

# **Research Policy Handbook**



**Office of Research and Sponsored Projects**

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## Introduction

New Mexico Highlands University (NMHU) acknowledges that professional and public research and service 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, 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 and use resources 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 number 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 with multi-department and 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 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 assist with 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 state and federal policies and regulations. It is designed to assist faculty, staff, and students in implementing, monitoring, and administering programs funded by agencies outside and within the university.

This handbook is not definitive. Individuals are urged to bring 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 on the handbook's cover page. 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. The New Mexico Highlands 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 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 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 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. Vice President for Academic Affairs**

The 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. This person is also responsible for creating and implementing academic policies and priorities of the university and allocating resources to support those priorities and policies, including the ORSP.

### **1.4. Director of the Office of Research and Sponsored Projects**



**The director of the Office of Research and Sponsored Projects is the authorized representative** for grants and contracts. This person is also the official at NMHU with the legal authority to give assurances, make commitments, make contractual agreements, and execute such documents on behalf of the university as may be required by a granting or contracting agency. The signature of the authorized representative certifies that commitments made on grant proposals will be honored and ensures that the applicant agrees to conform to the granting agency's regulations, guidelines, and policies. The director is expected to provide intellectual, academic, and administrative support to the provost and Office of Academic Affairs to further the university's mission, vision, and strategic goals. This person 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 ORSP.

The director of the ORSP must provide high-quality service to the university research community for representing the interests of the board of regents, the president, and vice president of the Academic Affairs. The director of ORSP approves requests for funds including external sources in support of research, instruction, public service, facilities, construction, and capital improvements.

### **1.5. School and College Deans**

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 (including professors emeritus and visiting faculty) external funding proposals
- Approval for the request of Independent Centers and Institutes and submission of request to the ORSP
- Approval of the allocation of space and other resources including any prior approval activities
- Handling issues and procedures for compliance with financial conflict of interest (FCO).

### **1.6. School and College Chairs**

Department chairs report directly to the college or school dean and, in the context of shared governance with faculty, are responsible for the administration of their respective unit's budget, curriculum, and supervision and leadership for faculty. As it pertains to sponsored projects, the chairs will work collaboratively with their school or college dean and the director of ORSP and are responsible for the following:

- Approval of university staff and faculty (e.g., professors emeritus or visiting scholars) in proposal submissions
- Approval of the allocation of space and resources including any prior approval activities

- Approval of project travel and completing 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 active research engagement and compliance with federal, state, and local regulations on research. This section references those committees as described in the New Mexico Highlands Faculty Handbook.

**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 establishing 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.** Reports to Faculty Senate.

**1.7.1.5. Duties and Responsibilities.**

- Review and formulate recommendations for policies and procedures regarding research activities conducted under the auspices of the university
- Formulate policies and procedures pertaining to allocation of university funds for support of scholarly, creative or research activities
- Review and approve/disapprove requests for funding of scholarly, creative or research projects through university monies
- Organize an annual Faculty Research Day

**1.7.2. Institutional Review Board for Human Subjects (IRB).** 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 the Institutional Review Board website.

**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 participant research. In addition, the IRB will include at least one outside community member. 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 forwarded to the director of the ORSP.

**1.7.2.4. Reports.** 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 5.2. of this handbook.

**1.7.3. Institutional Animal Care and Use Committee (IACUC).** In accordance with Animal Welfare Act, 7 U.S.C. §§ 2131 et. Seq., the Institutional Animal Care and Use Committee shall possess sufficient ability to assess animal care, treatment and practices in experimental research as determined by the needs of the research facility and shall represent society's concerns regarding the welfare of animal subjects used at NMHU.

**1.7.3.1. Membership.** In addition to a faculty committee chair and four faculty members, but not more than three members from the same administrative department, at least one member shall be a doctor of veterinary medicine and at least one member shall be not affiliated in any way with NMHU other than as a human IACUC committee member; shall not be a member of the immediate family of a person who is affiliated with NMHU; and is intended to provide representation for general community interests in the proper care and treatment of animals.

**1.7.3.2. Meetings.** Meetings are held at least once a semester or as need arises.

**1.7.3.3. Minutes.** Minutes are maintained for all meetings and forwarded to the director of the ORSP.

**1.7.3.4. Reports.** Reports to the director of the ORSP.

**1.7.3.5. Duties and Responsibilities.** A complete description of the duties and responsibilities of the Institutional Animal Care and Use Committee can be found in Section 7.2. of this handbook.

## **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 support, oversight, and compliance of university activities related to research and sponsored programs which may include, the following:

- Overall administration of fiscal activities and responsibilities pertaining to the ORSP
- Support principal investigators on all aspects of budget preparation
- Have signatory authority on 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 costs) with federal agencies
- Maintain current files on government regulations affecting management of externally sponsored funds and information regarding sponsored project proposals and agreements
- Prepares 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 advice to faculty on research support and funding opportunities
- Have oversight responsibility for research conducted at any independent centers or institutes
- 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
- Supervise both pre-award and relevant post-award activities.
- Review of funding announcement publications from sources such as the *Federal Register*, *Commerce Business Daily*, *Federal Grants and Contracts Weekly*, *Federal Research Report*, *NIH Guide to Grants and Contracts*, and the *NSF Bulletin*
- 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
- 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 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 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
- 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 takes the following actions:

- 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
- In coordination with the Business Office, assists principal investigators in financial management of projects and resolution of accounting problems
- 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**

<b>Committees</b>	<b>Meeting Schedule</b>
Human Subjects	Once a month
Animal Care & Use	At the beginning of each academic year and as needed
Faculty Research	Three times per Academic year and as needed

## 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.

On December 26, 2013, the Office of Management and Budget (OMB) issued the [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#). The "Uniform Guidance" supersedes and streamlines the administrative, accounting, audit rules, and principles from: OMB Circulars A-21, A-87, A-110, A-122; Circulars A-89, A-102 and A-133; and Circular A-50 on Single Audit Act follow-up.

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 Dec. 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, or nonprofit 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 goal of the university depends upon rules of fairness, honesty, and respect for the rights of others. All faculty 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 members also have 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).

For additional information regarding academic freedom, please refer to the appropriate collective bargaining agreement under which you may be covered at NMHU.

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

**2.2.1. Obligations to Staff in the Sponsored Project.** Each year, the principal investigator should review relevant sections in the *NMHU Research Policy 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. The principal investigator should consider the following topics:

- Travel policies
- Charging and closeout of vacation, sick leave, and holidays
- 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 are encouraged to demonstrate support and appreciation for its staff and students by offering opportunities for involvement and building mentor relationships.

In addition, all research team members have the right to know who is sponsoring the research and supporting their 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 conflicts that may exist between the private interests and the official responsibility of a person. If a financial conflict of interest arises, faculty and staff should advise their dean 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*).

**2.2.3. Policy on Copyrights.** All researchers, including students and visiting scholars, must sign NMHU's Patent and Copyright Agreement before beginning any research at NMHU.

**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 Nov. 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.

**2.2.5. Relations with Foundations.** Faculty members are expected to comply with the following procedures for implementing university relations with affiliated foundations:

- Accounts for the university schools/college or faculty shall not be established with a foundation or a university-affiliated, non-profit without the prior written approval from the director of the ORSP.
- 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.
- 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 president of NMHU.

Each faculty/staff member is responsible for understanding safety and risk concerns associated with their research activities. The lead researcher shall ensure that each research team member is trained on work area safety, equipment operating procedures, and emergency notification procedures. In the event that training is required and outside the expertise of one of the research team members, such training should be coordinated with the NMHU Department of Environment Health and Safety.

For a comprehensive guide to NMHU safety policies, please click on the following links:

Environmental Health and Safety Standard Operating Procedures

<https://its.nmhu.edu/IntranetUploads/006739-NMHU-EHS-Sta-218202040713.pdf>

Safety Plans for Individual Facilities

<https://www.nmhu.edu/environmental-health-safety-office/>

### **2.2.6. Supplemental Compensation.**

Subject to the policies of the sponsor, NMHU's Personnel Policies and Procedures Manual, or the various university Collective Bargaining Agreements, faculty and staff may receive supplemental compensation from contract or grant funds for services.

## **2.3. Principal Investigator Eligibility and Responsibilities in Preparing a Proposal**

**2.3.1. Eligibility for Principal Investigator (PI).** Persons eligible to submit proposals and act in the role of PI include faculty, university staff, and administrators. Prospective PIs must complete an NMHU Proposal Routing Form and be approved by the appropriate chair, dean, director of the ORSP, and VPAA. This is due to the responsibility that the PI must maintain the direction of the project and oversight of student participants and project staff. The ORSP Director may need to administratively remove PIs from service and sub-award grants if they are unable to comply with the terms of the grant or are not spending grant money in a timely manner. The ORSP Director shall consult with Co-principal investigators and project directors



on the grant for the selection of the new acting PI. Reasonable efforts shall be made to achieve consensus among the parties. If consensus is not achieved, the ORSP Director will make the appointment and the majority vote of the co-principal investigators and project directors will constitute the recommendation of the grant team. For research grants, in circumstances requiring the replacement of the PI, the ORSP Director shall follow the requirements of the grantor. Written approval for someone other than faculty, university staff, or administrators to act as a PI must be obtained by the relevant dean and director of the ORSP, both who have oversight responsibility of the potential PI. Projects that will be considered under this exception include the following:

- 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. 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.

If a PI cannot continue with a Service or Subaward grant the ORSP Director consult with the other Co-PIs and project directors, assigned to the grant, and the Dean to find a suitable replacement PI. Reasonable efforts shall be made to achieve consensus among the parties. If consensus is not achieved, the ORSP Director will make the appointment and the majority vote of the co-principal investigators and project directors will constitute the recommendation of the grant team. For research grants, in circumstances requiring the replacement of the PI, the ORSP Director shall follow the requirements of the grantor.

**2.3.2. Expected Responsibilities of the PI.** When applying for a grant from a sponsored agency, the PI will be responsible for overseeing all terms and conditions of the sponsored project. In carrying out these critical tasks, the PI 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
- General research and policies and procedures ([Section 2](#))
- Assurances – see section 3.6.1
- General and fiscal administration and management
- Research property, including inventions, patents, copyrights, licensing, and authorship
- Human subjects

- Laboratory animals
- Disclosures and conflict of interest
- Appointments of non-faculty research appointments
- Adherence to appropriate research conduct and misconduct reporting.

**Note:**

- The PI supervising large-scale projects may delegate responsibility to other project members (faculty or nonfaculty) if approved by the sponsoring agency.
- Although awards to support projects are granted based on the professional expertise of the PI 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 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 NMHU Board of Regents. The PI also is required to adhere to federal regulations. Websites 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 Regulations on Animal Research](#)
- [New Mexico Environmental Regulations](#)

**2.4.2. 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 ORSP or the business office should be contacted with questions regarding billing/payment policy and procedures.

**2.4.3. 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 ORSP.

**2.4.4. Patent Rights.** In general, inventions created by employees (faculty members, visiting scholars, staff members 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: For federal agencies under recently enacted legislation, rights rest with the university subject to retention of a paid-up non-exclusive license by the government. For non-profit organizations, rights rest with the university; any other arrangements must be negotiated through the ORSP.

## **2.5. Independent Centers and 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 brings the university many benefits, it also exposes the university to potential dangers that might result in 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 ORSP. 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 the 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
- Administrative costs to the school/college and university.

