA (Social Security) and Medicare.* Undergraduate courses will not be
considered part of the required graduate enrollment requirement.
c) A graduate assistant may hold more than one work assignment, but the
combined hourly commitment may not exceed 20 hours (full-time) per week,
e.g., 10 hours, work-study employment; 10 hours, GA employment.

4. An undergraduate student may not be awarded a GA, even if he or she has
attained Advanced Standing admission to a graduate program, except in special
circumstances with the approval of the associate dean of graduate studies.
Section 11: Research Misconduct

University faculty, students, and staff have a responsibility to maintain an environment that fosters integrity, trust, and respect. Research misconduct, when it occurs threatens public confidence and financial support from sponsors of academic research. In spite of the infrequency of acts of misconduct in research, it is necessary for the University to set guidelines for the prevention and detection of these acts. This policy applies only to misconduct related to research conducted or reported by individuals including: faculty; academic staff; students; visiting scholars; and others with teaching and/or research appointments who make use of university research resources and/or sponsored projects awards to NMHU.

11.1. Definitions

Fabrication: Making up data or results and recording or reporting them.

Falsification: Manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Inquiry: Preliminary information-gathering and preliminary fact-finding to determine whether an allegation or an apparent instance of misconduct has substance. The outcome of an inquiry is a determination as to whether or not an investigation is to be conducted.

Investigation: A formal examination and evaluation of relevant facts to determine whether or not misconduct has taken place.

Research Misconduct: A fabrication, falsification, or plagiarism in proposing, conducting, reporting or reviewing sponsored or unsponsored research. The misconduct must have been committed intentionally, knowingly or recklessly. Research misconduct is further defined to include gross carelessness in conducting research amounting to wanton disregard of truth or objectivity, or failure to comply or at least attempt to comply with material and relevant aspects of valid statutory or regulatory requirements governing the research in question. Research misconduct is more than a simple instance of an error in judgment, a misinterpretation of experimental results, an oversight in attribution, a disagreement with recognized authorities, a failure in either inductive or deductive reasoning, an error in planning or carrying out experiments, or a calculation mistake.

Plagiarism: Appropriation of another person’s ideas, processes, results or words without giving appropriate credit.

PHS: Public Health Service, a component of the U.S. Department of Health and Human Services. The PHS has adopted rules establishing standards for institutional responses to allegations of research misconduct.
ORI: Office of Research Integrity. An office within the U.S. Department of Health and Human Services that is responsible for overseeing the implementation of PHS policies and procedures on research misconduct.

11.2. General Principles

1. Research misconduct cannot be tolerated and will be firmly dealt with when found to exist.

2. Charges of research misconduct shall be promptly reviewed and a copy of this policy shall be made available to the complainant. Allegations must be made in writing, and signed and dated by the complainant. If health or safety is involved, prompt remedial action shall be taken.

3. Every effort shall be made to protect the rights and the reputations of everyone involved, including the individual who in good faith alleges perceived misconduct as well as the alleged violator(s). A good faith allegation is made with the honest belief that research misconduct may have occurred. Persons making a good faith allegation shall be protected against retaliation. However, persons making allegations in bad faith will be subject to disciplinary action, up to and including termination or expulsion. An allegation is made in bad faith if the complainant knows that it is false or makes the allegation with reckless disregard for or willful ignorance of facts that would disprove it.

4. All members of the university community are expected to cooperate with committees conducting inquiries or investigations.

5. Care will be exercised at all times to ensure confidentiality to the maximum extent possible and to protect the privacy of persons involved in the research under inquiry or investigation. The privacy of those who report misconduct in good faith will also be protected to the maximum extent possible. Files involved in an inquiry or investigation shall be kept secure and applicable state and federal law shall be followed regarding confidentiality of personnel records.

6. If the Director of the ORSP or designee, as appropriate, has any actual or potential conflict of interest, they shall recuse themselves from the case. The VPAA of the university shall appoint designates to act instead.

7. When a case continues to the inquiry and investigation stages (see Sections 11.4 and 11.5.), if the President of the Faculty Senate has any actual or potential conflict of interest, the person shall recuse him/herself from the case and the Senate President-elect shall appoint a designate to act instead. If any member of the Faculty Senate Committee or the Director of the ORSP has any actual or potential conflict of interest, they shall recuse themselves from the case. The
Faculty Senate President, or designate as appropriate, shall appoint faculty members to act instead.