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

**2.5.3. Regular Evaluations.** Each center or institute will be evaluated by the appropriate administrator 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 the following:

- 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
- 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 NMHU *Research Policy Handbook*. If problems occur during the operation of a center or institute, the VPAA has the authority to review the policies and procedures of the center or institute, consult with the center's or institute's personnel and take appropriate actions, including the closing of the center or institute, if warranted. Decisions 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 on and off campus. Included are guidelines for budgeting, responsibilities associated with proposal writing, and references on resources for seeking funding from a broad range of agencies. The federal source document for this section can be accessed at the link below.

[Part 200-Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.](#)

### 3.1. Definition of Sponsored Projects

Sponsored projects are externally supported activities with funds typically provided 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 and by the sponsor and generally 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
- 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 <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-F>
- The university’s full negotiated Facilities and Administrative (F&A) indirect cost rate, unless a waiver of those costs has been approved
- 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 to data, copyrights, or inventions) to occur at the end of the grant period.

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.

3.1.1. Sponsored projects must be identified on the Routing Form as primarily conducted for either service or research purposes, or as subawards from another institution.

3.1.1.1. Service projects or training grants are those conducted primarily for the benefit of the university. As these projects are conducted for the benefit of NMHU and our students, PIs and other faculty and staff on these grants primarily do administrative or leadership activities.

3.1.1.2 Research projects are those conducted primarily to systematically investigate, discover, or study materials and sources to establish facts and draw conclusions. Although there is administrative work on these grants, PIs and other faculty and staff on these grants primarily are engaged in investigation and discovery.

3.1.1.3 Subawards are awards provided through a pass-through entity to NMHU as a subrecipient for the NMHU to carry out part of a Federal award received by the pass-through

entity. Subawards require special considerations because of obligations to the pass-through entity as part of the contract.

### **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 ORSP submits the proposal to the granting agency on behalf of NMHU and the Principal Investigator (PI). All awards must be officially accepted by the ORSP, on behalf of the university, to assure that all legal requirements incumbent upon the university from the award are reviewed and appropriately acknowledged.

The proposal process typically consists of the PI working within or among departments, schools, centers, or institutes to prepare and circulate the proposal to obtain the appropriate signatures before sending the application for review and submission to the sponsoring agent by the ORSP. In addition, the ORSP will provide guidance in completing all aspects of the application as needed. Below is a description of the steps involved in the planning and submission of proposals.

**3.2.1.1. Prior Written Approval.** The PI must submit a completed Proposal Routing Form (PRF) to the ORSP. The PRF contains the following elements for preproposal approval:

- A completed PRF with a signature from the appropriate dean
- Statement of work
- 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, NMHU may seek the prior written approval of the cognizant agency for indirect costs in advance of the incurrence of the following special or unusual costs to avoid disallowance or dispute based on unreasonableness or non-allocability. Note: The absence of prior written approval on any of these elements of cost will not affect its reasonableness or allocability unless prior approval is specifically required for allowability as described under certain circumstances in the following sections.

**3.2.2. 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](#)).
- Reasonable as described in §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.
- 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. This standard is met if the cost meets the following specifications:
  - Is incurred specifically for the federal award
  - 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
  - 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 non-federal sources. Regardless of funding, **they must be appropriately identified with the proper code number** in NMHU’s Budget Adjustment Request (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 (e.g., a note on the meeting agenda) 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.

**3.2.2.1. Unallowable Activities.** See §200.420 – 429. 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, §200.300 Statutory and National Policy Requirements through §200.309 Period of Performance.

To avoid disallowance or dispute based on unreasonableness or non-allocability, NMHU 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 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.

**3.2.2.2. Allowable Activities.** Allowable activities include the following examples:

- Activities that are necessary and reasonable for successful performance under the federal award
- That are allowable under the applicable cost principles and practices and consistent with the NMHU's policies
- That have prior written approval of the federal funding agency and NMHU.

See the [Part 200-Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards §200.420-476](#).

**3.2.2.3. Estimated Use of Space and Personnel.** The PI must consider the availability and use of space and personnel while constructing a proposal. To assist in the estimated space, the PI should consult with the VPFA and IT and facilities directors. For information regarding personnel, the PI should consult with the department chair, school/college dean, and director of the ORSP. Questions about fringe benefits should be directed to the business office.

**3.2.2.4. 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.

**3.2.2.5. Review and Approval Process of a Completed Proposal.** All submitted proposals are required to be reviewed and approved programmatically by the chair, dean or director, and director of the ORSP. In addition, adequate time for review and approval will be needed for proposals involving the following issues:

- Multiple department involvement
- Cost sharing
- Program income
- Reduced Facilities and Administrative (F&A) costs or indirect costs
- Conflict of interest issues
- Human participant or animal subject approvals from IRB or IACUC.

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:

- Based on the criteria set forth in *§200.20 Federal Awarding Agency Review of Risk Posed by Applicants*
- When an applicant or recipient has a history of failure to comply with the general or specific terms and conditions of a Federal award
- When an applicant or recipient fails to meet expected performance goals as described in *§200.210 Information Contained in a Federal Award*
- When an applicant or recipient is not otherwise responsible.

These additional federal award conditions may include items such as the following:



- Requiring payments as reimbursements rather than advance payments
- Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance
- Requiring additional, more detailed financial reports
- Requiring additional project monitoring
- Requiring NMHU to obtain technical or management assistance
- Establishing additional prior approvals.

When such circumstances occur, the federal awarding agency or ORSP must notify the applicant as to the following conditions:

- The nature of the additional requirements
- The reason the additional requirements are being imposed
- The nature of the action needed to remove the additional requirement, if applicable
- The time allowed for completing the actions if applicable
- The method for requesting reconsideration of the additional requirements imposed
- Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.

**3.2.2.6. Time Limit for Submitting Final Proposal from the Office of Research and Sponsored Projects.** Normally, two weeks prior to submitting a complete copy of the application, the PI should let the ORSP know of the planned submission date (please see the PRF). 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 application deadline. These additional days are required for the following reasons:

- Federal and many private sponsors use electronic submissions, and extra time is required to ensure all aspects of the application are correctly submitted
- Extra time required by the local unit/department/school for their review
- The ORSP operates with a limited staff and needs time to schedule, review the proposal, and approve the complete application.

**3.2.2.7. Final Submission of the Proposal to a Sponsoring Agency.** All proposals, after review and approval, are submitted by the PI, grants manager, or designee on behalf of NMHU. The ORSP can assist in the submission if scheduled with sufficient lead time.

**3.2.2.8. Institutional Facts.** There are several 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.

**3.2.3. Faculty and Staff Eligibility.** Persons eligible to submit proposals and act as PIs include tenured and non-tenured assistant, associate, or full professors. Other appropriate university staff and faculty (e.g., professors emeritus, visiting professors, contingent faculty, or visiting scholars) are encouraged to submit proposals. Persons ineligible for PI status may be identified as an associate investigator, but not as a Co-PI.

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

- Initiating original, creative, or scholarly activity
- Disseminating research, creative activity, or scholarly pursuits
- Supporting specific activities that will contribute to external funding.

All faculty members are eligible to submit proposals. The maximum amount of funding available to each successful applicant will be determined by the Research Committee with the approval of the ORSP. No quotas are set to allocate funds among the types of projects eligible for funding among schools or the college. Funds are awarded on the merit of each individual proposal as established by the members of the Research Committee.

All faculty members interested in writing a grant proposal or who are administering a large grant in the first year are eligible to submit a request for a one-course release for a designated semester. If successful, the ORSP will fund a per-course instructor to replace the released faculty member. The request for release time must be accompanied by the completed Grant Development Release Time Program form.

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 Research Committee, funding, and the application process are available from the chair of the committee.

### **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 that provide the basis of indirect cost requirements (*§200.414*).

In federally sponsored projects, indirect costs encompass broad categories of costs and expenditures. The term "facilities" is defined as depreciation of buildings and equipment, capital improvement, interest on debt associated with certain buildings, 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 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 NMHU's Fact Sheet 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 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 more than \$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, 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 and print shops. 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 based on 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 institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations:

**Academic Dean or Administrative Officer.** Salaries and operating expenses are limited to those attributable to administrative functions.

**Departments.** Administrative and supporting expenses incurred within departments are allowable provided they are treated consistently in similar circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, and stockrooms. Other fringe benefit costs applicable to the salaries and wages 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.

**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 similar 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*. 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 the following:

- Large complex programs such as research centers and other grants and contracts that entail assembling and managing teams of investigators from several 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.

**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 relevance to the sponsoring agency should not be allocated agency. 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, based on primary categories of users, including students, professional employees, and other users.

- 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.

- 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.
- 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 above in this section must be further assigned as follows:

- The amount in the student category must be assigned to the instruction function of the institution.
- 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.
- The amount in the other users' category must be assigned to the other institutional activities function of the institution.

**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 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.

**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.

**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) that 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. For actual costs incurred to be allowable, they must meet the following requirements:

- 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*)
- Be necessary and reasonable for proper and efficient accomplishment of project or program objectives
- Be verifiable from the non-federal entity's records.

Payments made by the federal awarding agency to NMHU'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.**

- Sponsors proposing lower facilities and administrative costs will require a letter or notification and a signature on the PRF. If a sponsor has established its own policies on facilities and administration costs and continues to support university research, that sponsor may be preapproved for a waiver of the negotiated facilities and administration rate.
- 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 obtained from the director of the ORSP.

#### **3.3.5. Fringe Benefits.**

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 Personnel Procedures and Policy Manual or Collective Bargaining Agreements provide a breakdown of the fringe benefit rates for applicable faculty and staff.

#### **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 or contracts with the university who are terminating their employment must either:

- Take their accrued annual leave during the contract period in which they are terminating their employment
- Or take leave at the end of the contract period with sufficient advance notice to the director of the ORSP.

**3.3.7. Student Salaries and Tuition.** A 1986 IRS ruling states that any payments made to a student are taxable. To remain in compliance with this ruling, the following policies for Graduate Assistants (GAs) as well as work study students are effective immediately.

**IRS Reporting.** Salaries issued to GAs and other project or work study students will be reported to the IRS and reported as a direct line item.

**Tuition & Scholarships.** 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 for 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.** According to the IRS, scholarships may be all or partially taxable, even if a 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, 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.

**Student Stipends.** Stipends are made to students to pay for educational or other expenses. Stipends shall be processed through the financial aid, accounts payable, accounts receivable, or payroll systems, as appropriate.

**Academic Awards-Qualified Educational Expenses (Tuition & Fees).** Payments required by the educational institution and recognized by the IRS as "qualified tuition and related expenses" are tuition and fees required for enrollment and books, supplies and equipment required for courses taken.

- **Taxation and reporting:** Awards for qualified educational expenses are the only amounts that are not taxable to the student\*. IRS Form 1098 is issued to the student, reporting the amount paid for "qualified" tuition and fees. It is the student's responsibility to report any amounts received which exceed "qualified tuition and related expenses" as income.
- **Payment processing:** These awards go through the financial aid system and are paid to the student's account and applied directly to their bill. As appropriate, any extra is refunded directly to the student once per semester.



- **Examples:** Limited to tuition and fees required for enrollment and books, supplies and equipment required for courses taken.

**Academic Awards—Non-Qualified Educational Expenses.** Payments to students to enable them to attend school that are not qualified educational expenses as defined above. This funding does not require the recipient to perform services such as serving as clerks/interns, or assisting with teaching, research, or other academic work.

- **Taxation and reporting:** Awards for non-qualified educational expenses are subject to income tax withholding. An IRS W-2 is issued.
- **Payment processing:** These awards go through the financial aid system and may be posted directly to the student’s account and applied to their bill or paid directly to the student, based on the terms of the award. When payment is made directly to the student, it is processed through the payroll system during the month-end payroll cycle.
- **Examples:** A full-time student performing service for academic credit—combining instruction with work experience as an integral part of the program.

**Service-Related Stipends. Definition:** Payment to any student who is required to perform services in order to receive the payment is a service or “work-related” stipend.

- **Taxation and reporting:** Service stipends are subject to tax withholding. An IRS Form W-2 is issued. **Payment processing:** Processed through Payroll during the month-end payment cycle. Service stipends are not included in calculating a student’s eligibility for financial aid.
- **Examples:** Assistant teaching, internships/clerkships, research, or other academic work.

**Non-Service Stipends. Definition:** Non-service stipends are amounts paid to individuals who do not provide any services, and which are not academic awards.

- **Taxation and reporting:** The payee will be issued a 1099, if required.
- **Payment processing:** Non-service stipends are paid through the accounts payable office; if paid to a student, non-stipend payments are included in calculating a student’s eligibility for financial aid. If paid to an employee, the payment is processed through payroll.
- **Examples:** Token payments and other one-time monetary awards for being the subject in a study, completing a survey, providing samples. Awards to high-school students taking part in a summer STEM program.

**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.** A student may be entitled to reduced tuition because they or one of their 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. (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 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.

- **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

**3.3.8. Academic Faculty Release Time and Salaries, Conditions of Employment.** The PI should refer to NMHU's Faculty Collective Bargaining Agreement regarding terms and conditions of faculty work under grants and sponsored projects.

**3.3.9. 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.

**3.3.10. Travel. This policy does not apply to Tenured and Tenure Track faculty.** The State of New Mexico and NMHU have established regulations concerning travel using state funds. 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 international travel requests must be approved by the president or their designee. Contact the business office for questions relating to travel policy. NMHU faculty and staff should refer to the Collective Bargaining Agreements for additional information, as appropriate.

**3.3.11. 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.

**3.3.12. Restricted and Unrestricted Funds.** Restricted funds are current funds in which restrictions are imposed by an external entity, such as a federal agency, individuals, private

corporations, state, or local government. The funds support research and other projects performed by the university and are in the 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 by entities outside the university. Unrestricted funds are part of the general fund that relies largely on student tuition and 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 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 cafeteria, residence halls, 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.** The definitions and descriptions for Subawards and Contracts are derived from *Part 200, Subpart A, §200.93 Definition, §200.330 – Subrecipient and Contractor Determinations, §200.331-Requirements for Pass-Through Entities, and §200.332 – Fixed Amount Standards.*

**Subaward.** A subaward, formerly known as “a subcontract,” is an award 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 NMHU's use and creates a procurement relationship with the contractors needed for training, evaluation, grant-writing support, or goods and services NMHU needs to complete the grant objectives.

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).** NMHU 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 that support the classification of NMHU as a recipient, subrecipient, and contractor are as follows:

- Determines who is eligible to receive what federal assistance
- Has its performance measured in relation to whether objectives of a federal program were met
- Has responsibility for programmatic decision making
- Is responsible for adherence to applicable federal program requirements specified in the federal award
- 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 NMHU and a contractor are when the contractor does the following:

- Provides the goods and services within normal business operations
- Provides similar goods or services to many different purchasers
- Normally operates in a competitive environment
- Provides goods or services that are ancillary to the operation of the federal program
- Is not subject to compliance requirements of the federal program because 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 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.** 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. The following information is required:

- Federal Award Identification
  - Subrecipient name (which must match the name associated with its unique entity identifier)
  - Subrecipient's unique entity identifier
  - Federal Award Identification Number (FAIN)
  - Federal award date of award to the recipient by the federal agency;
  - Subaward period of performance start and end date
  - Amount of federal funds obligated by this action from NMHU to the subrecipient
  - Total amount of federal funds obligated to the subrecipient by NMHU including the current obligation
  - Total amount of the federal award committed to the subrecipient by NMHU
  - Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)
  - Name of federal awarding agency, NMHU department, and ORSP contact information
  - 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
  - Identification of whether the award is R&D
  - Indirect cost rate for the federal award (including if the de minimis rate is charged per §200.414 *Indirect (F&A) Costs*).

- 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.
- Any additional requirements that the pass-through entity imposes on the subrecipient for the pass-through entity to meet its own responsibility to the federal awarding agency including identification of any required financial and performance reports.
- 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)*;
- 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 appropriate terms and conditions concerning closeout of the subaward.

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, which may include consideration of such factors as:

- The subrecipient's prior experience with the same or similar subawards
- 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
- Whether the subrecipient has new personnel or new or substantially changed systems
- The extent and results of federal awarding agency monitoring (e.g., if the subrecipient also receives federal awards directly from a federal awarding agency).

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

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:

- Reviewing financial and performance reports required by the pass-through entity.
- 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.
- 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*.

Depending upon the pass-through entity's assessment of risk posed by the subrecipient, 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:

- Providing subrecipients with training and technical assistance on program-related matters
- Performing on-site reviews of the subrecipient's program operations
- Arranging for agreed-upon-procedures engagements as described in §200.425 *Audit Services*.

Verify that every subrecipient is audited 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*.

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.

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 from 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 must select a subrecipient based upon their assessment of the potential subrecipient's ability to perform the service or research work successfully. This includes an analysis of the subrecipient's or contractor's past performance, technical resources and financial viability, and an assessment of the reasonableness of the subrecipient's proposed costs considering the work to be performed.

In rare cases, a PI may recognize the need for outside involvement on a project, but is either unable to identify the best subrecipient or contractor at the time of proposal submission, or is unable to acquire all 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 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' or contractors' cost. In addition, subrecipients or contractors should not be asked to reduce their F&A cost recovery or to otherwise cost share because of NMHU's failure to include the cost in its proposal.

If NMHU is the lead institution, NMHU 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 NMHU is not the lead institution, the other organization should provide an agreement form. Coordination in planning the agreement should take place with the dean, ORSP, and other administrative personnel, as appropriate.

### **3.5. Fixed Fee Contract**

#### **3.5.1. Fixed Fee Contracts.**

- 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.
- The contract should be awarded only after negotiation of a billing price that is as fair and reasonable as the circumstances permit.
- Since this contract type provides the contractor no cost control incentive except the ceiling price, NMHU must make clear to the contractor before awarding 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:

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 NMHU in performance of the award. Some of the ways in which the federal award may be paid include, but are not limited to:



- 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
- 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, in one payment at federal award completion.

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

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.

Periodic reports may be established for each federal award.

Changes in principal investigator, project leader, project partner, or scope of effort must receive 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 involved faculty, staff, and students. If it proceeds, NMHU 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 experience a deficit when the project ends.

For audit purposes, the PI 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 will make reasonable efforts to price these projects appropriately. The pricing must ensure that all NMHU costs are covered unless special permission is obtained, and NMHU may accept higher rates offered by the sponsor.

All contract proposals must be submitted by the ORSP to execute contracts on behalf of NMHU. All PIs and their departments are encouraged to consult with the director of 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 to determine that the work has been completed, the deliverables and any required technical reports have been accepted by the sponsor, and 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.

If the project's total costs exceed the sponsor's payments, then the project will present NMHU with a deficit. The ORSP staff will write a memorandum to the PI with copies to the department chair, dean, and director of ORSP requesting the PI identify an alternative unrestricted fund to clear the deficit. Money will be transferred from this alternative fund until NMHU's costs are recovered.

**3.5.5. Residual Funds.** If the PI 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.

The ORSP staff will prepare a request to the budget to transfer the residual funds to the PI's 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 cost overruns (deficits) made by the same PI on other project accounts where they are responsible.

Although the PI 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 research-related activities.

In cases where the residual funds total is significant, the PI 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 must obtain the department chairperson's and the dean'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 than \$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 who is employed by 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 NMHU 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 that require mandatory cost sharing or match.

### **3.6. Other Documentation and Procedural Responsibilities**

#### **3.6.1. 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 Personnel Procedures and Policy Manual or the relevant Collective Bargaining Agreement. The director of the ORSP is available to advise faculty and other staff members on matters relating to possible conflict of interest.

**3.6.2. Human and Animal Subjects.** The use of human (IRB) and animal subjects (IACUC) in research is strictly regulated by the federal government and the university, and requires special licensing.

## Section 4: Fiscal Management and Administration

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

### 4.1. Overall PI Budget Responsibilities

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

- Manage the project in accordance with the approved grant application, contract, Scope of Work, or Statement of Work. Significant changes to the approved agreement need prior written approval of the funding agency. Request for changes in the approved agreement must be routed to the Office of Research and Sponsored Projects (ORSP).
- Initiate and supervise grant expenditures as stipulated in accordance with the terms, conditions, and limitations of the funding agency
- 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](#);
- Follow conflict of interest in policies in conducting research
- Initiate, monitor, and approve any subawards according to NMHU's policies
- 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
- Ensure the university and potential sponsors that project finances are represented as accurately and reasonably as possible
- Submit salary and non-salary transfers on a timely basis
- Complete effort certifications and timesheets as required for the project on a timely basis
- Certify the appropriateness of direct charges, salary, and annual and sick leave each month during the project period
- Seek no-cost extension, re-budgeting requests, and modification in the scope of the project of the award as needed
- Follow intellectual research property policies
- Inform sponsors of significant changes affecting the project (see §200.308 – *Revision of Budget and Program Plans*)
- Oversee the clearing of overdrafts or overruns if necessary and the proper and timely closeout of sponsored
- Complete all reports (financial, program, or technical) and all Personnel Action Request (PAR/PA-1) forms as required by the award
- Be accountable for deficits or disallowances that occur under the grant or contract
- Spend the grant funds in a timely manner
- Comply with p-card policies

- Submit all budgetary requests through the ORSP including PRs for equipment and supplies and travel through Chrome River preapproval process.

## 4.2. Acceptance and Negotiation of Grants

Awards are given to the university. The PI is the university's agent and directly responsible for the administration of the grant. The ORSP is responsible for reviewing, negotiating, and accepting awards received from external sponsors. Individual PIs should not sign award agreements until the 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 the following:

- 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 on the award and include them in the negotiation process. Once agreed, the terms and conditions are legally binding, and both the recipient and 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 that 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 grants awarded by a particular agency.

**4.2.1. Account Creation of Approved Grant Procedures.** Once the award has been accepted by NMHU, the PI is required to complete the following procedures:

- Inform the dean or appropriate supervisor of the award. Identify any special implications that the award may have on the school, college, or 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.
- Submit the award notice, contract issued by the granting agency, approved budget, and any special guidelines and other relevant information to the ORSP. In addition, the PI will do the following:

- Complete the Billing and Accounts Receivable (BAR) Form to set up the initial budget through NMHU based on the approved award
  - Complete the Web Authorization Form to access the fund's budget on Banner
  - Obtain Banner permission to authorize who has signatory authority over your budget through NMHU.
- The ORSP is responsible for the following:
    - Edits and prepares the BAR so an account can be established
    - Sets up an account in the business office
    - Collaborates 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.