11.3. Individual Responsibilities

Any individual who believes an act of research misconduct has occurred or is occurring should notify the appropriate department chair or school/college dean. Reporting such concerns in good faith is a service to the university and to academic community. The employment of the reporting individual will not be jeopardized. NMHU prohibits retaliation of any kind against a person who, acting in good faith, reports or provides information about suspected or alleged misconduct. For information on grievance procedures refer to Policy #69 in NMHU’s *Purchasing and Policies Manuel* available at NMHU’s website in NMHU’s Faculty Resources.

11.3.1. Preliminary Assessment. A preliminary assessment of all reported misconduct related to research at NMHU will consist of the following three steps.

1. After a preliminary assessment indicating misconduct, the department chair or dean of the appropriate school shall immediately begin an inquiry (see Sections 11.1.3 and 11.4) in a confidential manner and so inform the faculty member or other person (e.g., chairperson, supervisor, dean, principal investigator) responsible for the researcher(s) whose actions are in question, or to the dean of the researcher’s college/school. An immediate confidential report of the allegations shall brought be to the Director of the ORSP.

2. Upon receipt of the initial report of alleged research misconduct, the Director of the ORSP or designee, shall conduct a preliminary assessment within seven (7) working days. The purpose of the preliminary assessment is to determine whether the allegation falls within the definition of research misconduct and whether there is sufficient evidence to warrant an inquiry. If both conditions are met the inquiry process shall be initiated. If the allegation is vague, an effort should be made to obtain more information before deciding whether there is sufficient evidence to warrant an inquiry. If the preliminary assessment finds insufficient information to allow specific follow-up or the allegation falls outside the definition of research misconduct, the matter will not proceed to an inquiry, and the Director of the ORSP or Vice President for Academic Affairs shall so inform the respondent and complainant in writing. The allegation may be referred for review under another university policy, as appropriate.

3. A finding of research misconduct requires that:
   - There is a significant departure from accepted practices of the relevant research community;
   - The misconduct is committed intentionally, or knowingly, or recklessly;
   - The allegation is proven by a preponderance of evidence.
11.4. Inquiry Process

11.4.1. Purpose and Initiation. If the preliminary assessment reveals that the allegation falls within the definition of research misconduct and there is sufficient information to allow specific follow-up, the inquiry process shall be initiated by the Director of the ORSP or Vice President for Academic Affairs. The initiating official will clearly identify the original allegation and any related issues that should be evaluated in the inquiry. The purpose of the inquiry is to make a preliminary evaluation of the available evidence to determine whether there is sufficient credible evidence of possible research misconduct to warrant conducting an investigation. The purpose of the inquiry is not to reach a final conclusion about whether misconduct occurred. The findings of the inquiry shall be set forth in an inquiry report.

11.4.2. Securing Research Records. Those conducting such inquiries shall promptly take all reasonable and practical steps to obtain custody of the research records and/or evidence needed to conduct the misconduct proceeding, inventory the record and evidence, and sequester them in an appropriate manner.

As soon as practicable, a copy of each sequestered record will be provided to the accused individual (hereafter “the respondent”), or to the individual from whom the record is taken if not the respondent, if requested. The respondent shall be notified of the charges and the procedures to be followed.

11.4.3. Inquiry Committee. The inquiry shall be carried out by a committee of three persons appointed by the Director of the ORSP or Vice President for Academic Affairs, as appropriate, in consultation with the president of the faculty senate, or designee. At least two Inquiry committee members shall be tenured faculty. One of the tenured faculty members shall chair the committee. Committee members should be selected on the basis of relevant research background and experience. Faculty members from other universities may be named to the Inquiry Committee if a sufficient number of qualified faculty members are not available.

The respondent and the person(s) making the allegation (hereafter “the complainant”) shall be notified of the proposed committee membership and may object in writing to any of the proposed appointees on the grounds that the person, or the committee as a whole, does not meet the criteria stated above. The Director of the ORSP or Vice President for Academic Affairs, as appropriate, in consultation with the president of the faculty senate, or his/her designate, will consider the objection and if it has merit, shall make appropriate substitution(s). In the case of disagreement regarding appointments, the Director of the ORSP or Vice President for Academic Affairs, as appropriate, shall decide the challenge. That decision shall be final.

If the committee so requests, the Director of the ORSP or Vice President for Academic Affairs, as appropriate, shall designate an official to assist the committee in conducting the inquiry. The committee shall receive a written charge from the Director of the ORSP
or Vice President for Academic Affairs, as appropriate, defining the subject matter of its inquiry prior to beginning its work.

### 11.4.4. Inquiry Process

The respondent, complainant and other relevant individuals shall be given an opportunity to interview with the Inquiry Committee. Relevant research records, as necessary, will be examined to determine whether there is sufficient credible evidence of possible research misconduct to warrant conducting an investigation. University legal counsel shall be available to the committee for consultation.

The length of the inquiry shall not exceed sixty (60) days unless prior written approval for a longer period is obtained from the Director of the ORSP or Vice President for Academic Affairs as appropriate. If the period is extended, the record of the inquiry shall include documentation of the reasons for exceeding the sixty-day period.

### 11.4.5. Inquiry Report

The Inquiry Committee shall prepare an inquiry report that includes:

- the names and titles of committee members, and experts consulted, if any;
- a description of the allegations;
- the PHS support, if any;
- a summary of the inquiry process;
- a summary of the evidence reviewed;
- a summary of any interviews;
- the conclusions of the inquiry as to whether an investigation is recommended; and
- whether any other action should be taken if an investigation is not recommended.

The respondent shall be given fourteen (14) days to review the report and to add his or her comments, which will become part of the final inquiry report and record. Based upon the respondent's comments, the Inquiry Committee may revise its report.

The Committee’s Inquiry Report will be sent to the Director of the ORSP or Vice President for Academic Affairs, as appropriate, who will determine whether the results of the inquiry provide sufficient evidence of possible research misconduct to warrant conducting an investigation or whether the matter will not be pursued further. The respondent and complainant shall be notified in writing of the decision.

### 11.5. Investigation

#### 11.5.1. Purpose and Initiation

The purpose of the investigation is to explore the allegations in detail, examine the evidence in depth, and determine specifically whether research misconduct has been committed, by whom, and to what extent. If instances of possible misconduct involving a different respondent are uncovered, the matter should be sent to the Director of the ORSP or Vice President for Academic Affairs, as appropriate, to initiate a preliminary assessment.
The Investigation Committee will be appointed and the process initiated within thirty (30) days after the conclusion of the inquiry. If required by sponsoring agency regulations, the Director of the ORSP or Vice President for Academic Affairs, as appropriate, shall notify the agency of its decision to commence an investigation on or before the date the investigation begins.

11.5.2. Securing Additional Research Records. Any additional pertinent research records that were not previously sequestered during the inquiry will be immediately sequestered when the decision is made to conduct an investigation. The Director of the ORSP or Vice President for Academic Affairs, as appropriate, will direct this process. This sequestration should occur before or at the time the respondent is notified that an investigation will begin. The need for additional sequestration of records may occur for any number of reasons, including a decision to investigate additional allegations not considered during the inquiry stage or the identification of records during the inquiry process that had not been previously secured. As soon as practicable, a copy of each sequestered record will be provided to the respondent, or to the individual from whom the record is taken if not the respondent, if requested.

11.5.3. Investigation Committee. The investigation shall be conducted by a committee of five persons appointed by the Faculty Senate Committee, in consultation with the Director of the ORSP or Vice President for Academic Affairs or designee. Committee members should be selected on the basis of relevant research background and experience. All persons appointed from NMHU shall be tenured faculty. Tenured faculty members from other universities or senior researchers from research institutions may be named to the Investigation Committee if a sufficient number of qualified NMHU faculty members are not available. No more than two members of the Inquiry Committee may be appointed to serve on the Investigation Committee.

The respondent and the complainant shall be notified of the proposed committee membership and may object in writing to any of the proposed appointees on the grounds that the person, or the committee as a whole, does not meet the criteria stated above. The Faculty Senate Committee will consider the objection and if it has merit, shall make appropriate substitution(s), in consultation with the Director of the ORSP or Vice President for Academic Affairs or designee. In the case of disagreement regarding appointments made by the Faculty Senate Committee, the Director of the ORSP or Vice President for Academic Affairs, as appropriate, shall decide the challenge. That decision shall be final.

If the committee so requests, the Director of the ORSP or Vice President for Academic Affairs shall designate an official to assist the committee in conducting the investigation. The committee shall receive a written charge from the Director of the ORSP or Vice President for Academic Affairs, as appropriate, defining the subject matter of its investigation prior to beginning its work.