### 4.3. Management of Reporting, Budgets, and Expenditures

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 ORSP director and 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 are described below.

**4.3.1. 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* must be adhered to at the proposal stage. Key policies to address are as follows.

- **Commitment of University Resources.** Sponsored awards are made to the university. To accept awards, the university must legally commit to the conditions of the award document and the provision of resources necessary to fulfill the award. ORSP is authorized to approve grants documents, contracts, and intergovernmental agreements.
- **Allowability.** Proposals should not include expenses that the federal government or sponsor has identified as unallowable.
- **Commitment to Effort.** Proposals should accurately represent the amount of time that key personnel are committing to the project. In preparing proposals, PIs must not overcommit themselves or others. Effort on the project must consider the time required for teaching and campus citizenship.
  - PIs may submit proposals on the assumption that not all funds 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.

- **Estimating Methods.** When estimating funding to be budgeted for project expenses, estimating methods must be consistent with NMHU’s accounting practices and allow expenditures to be accumulated and reported to at least the same level of detail as the estimate.
  
- **Cost Sharing.** Cost sharing is the portion of the total sponsored project cost that is not provided by the sponsoring agency (§200.29). What follows are several types of cost sharing that 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 must provide as part of the performance of the sponsored agreement. A 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 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 awarding agency regulations and 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 award on the part of the NMHU, which then becomes a binding requirement of the award.
  - Voluntary uncommitted cost sharing is faculty-donated additional time above what was 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.

Whatever the case is, 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 are acceptable as cost sharing or matching when all six criteria are met:

- Verifiable from NMHU’s records
- Not included as contribution for any other agency’s grant
- Necessary and reasonable for proper and efficient accomplishment of project or program objectives
- Allowable under *Subpart E-Cost Principles*
- Are not paid by the awarding agency under another award made by the same agency 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

- Is provided for in the approved budget when required by the awarding agency.

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 a sponsored agreement with prior approval from NMHU. 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).
- **Equipment.** The following rules of allowability must apply to equipment and other capital expenditures:
  - Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the awarding agency or pass-through entity.
  - Capital expenditures for special purpose equipment are allowable as direct costs, if items with a unit cost of \$5,000 or more have the prior written approval of the awarding agency or NMHU.
  - Capital expenditures for improvements to land, buildings, or equipment that materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the awarding agency, or pass-through entity.
  - 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.
  - The unamortized portion of any equipment written off because 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 awarding agency for indirect cost.
  - Cost of equipment disposal. If NMHU is instructed by the awarding agency to otherwise dispose of or transfer the equipment, the costs of such disposal or transfer are allowable.
  - Equipment and other capital expenditures are unallowable as indirect costs.
- **Other Direct Costs.** Allowable direct costs other than salaries, fringe benefits, or equipment may be committed by the PI as cost sharing on the proposal budget. The following examples of other direct costs that may be cost shared including travel expenses, items that do not meet the capitalization threshold, and supplies.



- **Facilities and Administration Costs (Indirect Costs).** Facilities and administration costs are expenses 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, and libraries. 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.
- **Sources of Funds for Cost Sharing.** Funds from another federal award or other sponsoring agency 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 Non-Federal Funds.** Identifying and providing resources for cost sharing of direct costs (including equipment) is always the responsibility of the PI. The PI may not use funds from non-federal sources to provide cost sharing unless authorized by the non-federal sponsor.
- **Expenditures NOT Eligible for Cost Sharing.** Unallowable costs as defined in §200.410 include the following:
  - Negotiated indirect (F&A) cost rates
  - Salary dollars above a regulatory cap (see [NIH's 2011 Notice on Salary Limitations](#)).
- **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 made as a condition of receiving external sponsorship. The ORSP must provide cost-sharing reports to sponsors when required by the sponsor. To do so, departments must provide the necessary information on the Cost-Sharing Authorization Form at the time of the award. During the financial close-out of a sponsored project, the ORSP will review cost-sharing commitments.
- **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 or research administrator must consult with the ORSP before the sponsor is contacted.**

- **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.
- **Stipend Award Procedures.** Costs such as student stipends, tuition, housing, travel, books, and supplies must be listed separately in the proposal budget and are often excluded from the F&A cost calculations. **Note:** Participant costs such as workshops, surveys, and studies are typically in small, fixed amounts to compensate participants for their effort and included in the F&A calculation.

#### **4.3.2. Project Monitoring, Reporting, and Billing.**

For a PI 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.

Overall, regular monitoring of a sponsored account will include the following:

- 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 the budget
- Avoid overspending, which may cause a deficit and limit further spending
- The PI/director should be confident that the project complies 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
- Maintain a clear audit trail for the future.

#### **4.3.3. Additional Reporting Guidelines and Forms from Federal Sponsors.**

Certain federal sponsors have specific reporting requirements. Links to the federal sponsors can be found on the ORSP webpage.

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

- **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.

- **Reporting on Significant Changes in Scope of Project.** PIs are obligated to request prior approval from the ORSP and the funding agency 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.
- **Reviewing Project Expenditures.** PIs are 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. Possible actions include the following:
  - 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.
- **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 PI or designee on the grant. 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 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 necessary to complete the project. To be considered timely, the certification must be signed within two months of the end of the academic quarter.
- **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 follows these regulations, the principal investigator is thus responsible for ensuring that cost transfers meet the following requirements:
  - The transfer is 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.
  - It is 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 director of the ORSP.

- **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 award, the NMHU entity must retain the supplies for use with other activities or sell them, but must, in either case, compensate the funding agency for its share. The amount of compensation must be computed in the same manner as for equipment.

#### 4.4. PI Budget Management Responsibilities

Beginning with the receipt of funds at the onset of the award, the PI is responsible for the day-to-day management of the sponsored project budget, which includes the following:

**4.4.1. 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; the check must be forwarded to the business office for deposit.

**4.4.2. 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 Manual* available at NMHU's website in NMHU's Faculty Resources.

**4.4.3. 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 ORSP before they are forwarded to the sponsor. Questions about financial reports should be directed to the account manager at the business office.

**4.4.4. Informing Sponsors of Changes in Principal Investigators.** This section includes policies related to changes of a PI in a sponsored project.

Transfer of Project to Another PI. In cases where the PI is away from the campus on sabbatical or leave for three months or more, another eligible faculty or staff member should be named as acting PI of Service and Subaward by the director of the ORSP. Co-PIs and project directors associated with the grant shall be consulted regarding the selection of the new acting PI. Reasonable efforts shall be made to achieve consensus among the parties. If consensus is not

achieved, the ORSP Director will make the appointment and the majority vote of the co-principal investigators and project directors will constitute the recommendation of the grant team. This may not apply to Research Grants. In those cases, the ORSP director will consult with the PI to determine the best course of action following any additional guidance from the grantor. The acting PI will assume the direction of the project subject to the approval of the sponsoring agency. If absence of the regular PI 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.

Transfer of PI 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 assigned to a new PI. 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. A suitable replacement will be selected based on the recommendation of the chair, dean/director, and other PIs. If a PI should resign from the university, the PI should advise the ORSP as soon as possible to maintain continuity in the project and discuss transfer procedures.

Transfer of Active Research Grants. In cases where active research grants are awarded primarily based on the qualifications and research program of the PI, 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 regarding the following issues.

**4.4.5. Grant Transfers.** Generally, the original institution must formally relinquish the award and any remaining funding; the new institution must formally accept the award and associated terms and conditions; and the funding agency must approve the transfer to new institution.

**4.4.6. Purchasing Procedures.** All purchases made with sponsored funds must follow procedures outlined in NMHU's *Purchasing and Policies Manual* 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.*

- 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 (\$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.
- Small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that does

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.

- 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.
  - For sealed bidding to be feasible, the following conditions should be present:
    - A complete, adequate, and realistic specification or purchase description is available
    - Two or more responsible bidders are willing and able to compete effectively for the business
    - The procurement lends itself to a firm fixed-price contract, and the selection of the successful bidder can be made principally based on price.
  - If sealed bids are used, the following requirements apply:
    - 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 publicly advertised
    - 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
    - All bids will be opened at the time and place prescribed in the invitation for bids. For local and tribal governments, the bids must be opened publicly
    - 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
    - Any or all bids may be rejected if there is a sound, documented reason.
- 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:
  - Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical
  - Proposals must be solicited from an adequate number of qualified sources
  - The non-federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients

- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered
- 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.
- 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:
  - The item is available only from a single source
  - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
  - The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity
  - Or, after solicitation of several sources, competition is determined inadequate.

**4.4.7. Re-budgeting of Project Funds.** The PI 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 re-budgeting, unobligated balances, and pre-award costs, NMHU and sponsors expect expenditures to be reasonably consistent with the approved project and budget. Regarding 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 re-budgeting.

**4.4.7.1. Re-budgeting Guidelines.**

The budget is the financial expression of the project or program as approved during the award process. After a grant or contract has been awarded, the PI may determine that the approved budget allocations are not consistent with actual project needs and may request the formal reallocation of funds from one spending category, or object code, to another object code category that better reflects the project requirements. This process is called re-budgeting or budget revision.

Informal re-budgeting occurs when actual expenditures exceed or fall short of the allocated amount budgeted in an object code or when actual expenditures occur in an object code that has no budget allocation.

Many sponsors allow re-budgeting without prior approval, while others require approval when re-budgeting into or out of a spending category exceeds a specified percentage of the award amount. If prior approval is not required, then formal re-budgeting is not necessary but may be requested to assist in budget management.

**Note:** Re-budgeting may impact Facilities and Administrative (F&A) Costs.

#### **4.4.7.2. Procedure to Request Re-budgeting of Funds on a Grant or Contract.**

Determine if the sponsor of the grant or contract allows re-budgeting and whether prior approval is required or not

**Note:** If the sponsor requires prior approval for re-budgeting that exceeds a certain percentage of the budget, care must be taken to ensure this limit is not exceeded when multiple re-budgeting events occur in a single budget period. For example, per the NIH [Grants Policy Statement](#), “Significant re-budgeting occurs when expenditures in a single direct cost budget category deviate (increase or decrease) from the categorical commitment level established for the budget period by 25 percent or more of the total costs awarded.”

- *If sponsor approval is required:*
  - Forward a copy of the budget revision request to ORSP.
  - The ORSP will send the re-budgeting request to the sponsoring agency
- *If the sponsor does not require prior approval for re-budgeting:*
  - Complete the Re-budgeting Form and submit to the ORSP.

#### **4.4.7.3. The ORSP Responsibilities.**

- ORSP will review the re-budgeting request to determine if it is allowable, based on sponsor regulations or contractual agreements in the award documents.
- If prior sponsor approval is required, ORSP will forward the request to the sponsoring agency.
- Re-budgeting requests that do not require sponsor approval will be completed within a week of receipt of the request.
- ORSP will notify the department about the status of the request.

**4.4.7.4. Effect of Re-budgeting on F&A Costs.** When a sponsor allows re-budgeting between the direct costs and F&A costs, it is necessary to provide for the increase or decrease in F&A that may occur when re-budgeting.

Occasionally after an award is received, the planned site where the project is to take place changes from on-campus to off-campus or vice versa. A change in location may have an impact on the F&A rate to be applied. Such a move will require formal re-budgeting.

When re-budgeting **from** direct cost categories that are *exempt* from F&A costs (do not incur F&A) **to** *non-exempt* F&A categories (do incur F&A) cost, the amount being re-



budgeted is reduced proportionately by the associated F&A cost of the non-exempt category.

**Example:** If the F&A rate on your grant is 50%, and you want to move \$2,000 from an exempt direct cost category to a non-exempt direct cost category:

$$\$2,000/1.5 = \$1,333$$

\$1,333 is the amount transferred as direct cost

The \$667 difference is the amount transferred as F&A cost

When re-budgeting from exempt direct cost to any non-exempt direct cost, provide for additional F&A costs (example #1):

Example #1 - Addition to F&A Cost Budget

Object Code	Current Budget	Amount Re-budgeted	Revised Budget
01-XX-XX (non-exempt)	4,000	3,000	7,000
05-XX-XX (non-exempt)	1,000	0	1,000
06-XX-XX (exempt)	2,000	(2,000)	0
08-02-XX (exempt)	3,000	(2,500)	500
Direct Cost total	10,000	-1,500	8,500
25- F&A Cost total	2,500	1,500	4,000
<b>Total</b>	<b>\$12,500</b>	<b>\$0</b>	<b>\$12,500</b>
*Note - 50% F&A rate used			

Re-budgeting **to** exempt direct cost from non-exempt direct cost will result in a reduction to F&A costs that may be re-budgeted (example #2):

Example #2 - Reduction to Facilities & Administrative (F&A) Cost Budget

<b>Object Code</b>	<b>Current Budget</b>	<b>Amount Re-budgeted</b>	<b>Revised Budget</b>
01-XX-XX (non-exempt)	4,000	(2,000)	2,000
05-XX-XX (non-exempt)	1,000	0	1,000
06-XX-XX (exempt)	2,000	1,000	3,000
08-02-XX (exempt)	3,000	2,000	5,000
Direct Cost total	10,000	1,000	11,000
25 F&A Cost total	2,500	(1,000)	1,500
<b>Total</b>	<b>\$12,500</b>	<b>\$0</b>	<b>\$12,500</b>
*Note - 50% F&A rate used			

**4.4.7.5. Cost Overruns.** Costs exceeding project budgets are the responsibility of the PI, OSRP director, and University and considered unallowable costs. Nonetheless, the university is obligated to account properly for this action. In the event of a cost overrun, all university resources must be considered to settle the overrun. However, the director of OSRP shall not use academic department or school/college budget to cover overruns unless agreed to by the Chair or the Dean, respectively, or because of university financial exigency.

**4.4.8. Underestimating Project Budgets when Funds are Initially Requested from the Sponsoring Agency.** The PI should carefully consider all potential costs of projects when the budgets are first developed. Monthly university financial reports should be reviewed by the PI or the PI's representative. Any anomalies 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.

**4.4.9. Control of Property.** The university is responsible for the control of property funded under the terms of sponsored project contracts and grants. The PI is responsible for the control and maintenance of the sponsored property. The PI 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.

**4.4.10. Travel Policies and 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 restricted funds must comply with the university's travel policy. Contact the ORSP or the business office for further policy guidelines on travel procedures.

**4.4.11. 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 Personnel Procedures and Policy Manual, Faculty Handbook, and NMHU Collective Bargaining Agreements, as appropriate.

**4.4.12. 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.

**4.4.13. 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, prior approval from the sponsor is required. Requests for extensions should be initiated by a PI and processed in accordance with the terms of the sponsored award. The PI 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 and ORSP must consider all available resources. However, the director of ORSP shall

not use academic department or school/college budget to cover overruns unless agreed to by the Chair or the Dean, respectively, or because of university financial exigency.

**4.4.14. Collection of Improper Payments.** According to (§200.428), costs incurred by a non-federal 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 case management standards in §200.305: *Payment*.

**4.4.15. Records Retention.** For some projects, the retention period may be longer based on the following conditions:

- To protect any intellectual property resulting from the work
- To ensure that charges of misconduct or conflict of interest regarding the research are fully resolved
- To ascertain that a student involved in the research has graduated, or until 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 length of time.

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 the PI who is involved in the research project leaves the university, research data transfer will follow the protocols of the granting agency in coordination with ORSP. Any intellectual property issue is covered by the appropriate NMHU collective bargaining agreement and Section 5 of this document.

## 4.5. Project Closeout

The PI is responsible for overseeing the proper closeout of sponsored projects including the timely submission of all required reports. While the ORSP prepares and submits final administrative reports, including financial and property reports, it does so based on documentation created in the department. The PI must ensure that such documentation is adequate and readily available. In addition, PIs 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, 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.

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, which includes the following:

- Final financial reporting
- Invoicing
- Disposition of equipment
- Termination of employees as required by the terms and conditions of the award.

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.

**4.5.1. Closeout Reporting Period.** Ninety days prior to the project end date, unless a different end date is specified by the granting agency, the PI shall complete and submit the **Project Closeout Procedure Record** to the ORSP and budget office. This form ensures the non-federal entity (NMHU) that key terms and agreements of the grant award are complete or nearing completion. In accordance with §200.343, the non-federal 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 the project end date, the PI 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, unless otherwise specified by the granting agency. During this time, the PI 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 non-federal 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. The non-federal entity must promptly refund any balances of unobligated cash that the federal awarding agency paid in advance and that are not authorized to be retained by the non-federal 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 non-federal 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*.

**4.5.2. 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 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.

#### **4.5.3. Post-Closeout Adjustments and Continuing Responsibilities.**

The closeout of a federal award does not affect any of the following:

- The right of the federal awarding agency or the university to disallow costs and recover funds based on 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.

- The obligation of the non-federal entity to return any funds due because of later refunds, corrections, or other transactions including final indirect cost rate adjustments.
- Audit requirements in *Subpart F—Audit Requirements*.
- Property management and disposition requirements in *Subpart D—Post Federal Award Requirements*, §200.310 *Insurance Coverage* through 200.316 *Property Trust Relationship*.
- Records retention as required in *Subpart D—Post Federal Award Requirements*, §200.333 *Retention Requirements for Records* through §200.337 *Restrictions on Public Access to Records*.

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.

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

**4.5.5. 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:

- 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
- Any costs of auditing the institution are 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.
- 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.
- Pass-through entities may charge federal awards for the cost of agreed-upon procedures 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 in place:
  - The procedures are conducted in accordance with Generally Acceptable Government Auditing Standards (GAGAS) attestation standards
  - They are paid for and arranged by the pass-through entity

- They are 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 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.

**4.5.5.1. 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
- Excessive transfers of costs among projects, especially at project termination.

A disallowance requires repayment by the university for previously billed costs. All university resources may be considered for repayment. However, the director of ORSP shall not use academic department or school/college budget to cover overruns unless agreed to by the Chair or the Dean, respectively, or because of university financial exigency.

Disallowed costs may not be transferred to another sponsored agreement. All audits must be carried out through the ORSP.

If a PI is contacted 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.

#### **4.6. Openness in Research.**

Individual scholars shall be free to select the subject matter of their research, seek support from any source for their work, and form their own findings and conclusions. Accordingly, this research shall be available for scrutiny and criticism as required by the university and shall be fully implemented. 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 agree to a contract or grant to carry out research if the grant or contract restrains the freedom of the university to disclose:

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

**Note:** The third bullet 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.

- With approval from the ORSP and academic department, a research program shall be regarded as requiring secrecy only when the following conditions are met:
  - If any part of the sponsoring or granting documents that establish the project is not freely publishable
  - If there is a reasonable basis for expectation that any documents to be generated during the research project will be subjected by an outside sponsor to restrictions on publication for a period more than that reasonably required (i.e., more than 90 days) for the sponsor to ascertain whether information they are entitled to have treated as confidential would be disclosed by publication
  - Or, if access will be required during 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 the intellectually significant portions of the project.
- 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:
  - If interview techniques or other involvement of a living human being would threaten the rights of that individual to privacy.
  - 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. Examples are as follows:

- 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
  - 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, would be subject to restriction on publication more enduring than those described in this section.
- 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:
- 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
  - 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
  - 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 following:
    - The rationale for the request
    - A description of who will have authority over publication decisions
    - A statement of the provisions that will allow the investigator to publish within a defined time period, 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.

- If a non-NMHU employee or entity has made available to the PI 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 to ensure that the investigator has not disclosed, intentionally or unintentionally, any portion of the confidential information supplied.
- If private papers, documents, diaries, or analogous materials have been provided to the PI of the research program, a provision may be made to preserve the confidentiality of those materials for protecting the privacy of the author, or of the addressee, or of the immediate family of either the author or the addressee.

- No research on a terminal project 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.
- No secret terminal project should be accepted as the basis for a degree unless, in the judgment of the NMHU Institutional 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.

## 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. Definitions.** 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, they are 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.
- **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 if 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.

### 5.1.2. Invention Rights.

The ownership of inventions is dictated by the research, service, or subaward status of the project.

**5.1.2.1. Research.** Ownership is granted to the PIs, CoPIs, and faculty and staff on the project, unless it is contracted University work or stipulated otherwise by the grantor.

**5.1.2.2. Service and Subaward Grants.** Ownership is granted to either the PIs, CoPIs and faculty and staff on the grant or the University, depending on circumstances stated below.

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

- 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)
- 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
- Works created under a sponsored research agreement that specifically grants ownership to the grantor.

**Technological works and technical information** are owned by the university, if they fall within the creator's scope of employment and are work for hire from university funds. Factors considered in determining scope of employment shall include the relationship of the work(s) to creator's teaching, research, and other university activities.

**5.1.3. Invention Disclosures.** Unless otherwise addressed by contract, it is the sole discretion of the inventor as to whether or not they want the university to be involved in the patent process. an invention is conceived or implemented in whole or in part through the university, 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 that 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 to the University:

- 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
- The inventor(s) may not use university resources, including facilities, personnel, equipment, or confidential information for any non-university purposes, including outside consulting activities or other activities in pursuit of personal gain except insofar as allowed by NMHU's policies or collective bargaining agreements.

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.**

The university may require inventors to refrain from publishing for a reasonable period of time 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.

In compliance with the Public Employee Bargaining Act (PEBA), relevant CBAs include grievance procedures to be used for the settlement of disputes pertaining to employment terms and conditions and related personnel matters.

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 30 days to complete the form and return it with all relevant information. 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.

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, they may appeal to the board of regents.

All materials produced by any of the parties under this section shall be retained for seven years as a 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.

**5.1.8. Miscellaneous.** 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.

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.

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

- The university's obligation to research sponsors
- Best interest of the university
- Best interest of technology transfer
- Avoidance of conflict of interest.

## 5.2. Patents

The following sections highlight the essential information related to patents and patenting procedures.

**5.2.1. Patent Definition.** Follow the link [35 U.S.C. § 102](#), for a definition of a patent, which is a grant issued by the U.S. 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 nonobvious. This review takes two to five years. 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](#).

**5.2.2. Procedures.** Faculty, staff, student employees, graduate students, and postdoctoral fellows who are engaged in funded research projects with the potential to result in the production of tangible intellectual property must sign, for informational purposes, NMHU's University Patent and Copyright Agreement Form. Additionally, intellectual property rights of CBA Faculty are handled by their collective bargaining agreement. In addition, non-employees who participate or intend to participate in research projects at NMHU must 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 rights, titles, 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 they do 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
- Obligates 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.