11.5.4. Investigation Process. The investigation will normally involve examination of all
relevant documentation. The committee shall make diligent efforts to interview the complainant, the respondent, and other individuals who might have information regarding aspects of the allegations. The interviews will be recorded on a recording device provided by the office of the Director of the ORSP or Vice President for Academic Affairs, as appropriate. A verbatim written record shall be made of all interviews. A transcript of his/her interview shall be provided to each witness for review and correction of errors, which shall be returned and become part of the investigatory file. University legal counsel shall be available to the committee for consultation.

11.5.5. Investigation Report. The Investigation Committee shall prepare a draft of the final report that includes:

a) the names and titles of committee members, and experts consulted, if any;
b) the allegations;
c) the PHS support, if any;
d) a summary of the inquiry process;
e) a summary of the evidence reviewed;
f) a summary of any interviews;
g) findings and basis for each finding;
h) conclusion(s) as to whether research misconduct occurred; and
i) recommendations for institutional action.

Copies of all significant documentary evidence referenced in the report should be appended to the report.

A finding of research misconduct requires that four conditions be met: (1) the conduct at issue falls within this policy’s definition of research misconduct; (2) the misconduct be committed intentionally, knowingly, or recklessly; (3) there be a significant departure from accepted practices of the relevant research community; and (4) the allegation be proven by a preponderance of the evidence. This means that the evidence shows that it is more likely than not that the respondent committed research misconduct.

The respondent will be provided with a copy of the draft investigation report for review and comment. The respondent will be allowed fourteen (14) days for review and any comments will be attached to the final report. The findings of the final report should take into account the respondent’s comments in addition to all of the other evidence. The complainant may be provided with those portions of the draft investigation report that address the complainant’s role and opinions in the investigation, and the complainant will have fourteen (14) days to review and submit any comments to the Investigation Committee. The report may be modified, as appropriate, based on the complainant’s comments.

If the Investigation Committee puts forward a final report with a finding of research misconduct, the respondent has 14 days to elect a hearing before the Director of the ORSP or Vice President for Academic Affairs as appropriate. The hearing will allow for argument, rebuttal, cross-examinations and a written record of the proceedings.
The respondent may appeal the final determination to the university president. An appeal is limited to: (1) a claim of procedural error; and/or (2) a claim that the sanction imposed as a result of a finding of research misconduct is inappropriate.

11.5.6. Institutional Review and Determination. The Investigation Committee final report will be forwarded to the Director of the ORSP or Vice President for Academic Affairs, as appropriate. The Director of the ORSP or Vice President for Academic Affairs will transmit the report to the President of the University who will make the final determination whether to accept the investigation report, its findings, and the recommended institutional actions.

The investigation shall be completed within 180 days of the first meeting of the Investigation Committee. However, if PHS sponsored the research, the investigation shall be completed, with the final investigation report and final determination submitted to ORI, within 120 days of the first meeting of the Investigation Committee, unless ORI grants an extension.

11.6. Actions Following Investigation

11.6.1. Finding of Research Misconduct. If the final determination is that research misconduct occurred, NMHU shall take appropriate action, which may include but is not limited to:

a) notifying the sponsoring agency;
b) withdrawal or correction of all pending or published abstracts and papers emanating from the research;
c) removal of the responsible person from the particular project, letter of reprimand, special monitoring of future work, probation, suspension, salary reduction, rank reduction or termination of employment in accordance with NMHU policies and procedures. In cases involving faculty, implementation must be consistent with the Policy on Academic Freedom and Tenure;
d) determining whether law enforcement agencies, professional societies, professional licensing boards, collaborators of the respondent, or other relevant parties should be notified; and
e) any other steps deemed appropriate to accomplish justice and preserve the integrity of NMHU and the credibility of the sponsor’s program.

11.6.2. Restoration of Respondent’s Reputation. If the final determination is that no research misconduct occurred, efforts shall be undertaken to the extent possible and appropriate to fully protect, restore, or maintain the credibility of the research project, research results, and the reputation of the respondent, the sponsor and others who were involved in the investigation or deleteriously affected thereby.

Depending on the circumstances, consideration should be given to notifying those...
individuals aware of or involved in the investigation of the final outcome, publicizing the final outcome in forums in which the allegation of research misconduct was previously publicized, expunging all reference to the research misconduct allegation from the respondent’s personnel files, or reviewing negative decisions related to tenure or advancement to candidacy that occurred during the investigation. Any institutional actions to restore the respondent’s reputation must first be approved by the Director of the ORSP or Vice President for Academic Affairs as appropriate.

11.6.3. Protection of the Complainant and Others. Regardless of whether NMHU determines that research misconduct occurred, reasonable efforts will be undertaken to protect complainants who made allegations of scientific misconduct in good faith and others who cooperate in good faith with inquiries and investigations of such allegations.

The Director of the ORSP or Vice President for Academic Affairs, or designee, will also take appropriate steps during the inquiry and investigation to prevent retaliation against the complainant. If a complainant believes that retaliation was threatened, attempted or occurred, he or she may file a complaint with the NMHU Audit Department.

11.6.4. Allegations Made in Bad Faith. If relevant, the Director of the ORSP or Vice President for Academic Affairs will determine whether the complainant’s allegation of research misconduct was made in good faith. If an allegation was made in bad faith, appropriate disciplinary action will be taken in accordance with NMHU policies and procedures. If the complainant is not associated with NMHU, appropriate organizations or authorities may be notified and administrative or legal action considered.

11.7. Other Considerations

11.7.1. Requirements for Reporting to ORI When Funding from PHS Is Involved

1. The decision to initiate an investigation must be reported in writing to the school dean, ORI, on or before the date the investigation begins. The notification must include at a minimum the name of the person(s) against whom the allegations have been made, the general nature of the allegation, and the PHS application or grant number(s) involved.

2. If NMHU plans to terminate an inquiry or investigation without completing all relevant requirements of the PHS regulation, a report of such planned termination shall be made to ORI, including a description of the reasons for the proposed termination.

3. If NMHU determines that it will not be able to complete the investigation within 120 days, a written request for an extension shall be submitted to ORI that explains the delay, reports on the progress to date, estimates the date of completion and describes other necessary steps to be taken. If the request is granted, NMHU must file periodic progress reports as requested by ORI.
4. NMHU will keep ORI apprised of any developments during the course of an investigation that may affect current or potential Department of Health and Human Services funding for the individual(s) under investigation or that the PHS needs to know to ensure appropriate use of federal funds and otherwise protect the public interest.

5. ORI shall be notified at any stage of the inquiry or investigation if any of the following conditions exist:
   - there is an immediate health hazard involved;
   - there is an immediate need to protect federal funds or
   - there is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s) who is the subject of the allegations as well as his/her co-investigators and associates, if any;
   - it is probable that the alleged incident is going to be reported publicly;
   - the allegation involves a public health sensitive issue (e.g., a clinical trial); or
   - there is reasonable indication of possible criminal violation in which case NMHU must inform ORI within 24 hours of obtaining that information.

11.7.1. Requirements for Reporting When NSF Funding Is Involved
1. The decision to initiate an investigation must be reported immediately in writing to NSF.

2. NSF shall be notified at any stage of the inquiry or investigation if any of the following conditions exist:
   - public health or safety is at risk;
   - NSF’s resources, reputation, or other interests need protecting;
   - there is reasonable indication of possible violations of civil or criminal law;
   - research activities should be suspended;
   - federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or
   - the scientific community or the public should be informed.

3. NSF shall be provided with a copy of the final investigation report.

4. The inquiry shall be completed within 90 days and the investigation completed within 180 days of its initiation. If completion of an inquiry or investigation will be delayed, NSF shall be notified and may require submission of periodic status reports.

11.7.3. Interim Administrative Action. NMHU officials will take interim administrative actions, as appropriate, to protect federal funds and ensure that the purposes of the federal financial assistance are carried out.

11.7.4. Termination of NMHU Employment. The termination of the respondent’s
NMHU employment, by resignation or otherwise, before or after an allegation of possible research misconduct has been reported, will not preclude or terminate the misconduct procedures. If the respondent refuses to participate in the process after termination of employment, the committee will use its best efforts to reach a conclusion concerning the allegations, noting in its report the respondent’s failure to cooperate and its effect on the committee’s review of all the evidence. Otherwise, terminations procedures will follow those set forth by the NMHU’s HR Department.

11.7.5. Record Retention. All documentation of an inquiry that does not lead to an investigation shall be maintained in the Human Resource Office files for at least three (3) years after the conclusion of the inquiry. All documentation of an investigation shall be maintained in Human Resource Office files for five (5) years after the end of the investigation. Documentation shall be provided to the sponsoring agency and ORI upon request or if required by the agency’s regulations. Documentation shall be treated as confidential personnel information to the extent provided for by law.

11.7.6. Reimbursement. If requested, the Board of Regents in the pursuit of justice and fairness may, in its sole discretion, fully or partially reimburse the respondent and/or the complainant for legal fees in cases of unusual hardship.