**5.2.3. Loss of Patentability.** For loss of patentability see [US Patent and Trademark Law and Rules](#).

**5.2.4. Process for Filing and Obtaining a Patent.** The inventor seeking to file a patent must first file, for informational purposes, an Invention and Technology Disclosure Form with the ORSP. The ORSP will review the IDF and meet with the inventor to obtain any additional information to decide 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 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 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.** For any university-sponsored patent, a written agreement will be reached between the University and inventor(s) regarding licensing, royalties, or any other expenses or profits, before the university expends any money pursuing a patent. Patent costs are regulated by §200.448 *Intellectual Property* described below.

#### **Allowable Patent Costs**

- 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
- Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a U.S. patent application where title or royalty-free license is required by the federal government to be conveyed to the federal government
- 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).

#### **Unallowable Patents and Copyrights Activities**



- Costs of preparing disclosures, reports, and other documents to make disclosures not required by the federal award.
- Costs in connection with filing and prosecuting any foreign patent application, or any U.S. patent application, where the federal award does not require conveying title or a royalty-free license to the federal government.

### **Royalties and Other Costs for Use of Patents and Copyrights**

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 the following conditions are met:

- The federal government already has a license or the right to free use of the patent or copyright
- The patent or copyright has been adjudicated to be invalid or has been administratively determined to be invalid
- The patent or copyright is unenforceable
- The patent or copyright is expired.

### **Royalty Reasonableness**

Special care should be exercised in determining reasonableness where the royalties may have been arrived at because of less-than arm's length bargaining, such as the following:

- The royalties were paid to persons, including corporations, affiliated with the non-federal entity
- The royalties were paid to unaffiliated parties, including corporations, under an agreement in contemplation that a federal award would be made
- The royalties were paid under an agreement made after a federal award is made to a non-federal entity.

### **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 that 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 from the university ([Copyright Law](#)), supported by a direct allocation of funds through the university for the pursuit of a specific project, commissioned by the university, makes significant use of

university resources or personnel, or otherwise subject to contractual obligations. Please see the appropriate CBA for discussion of specific copyright issues.

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 the author. [Section 101](#) of the copyright law defines a “work made for hire.”

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 that are not institutional works.

The university shall retain ownership of works created as institutional works. Institutional works include works supported by a specific allocation of university funds or that are created at the direction of the university for a specific university purpose.

**NMHU Copyright Statement.** To protect the copyright, the following statement should be used on all NMHU copyrighted materials. The name and address of the center or institute may be listed below the copyright to direct inquiries from any individuals and/or groups.

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.

**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 the following:

- Reports by consultants or subcontractors

- Computer software
- Architectural or engineering drawings
- Illustrations or designs
- Artistic works.

**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.

**Use of University Resources.** NMHU resources shall be used according to HR policy and the appropriate CBAs. 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, they 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.

**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 with the following exceptions:

- Violate any legal obligations of or to the university
- Limit appropriate university uses of the materials
- Create a real or potential conflict of interest for the creator
- Or, otherwise conflict with university goals or principles.

**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 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 university-owned or sponsored inventions will be generally distributed as follows:

<b>Administrative Overhead</b>	15% of gross royalty income followed by deductions for any assigned expenses or fees (e.g., filing fees)
<b>Inventor(s)</b>	50% after administrative overhead
<b>Inventor's School/College</b>	25% after administrative overhead
<b>Inventor's Department</b>	25% after administrative overhead

In cases where the university owned or sponsored 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 that is university owned or sponsored 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. 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 may be used to maintain quality co-authorship of publications or dissemination of work produced as a result of research activity sponsored by the university:

- The university shall not interfere with the faculty's right to publish.
- 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
- PIs and participating faculty are responsible for ensuring the overall soundness and validity of the publications of which they may appear as co-authors.

## **5.6. 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.

**5.6.1. Tangible Research Property (TRP).** Tangible research property owned by the university is generally defined as discernible or corporeal items produced during 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 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 practice the following:

- Encourage the open exchange of tangibly related research property
- Stimulate potential commercial value

- Promote the public use of university produced property
- Protect the university and employees from liability claims arising from the use of such property.

**5.6.2. 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 project and 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. Any sale of TRP shall be treated as indirect cost recover and distributed as defined in appendix A.

**5.6.3. 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 characterize the TRP more fully prior to distribution), scientific exchanges should not be inhibited due to potential commercial considerations.

#### **5.6.4. Income from TRP.**

**Recoverable Costs.** TRP may not be sold for profit, although licensing agreements that 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 that funded those costs.

**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.

**5.6.5. 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.

#### **Identification of TRP**

- **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 information regarding use of existing university systems (e. g., Biological TRP Registry, Trademark Registry, etc.).

**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.

## **Distribution of TRP for Research Purposes**

### **Biological TRP**

- **Transmittal Letter.** Each distribution for non-commercial research purposes should be accompanied by a letter of transmittal that 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.”
- **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).

### **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.

- **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 accompanied by an appropriate agreement with the recipient. The ORSP will arrange for trademark and copyright registration as needed. The ORSP also will 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 arranges for collecting departmental costs associated with providing software for non-commercial use and returning these to the department.

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

### **Distribution of TRP for Commercial Purposes**

- **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 there from, and disposition of any royalty income to NMHU from the licensing of intangible property rights associated with the use of the tangible property.
- **Income Distribution.** Distribution of any TRP-related royalty income other than patent royalties will be similar to the patent royalty income distribution policy except that the “inventor’s share” will normally be distributed to a research account in the laboratory that 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.
- **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.



## Section 6: 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.

### 6.1. Use of Human Subjects

**6.1.1. 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 data through intervention or interaction with the individual, or 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 that meet this definition constitute research for purposes of this policy, whether they are conducted or supported under a program that is considered research for other purposes. Other examples of systematic investigations may include the following:

- Surveys and questionnaires
- Interviews and focus groups
- Analyses of existing data or biological specimens
- Epidemiological studies
- Evaluations of social or educational programs
- Cognitive and perceptual experiments
- 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.

**6.1.2. Human Subject Principles.** The university must be assured that any research including human subjects must follow general principles of research with human subjects as described below:

- Respect for persons (e.g., applied by obtaining informed consent, considering 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 the following:

<ul style="list-style-type: none"><li>• <a href="#">Code of Federal Regulations and HHS Policy for Protection of Human Research Subjects in Title 45, Part 46.102</a></li><li>• <a href="#">Federal Wide Assurance for the Protection of Human Subjects</a></li><li>• <a href="#">Common Rule (45 CRR Part 46)</a></li><li>• <a href="#">Belmont Report</a></li><li>• Department of Veteran Affairs regulations in <a href="#">38 CFR Part 16</a> and <a href="#">VHA Handbook 1200.05</a>.</li></ul>	<ul style="list-style-type: none"><li>• Standards for Privacy of Individually Identifiable Health Information (HIPAA Privacy Rule) in <a href="#">45 CFR Parts 160 and 164 (PDF)</a></li><li>• Applicable NM law</li><li>• <a href="#">Food and Drug Administration Regulations for the Protection of Human Subjects</a> (21 CFR Parts 50 and 56)</li><li>• Provisions in contracts with other institutions engaged in research or entities providing funding for research</li></ul>
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## 6.2. Responsibilities of the Institutional Review Board for Human Subjects

The Institutional Review Board (IRB) 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 the following:

- Review and formulate policies and procedures for the use of human subjects in research
- Ascertain compliance with applicable public law, governmental guidelines, and professional standards and provide any required reports or statements of assurance of compliance
- Reasonable efforts should be made to review research studies during scheduled IRB meetings. However, the IRB may opt to review and approve/disapprove of research studies through electronic means (i.e., email, SharePoint, etc.) with committee approval and/or based on committee limitations and availability.
- 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.
- Convene at least once each semester to review applications and research activities, as needed
- Make determinations based on the federal regulation 45 CFR 46 and other state and university regulations to assure proper compliance of research projects
- Provide written notification to PIs and the ORSP of approval, modifications, or rejections of applications
- 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
- Identify activities that require a review more than every 12 months or that need verification that no changes occur after the review process

- 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](#)

**6.2.1. Criteria for Review.** The IRB will determine the quality of all applications based on the following criteria:

- 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 CFR § 46.111 (a)(1)(ii)* – [Criteria for IRB Approval of Research](#)
- 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 CFR § 46.111 \(a\)\(2\)\(PDF\)](#).
- Selection of participants is equitable. In determining whether selection was equitable, the IRB shall refer to [45 CFR § 46.111\(a\)\(3\)\(PDF\)](#)
- Informed consent is sought and documented in accordance with and [45 CFR §§ 46.116 and 46.117](#)
- 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
- A plan for debriefing of participants upon completion of their involvement is documented
- Permission from any appropriate agency or school is documented
- 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
- The application must be complete, and the proposal must provide sufficient information for the IRB to make a fair decision
- 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 CFR § 46.111\(PDF\)](#)
- 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 this subjects in accordance with [45 CFR § 46.111\(PDF\)](#).

**6.2.2. Required Procedures for Acquiring an Informed Consent from Human Subjects.** In accordance with [45 CFR 46.117](#), [45 CFR § 46.108\(b\)](#) and [45 CFR § 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 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, sponsor, 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:

- 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 that are experimental
- A description of any reasonably foreseeable risks or discomforts to the subject
- A description of any benefits to the subject or to others that may reasonably be expected from the research
- A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject
- A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained
- 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
- 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
- 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
- One of the following statements about any research that involves the collection of identifiable private information or identifiable biospecimens:
  - A statement that identifiers might be removed from the identifiable private information or identifiable biospecimens and that, after such removal, the information or biospecimens could be used for future research studies or distributed to another investigator for future research studies without additional informed consent from the subject or the legally authorized representative, if this might be a possibility
  - A statement that the subject's information or biospecimens collected as part of the research, even if identifiers are removed, will not be used or distributed for future

- research studies.
- Additional elements of informed consent may also be provided to each subject or the legally authorized representative:
    - A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) that are currently unforeseeable
    - Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's or the legally authorized representative's consent
    - Any additional costs to the subject that may result from participation in the research
      - The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject
      - A statement that significant new findings developed during the course of the research that may relate to the subject's willingness to continue participation will be provided to the subject
      - The approximate number of subjects involved in the study
      - A statement that the subject's biospecimens (even if identifiers are removed) may be used for commercial profit and whether the subject will or will not share in this commercial profit
      - A statement regarding whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions
      - For research involving biospecimens, whether the research will (if known) or might include whole genome sequencing (i.e., sequencing of a human germline or somatic specimen with the intent to generate the genome or exome sequence of that specimen).
      - Elements of broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens. Broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens (collected for either research studies other than the proposed research or non-research purposes) is permitted as an alternative to the informed consent requirements. If the subject or the legally authorized representative is asked to provide broad consent, the following shall be provided to each subject or the subject's legally authorized representative.

### **6.3. Responsibilities of Principal Investigators for Human Subjects**

The principal investigator is responsible for complying with all regulations that apply to the research project including the following:

- Complete all assurances to the satisfaction of the granting agency as required by 45 CFR § 46.103.
- 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)*.

- Conduct or support research as reviewed and approved by NMHU's IRB and submit to continuing review by the IRB as required by *45 CFR § 46.103*.
- 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
- Promptly report changes, injuries, or other unanticipated problems in human subject research activities to the IRB in accordance with *45 CFR § 46.101(b)*
- Report progress on modifications required by the IRB based on timelines set by the IRB.