11.7.7. Federal Regulatory Changes. If PHS, ORI, NSF or any other federal agency amends its requirements on research misconduct, those amendments shall govern where applicable and shall be incorporated into this policy by reference herein. Such changes in federal requirements shall supersede all relevant portions of this policy.

11.7.8. Revisions. The Faculty Senate is authorized to make minor technical and implementing modifications to the detailed Research Misconduct Policy subject to approval of the President of the University.

11.8. Other Considerations

11.8.1. Requirements for Reporting to ORI When Funding from PHS Is Involved

1. The decision to initiate an investigation must be reported in writing to the school dean, ORI, on or before the date the investigation begins. The notification must include at a minimum the name of the person(s) against whom the allegations have been made, the general nature of the allegation, and the PHS application or grant number(s) involved.

2. If NMHU plans to terminate an inquiry or investigation without completing all relevant requirements of the PHS regulation, a report of such planned termination shall be made to ORI, including a description of the reasons for the proposed termination.

3. If NMHU determines that it will not be able to complete the investigation within 120 days, a written request for an extension shall be submitted to ORI that
explains the delay, reports on the progress to date, estimates the date of completion and describes other necessary steps to be taken. If the request is granted, NMHU must file periodic progress reports as requested by ORI.

4. NMHU will keep ORI apprised of any developments during the course of an investigation that may affect current or potential Department of Health and Human Services funding for the individual(s) under investigation or that the PHS needs to know to ensure appropriate use of federal funds and otherwise protect the public interest.

5. ORI shall be notified at any stage of the inquiry or investigation if any of the following conditions exist:
   - There is an immediate health hazard involved;
   - There is an immediate need to protect federal funds or
   - There is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s) who is the subject of the allegations as well as his/her co-investigators and associates, if any;
   - It is probable that the alleged incident is going to be reported publicly;
   - The allegation involves a public health sensitive issue (e.g., a clinical trial); or
   - There is reasonable indication of possible criminal violation in which case NMHU must inform ORI within 24 hours of obtaining that information.

11.8.2. Requirements for Reporting When NSF Funding Is Involved

- The decision to initiate an investigation must be reported immediately in writing to NSF.
- NSF shall be notified at any stage of the inquiry or investigation if any of the following conditions exist:
  - public health or safety is at risk;
  - NSF’s resources, reputation, or other interests need protecting;
  - there is reasonable indication of possible violations of civil or criminal law;
  - research activities should be suspended;
  - federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or
  - the scientific community or the public should be informed.
- NSF shall be provided with a copy of the final investigation report.
- The inquiry shall be completed within 90 days and the investigation completed within 180 days of its initiation. If completion of an inquiry or investigation will be delayed, NSF shall be notified and may require submission of periodic status reports.

11.8.3. Interim Administrative Action. NMHU officials will take interim administrative actions, as appropriate, to protect federal funds and ensure that the purposes of the federal financial assistance are carried out.
11.8.4. Termination of NMHU Employment. The termination of the respondent’s NMHU employment, by resignation or otherwise, before or after an allegation of possible research misconduct has been reported, will not preclude or terminate the misconduct procedures. If the respondent refuses to participate in the process after termination of employment, the committee will use its best efforts to reach a conclusion concerning the allegations, noting in its report the respondent’s failure to cooperate and its effect on the committee’s review of all the evidence. Otherwise, terminations procedures will follow those set forth by the NMHU’s HR Department.

11.8.5. Record Retention. All documentation of an inquiry that does not lead to an investigation shall be maintained in the Human Resource Office files for at least three (3) years after the conclusion of the inquiry. All documentation of an investigation shall be maintained in Human Resource Office files for five (5) years after the end of the investigation. Documentation shall be provided to the sponsoring agency and ORI upon request or if required by the agency’s regulations. Documentation shall be treated as confidential personnel information to the extent provided for by law.

11.8.6. Reimbursement. If requested, the Board of Regents in the pursuit of justice and fairness may, in its sole discretion, fully or partially reimburse the respondent and/or the complainant for legal fees in cases of unusual hardship.

11.8.7. Federal Regulatory Changes. If PHS, ORI, NSF or any other federal agency amends its requirements on research misconduct, those amendments shall govern where applicable and shall be incorporated into this policy by reference herein. Such changes in federal requirements shall supersede all relevant portions of this policy.

11.8.8. Revisions. The Faculty Senate is authorized to make minor technical and implementing modifications to the detailed Research Misconduct Policy subject to approval of the President of the University.