#### **6.4. 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 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 on 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 was no longer be available as of March 1, 2008. NMHU now offers free web-based training to satisfy the NIH human subjects training requirement through the CITI program (<https://about.citiprogram.org/>). Specific information about which tutorials to complete are provided on NMHU's IRB website. The trainings are designed for those involved in the design and/or conduct of research involving human participants. They satisfy the NIH human subjects training requirement for obtaining NIH awards, but are 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

- The primary objectives of the T15 program are to increase knowledge among investigators regarding research ethics and 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 can serve as resources in the institutions and catalysts in discussions of critical ethical issues in research (see <http://grants.nih.gov/grants/guide/pa-files/PA-99-050.html>).

## 6.5. 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 groups of 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. The results 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 the following:
  - Investigational drug clinical trials
  - Medical treatment with investigational device study
  - Medical outcomes study comparing approved drugs/devices.
- **Student Projects.** NMHU supports a 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, they 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 that 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.

## **6.6. Exempt Human Subjects Research**

Human subjects research meeting certain specific criteria are exempt from some of the normal human subjects research requirements [see 45 CFR § 46.101(b)(1)-(6) or § 46.104]. Investigators cannot determine that their research is exempt; they must submit an IRB application for exempt research and determination of exempt status will be made by an IRB member. Only research that falls into one of eight categories described may be classified as exempt (and some exceptions or additional criteria apply). The eight category descriptions below are excerpted from the HHS website (<https://www.hhs.gov/ohrp/regulations-and-policy/regulations/45-cfr-46/common-rule-subpart-a-46104/index.html>):

(1) Research, conducted in established or commonly accepted educational settings, that specifically involves normal educational practices that are not likely to adversely impact students' opportunity to learn required educational content or the assessment of educators who provide instruction. This includes most research on regular and special education instructional strategies, and research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research that only includes interactions involving educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior (including visual or auditory recording) if...[certain] criteria [are] met.

(3) (i) Research involving benign behavioral interventions in conjunction with the collection of information from an adult subject through verbal or written responses (including data entry) or



audiovisual recording if the subject prospectively agrees to the intervention and information collection and at least one [additional] criteria is met.

(4) Secondary research for which consent is not required: Secondary research uses of identifiable private information or identifiable biospecimens, if at least one [additional] criterion is met.

(5) Research and demonstration projects that are conducted or supported by a Federal department or agency, or otherwise subject to the approval of department or agency heads (or the approval of the heads of bureaus or other subordinate agencies that have been delegated authority to conduct the research and demonstration projects), and that are designed to study, evaluate, improve, or otherwise examine public benefit or service programs, including procedures for obtaining benefits or services under those programs, possible changes in or alternatives to those programs or procedures, or possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies [additional criteria must be met].

(7) Storage or maintenance for secondary research for which broad consent is required: Storage or maintenance of identifiable private information or identifiable biospecimens for potential secondary research use if an IRB conducts a limited IRB review and makes the determinations required by [§46.111\(a\)\(8\)](#).

(8) Secondary research for which broad consent is required: Research involving the use of identifiable private information or identifiable biospecimens for secondary research use, if [additional] criteria are met.

## **6.7. Human Subjects Research Excluded from Review Requirements**

In accordance with *45 CFR § 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 individuals about whom the information is collected.

## **6.8. 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.
  - Collection of hair and nail clippings, in a non-disfiguring manner, deciduous teeth, and permanent teeth if patient care indicates a need for extraction.
  - 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.
  - Recording of data from subjects 18 or older using noninvasive procedures routinely employed in clinical practice. These includes the use of physical sensors 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).
  - Collection of blood samples by venipuncture, in amounts not exceeding 450 milliliters in an eight-week period and no more often than two times per week, from subjects 18 years of age or older and who are in good health and not pregnant.
  - 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.
  - Voice recordings made for research purposes such as investigations of speech defects.
  - Moderate exercise by healthy volunteers.
  - The study of existing data, documents, records, pathological specimens, or diagnostic specimens.
  - 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.
  - 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 [45 CFR 46.108\(b\)](#).

## 6.9. 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.

**6.9.1. 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 their 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 CFR § 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, or 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, their 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.

**6.9.2. 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.

**6.9.3. 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.

**6.9.4. 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. 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 they agree, 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 CFR § 46.408](#))
- Waiver of the Consent Requirements [[45 CFR § 46.408\(c\)](#)]

## 6.10. Complaint Procedures

If a participant in an NMHU IRB approved study has questions, complaints, or concerns (hereafter “complaints”), they can follow these procedures:

### Reporting

- Participants can contact the Principal Investigator (PI) of the research study directly. During the review and approval process, the IRB informs study PIs that

if participants report any physical or emotional trauma from participating in their study, a report must be made to the IRB, or

- Participants can contact the NMHU IRB Chair to submit their complaint, or
- Participants can use the NMHU IRB webpage to submit their complaint and this can be done anonymously (<https://www.nmhu.edu/institutional-review-board/>)

**If the complaint comes directly to the IRB**

- The IRB will communicate the complaint to the study PI. The PI will work to address the complaint in consultation with the IRB.

**Follow-up**

- If the participant is not anonymous and requests to be contacted further, the IRB will follow up with them to report how the PI has addressed their complaint.
- If the participant is not satisfied with the response of the PI, the complaint will be forwarded to the ORSP.
- The ORSP will review the complaint and follow-up with the participant.

## **Section 7: Research on Laboratory Animals**

### **7.1. Responsibility of Institutional Animal Care and Use Committee (IACUC)**

The IACUC consists of at least five members including a veterinarian, community member/non-scientist, and scientists with relevant expertise. 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 vertebrate animals at NMHU (laboratory animals and wildlife) with policies established by the U.S. Public Health Service (PHS) and OLAW. Meetings are held every six months to review the program, animal facilities, current permits, and new proposals. More frequent meetings are held as needed. As part of the review process, the IACUC will examine each application for actions such as the following:
  - Protocols for purchasing and ordering laboratory animals
  - Standards for housing, feeding, and providing veterinary care
  - Procedures for trapping and/or handling animals
  - Conditions for animals that minimize hazard to public health and safety
  - Procedures for reporting inhumane treatment of animals
  - Procedures for transporting animals in the field or to or from the university.
- Notify principal investigators or project directors and the 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 animal care for PIs and staff with support from ORSP
- Monitor at least every six months all laboratory facilities affiliated with the university
- Review concerns involving the care and use of animals at NMHU. Notices are posted in animal care areas with contact information to report animal welfare concerns to the IACUC. University employees who report animal welfare concerns, in good faith, are protected against retaliation and discrimination by the New Mexico Whistleblower Protection Act. Concerns can be addressed to the IACUC chair, veterinarian, or Institutional Officer, or can be reported anonymously in writing submitted to the on-campus mailbox of these contacts
- 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 and field observations to the ORSP.
- Provide an annual report to the PHS or OLAW offices as required by the Animal Welfare Assurance and 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
- Maintain the OLAW Animal Welfare Assurance for Domestic Institutions, which is renewable every five years

- Coordinate with the NMHU Environmental Health and Safety Office to maintain animal facilities disaster planning and preparedness and risk-based occupational health and safety procedures related to animal care and use
- With assistance from the ORSP, maintain records of applications, protocols, changes in ongoing activities, reports for duration of each research project and for at least a three-year period after the completion of the project
- Recommend policy changes on any aspects of the policies related to animal use and care at the university to the ORSP.

## **7.2. Responsibility of Principal Investigator for Laboratory Animals**

Principal Investigators working with vertebrate animals must adhere to the following responsibilities:

- Maintain an understanding of federal, state, and university regulations pertaining to the humane care and use of laboratory animals
- Prepare an animal study proposal form, which can be found at the ORSP website, describing research activities involving vertebrate animals and submit to the IACUC for review. Research with vertebrate animals cannot begin until IACUC approval is acquired. Approval is valid for three years, with yearly updates and review required
- Each year, file an Approved Animal Protocols Yearly Update Form with IACUC for review
- 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
- Maintain documentation on staff and student training as requested by regulatory and accrediting agencies. Documentation must be provided to the IACUC as well
- Seek prior approval to bring vertebrate animals to the university campus from outside institutions or collaborating agencies
- Seek prior approval from the IACUC to move and/or transport animals out of the animal facility.

## **7.3. Responsibilities 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 and wildlife. Attendance at training orientations for the care and use of animals is mandatory for everyone 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 animals.



- Complaints (anonymous complaints accepted) regarding the mistreatment or abuse of vertebrate animals may be filed with the IACUC or the ORSP.

#### **7.4. 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. University personnel should assist visitors in complying with all procedures and precautions based on the species and activity that will take place, including wearing 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 8: Financial Conflict of Interest and Code of Conduct

This section primarily focuses on policies and procedures intended to minimize Financial Conflicts of Interest (FCOI). Included in this section are responsibility of faculty, staff, and dean; FCOI procedures for annual certification; and a description of the institution's code of ethics for consulting and other professional activities.

### 8.1. Definition of Terms

An **Investigator** is defined as the Principal Investigator (PI). The PI and any other person, regardless of title or position, who is responsible for the design, conduct, and reporting of research funded by an external funding agency.

**Financial Conflict of Interest (FCOI)** arises when an investigator diverges from the university's professional obligations to a private interest involving actions that are motivated by significant personal gain or financial gain. Such behavior may call into question the professional objectivity and ethics of the individual and 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 each external funding agency

**Significant Financial Interests.** The term "significant financial interest" means:

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:

- Regarding any publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the 12 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.
- Regarding any non-publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the 12 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).

See [42 CFR Part 50, Subpart F](#) for further information.

### 8.2. 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.

The following links are included to assist investigators in the determination of disclosure requirements:

- [Federal Register Title 45-Public Welfare, Part 94.4.](#)
- [42 CFR Part 50, Subpart F](#) - *Management and Reporting of Financial Conflicts of Interest*
- [CFR 42, Part 50, Subpart F, Sec 50.606](#)
- [45 CFR 74.62](#) – *Enforcement*
- [§200.113](#)- *Mandatory Disclosures*

The following disclosure-related forms are available online from the ORSP:

- [Investigators Annual FCOI Disclosure Form](#)
- [Investigators Annual Project Disclosure Certification Form](#)
- [Subrecipient Commitment Form- for non-NMHU investigators](#)

**8.2.1. Review Process.** The ORSP will establish a case file for each FCOI Management Plan and monitor compliance.

NMHU will respond to any HHS inquiries (or those of any other federal agency) into the university's procedures and actions regarding conflicting financial interests in any federally-funded research, including a requirement for submission of, or review on site, all records pertinent to compliance with this subpart.

**8.2.2. Appeal Process.** Should an investigator wish to appeal a decision made by the director of ORSP they may present the appeal to the VPAA.

**8.2.3. 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 terms and conditions outlined in [Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters](#).

### **8.3. 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 their official university position may exist.

Code of Conduct. Faculty and professional staff are permitted to engage in external consulting within the guidelines established by the code of conduct or collective bargaining agreements.

### **8.3.1. Time Restrictions**

If a faculty or staff member is awarded a grant through NMHU, release time may be given from their duties. Faculty or staff 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 participation in that release time from normally assigned duties. Where release time from duties is not feasible, the faculty member may be provided an administrative overload supplemental contract. For more detail see the various collective bargaining agreements.

**8.3.2. Students.** The work of students shall not be exploited for faculty or staff outside obligations. 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.

**8.3.3. Resources.** University resources must be used in accord with HR policy and the various collective bargaining agreements.

**8.3.4. Inventions.** Faculty and staff shall 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. Intellectual property will be handled in accord with Section 5 of the RPH, HR policy, and the various collective bargaining agreements.

**8.3.5. 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 if the violation is seen as sufficiently serious or the immediate supervisor is unresponsive.

In situations in which the objectivity of a faculty or staff member could reasonably be questioned, the dean of a school/college must adhere to the procedures described in the various collective bargaining agreements.

## **8.4. Prohibited Activities and Exceptions**

The following prohibited actions are listed to further clarify the boundaries of conflict of interest to faculty and professional staff.

**8.4.1. 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.

**8.4.2. 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 in accordance with state and federal law.

**8.4.3. Personal Gain.** Providing non-university employees or outside entities with university supported materials, property records or information, work products or results is prohibited.

**8.4.4. 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.

## **8.5. Procedures for Submitting Exceptions**

If a faculty or staff member is in a situation of potentially violating any policies related to conflict of interest, they should make a full, detailed disclosure in writing of the conflict and a justification for an exception. If this COI has occurred unknowingly, there would be no administrative action or reprimand issued. The disclosure shall be submitted to the dean or department head and the faculty research committee for review and recommendations. 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 9: Non-Ranked Faculty/Staff Research Appointments

The policies and procedures on the appointment of non-ranked faculty and staff 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, contingent faculty, visiting researchers or scholars and consultants.

### 9.1. Postdoctoral Fellows

**9.1.1. 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 doctorate 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 ORSP.

**9.1.2. Appointment Process.** Application to the postdoctoral position is made directly to the school/college in which the scholar is seeking appointment. The following procedures shall be followed in approving a postdoctoral fellow:

- PIs must determine if there are sufficient funds to support a postdoctoral fellow.
- Deans work with the PI 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.
- PIs, with the approval of the director of the ORSP and the dean, 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
  - Information about health insurance and other relevant university policies and procedures.
- PIs must inform postdoctoral fellows to contact the Office of Human Resources for documents that may need to be completed, including a 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.

- PIs or the ORSP Director, with the approval of the dean, should 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.”
- PIs or the ORSP Director, with approval of the dean 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.

## **9.2. Visiting Researchers or Scholars**

**9.2.1. Definition of Visiting Researchers or Scholars** Visiting scholars are typically individuals who hold a doctorate degree and a temporary or permanent association at another institution of higher education and are associated with the University while on leave from such other institution. In rare instances, they may be persons from the private (Business) or public (government) sector.

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.

**9.2.2. 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:

- PIs 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.
- PIs, with approval of the ORSP Director and dean, will request an offer letter from HR that contains contractual details.
- Visiting researchers and scholars shall contact the Office of Human Resources for documents that may need to be completed, Social Security number, and a W-4 form (Employee’s Withholding Allowance Certificate.)

## **9.3. Consultants**

**9.3.1. Definition of Consultants.** Consultants are individuals who give expert advice to the university on sponsored research or training projects. They may also assist in the completion of

grant applications. The qualifications of a consultant are a doctorate 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 requirements for hiring the consultants.

- **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. 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 director of ORSP and VPAA in the case of faculty.
- **Outside Consultants.** It is university policy to conform to sponsor requirements governing outside consultants.
- **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.

**9.3.2. Appointment Process.** PIs, with the approval of the appropriate dean and director of ORSP, will appoint consultants to their sponsored projects. The director of ORSP appoints consultants for purposes of supporting university grant applications.

- 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.
- Depending on the nature of the consultation, consultants are required to sign a contract as a condition of working at the university. Consultants hired solely for training are excluded from having to sign this contract.
- 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, and copies shall be sent to the ORSP office.

#### **9.4. 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 PI 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.

#### **9.5. Research Associates, Senior Research Positions, and Visiting Research Associates**



### 9.5.1. Definitions.

**Research Associates.** Research associates are considered university employees during the term of the grant. They hold a doctorate, 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. 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.

**9.5.2. Appointment Process for Research Associates, Senior Research Positions, and Visiting Research Associates.** Once the position is approved the hiring authority will complete a Personnel Requisition form, and submit the form, with necessary approvals, to the human resources department to initiate the appointment process.

### 9.6. Graduate Research Assistants

- Graduate research assistants (GAs) 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 assistants may be employed by a research or administrative unit outside their department or disciplinary interest, but in a program of research to which the GA brings 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 they are assigned and the person(s) to whom they are responsible and by whom their performance will be evaluated.

GAs sign GA contracts through the graduate office and are obliged to meet the terms of their contract. As students, GAs have all the rights and responsibilities of students when acting in that capacity as defined by university regulations.

## **Section 10: Research Misconduct**

University faculty, students, and staff must maintain an environment that fosters integrity, trust, and respect. This policy applies to misconduct related to research conducted or reported by individuals including faculty, staff, students, visiting scholars, or others participating in sponsored projects awards to NMHU.

Research misconduct may be further explained or defined by the granting agencies. NMHU Researchers shall abide by rules established by the granting agency which sponsors their project, with the following understanding:

The misconduct must have been committed intentionally, knowingly or recklessly. Research misconduct is further defined to include gross carelessness in conducting research amounting to 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.

### **10.1. General Principles**

For issues related to investigations and disciplinary actions of Tenured or Tenure Track related to all misconduct, including research misconduct, see the NMHU Faculty Collective Bargaining Agreement (CBA).

- Research misconduct cannot be tolerated and will be firmly dealt with when found to exist.
- 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.
- 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.
- All members of the university community are expected to cooperate with committees conducting inquiries or investigations.
- Care will be taken 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.

- 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.
- When a case continues to the inquiry and investigation stages, if the president of the Faculty Senate has any actual or potential conflict of interest, the person shall recuse themselves from the case and the Senate president-elect shall appoint a designee 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.

## **10.2. Individual Responsibilities**

Subsections 10.2-10.6 of the Research Misconduct section do not apply to Tenured or Tenure Track Faculty.

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 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 NMHU's *Personnel Procedures and Policy* available at NMHU's website in NMHU's Faculty Resources.

**10.2.1. Preliminary Assessment.** A preliminary assessment of reported misconduct related to research at NMHU will consist of the following steps:

- The dean of the appropriate school shall immediately begin an inquiry 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 be brought to the director of the ORSP.
- Upon receipt of the initial report of alleged research misconduct, the director of the ORSP or designee, shall conduct a preliminary assessment within seven 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.

- A finding of research misconduct requires that following conditions be met:
  - 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.

### 10.3. Inquiry Process

**10.3.1. 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 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.

**10.3.2. 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.

**10.3.3. 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 chair 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 based on 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 their designate, will consider the objection and whether it has merit, shall make appropriate recommendation(s). In the case of disagreement regarding committee 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.

**10.3.4. 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 an investigation. University legal counsel shall be available to the committee for consultation

The length of the inquiry shall not exceed 45 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 45-day period.

**10.3.5. 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 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
- Whether any other action should be taken if an investigation is not recommended.

The respondent shall be given 14 days to review the report and add their 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 an investigation or whether the matter will not be pursued further. The respondent and complainant shall be notified in writing of the decision.

## **10.4. Investigation**

**10.4.1. 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 (15) 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.

**10.4.2. 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 investigate. 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.

**10.4.3. Investigation Committee.** The investigation shall be conducted by a committee of five persons appointed by the Faculty Senate, in consultation with the director of the ORSP or vice president for Academic Affairs or designee. Committee members should be selected based on 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.

**10.4.4. 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 their 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.

**10.4.5. Investigation Report.** The investigation committee shall prepare a draft of the final report that includes:

- The names and titles of committee members, and experts consulted, if any
- The allegations
- The PHS support, if any
- A summary of the inquiry process
- A summary of the evidence reviewed
- A summary of any interviews
- Findings and basis for each finding
- Conclusion(s) as to whether research misconduct occurred
- 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 for review and comment. The respondent will be allowed 14 days for review and any comments will be attached to the final report. The findings of the final report should consider 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 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 a claim of procedural error and/or a claim that the sanction imposed as a result of a finding of research misconduct is inappropriate.

**10.4.6. Institutional Review and Determination.** The investigation committee's 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 Office of Research Integrity ([ORI](#)) within 120 days of the first meeting of the Investigation Committee, unless [ORI](#) grants an extension.

## **10.5. Actions Following Investigation**

**10.5.1. 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:

- Notifying the sponsoring agency
- Withdrawal or correction of all pending or published abstracts and papers emanating from the research
- 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
- Determining whether law enforcement agencies, professional societies, professional licensing boards, collaborators of the respondent, or other relevant parties should be notified
- Any other steps deemed appropriate to accomplish justice and preserve the integrity of NMHU and the credibility of the sponsor's program.

**10.5.2. 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.

**10.5.3. 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, they may file a complaint with the NMHU Audit Department.

**10.5.4. 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.

## **10.6. Other Considerations**

**10.6.1. 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.

**10.6.2. 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 Human Resources Office.

**10.6.3. 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 years after the conclusion of the inquiry. All documentation of an investigation shall be maintained in Human Resource Office files for five 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.

**10.6.4. 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.

## **10.7. Misconduct Regulations of State or Federal Granting Agencies**

### **10.7.1. Requirements for Reporting to [ORI](#) When Funding from PHS Is Involved.**

- The decision to initiate an investigation must be reported in writing to the school dean, or [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.

- 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.
- 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](#).
- 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.

**10.7.2. Requirements for Reporting When NSF Funding Is Involved.** See [NSF Research Misconduct Guidelines](#).

**10.7.3. State or Federal Regulatory Changes.** If PHS, ORI, NSF or any other federal or state 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 state or federal requirements shall supersede all relevant portions of this policy.

## Appendix A – Indirect Cost Allocation

### Proposed Indirect Costs Allocation Percentages

<u>Organization</u>	<u>Allocation</u>
Principal Investigator(s)	15%
Office of Research and Sponsored Projects	60%
The University	25%

*Note: In years when indirect cost recovery is low, the VPFA may need to modify allocation to cover university research support functions described in section 2.E of this appendix.*

\*\*\*\*\*

### Explanation of Allocation Percentages

*Principal Investigator – 15%\**

*Office of Research and Sponsored Projects – 60%*

Examples of acceptable use of indirect funds may include, but are not limited to the following valid teaching, research, and service purposes.

- Laboratory materials and supplies
- Research travel faculty/staff/students to collect data
- Advertisement and promotion of laboratory facilities
- Salary(ies) for temporary student lab assistants.
- Scholarships for department/school
- Exhibits and displays to promote department/school
- Advertisements (online, print, etc.) promoting department/school opportunities
- Support principal investigators, departments, and the university in research endeavors
- Funding consultant(s) to establish the indirect cost rate for the university
- Contracting with professionals to locate grants or write, prepare, or edit grant applications
- Grant trainings for NMHU staff and faculty
- Supplement the research investment of principal investigators, departments, and schools in financing requests of greater value (e.g., matching costs)
- Conducting pre-grant feasibility studies
- Preparing competitive proposals for sponsored programs
- Providing carry-over funding for research efforts to provide continuity between externally funded projects
- Supporting new researchers pending external funding
- Supporting new student researchers
- Purchasing capital equipment directly related to expanding the research capacity of the institution
- Research administrative costs including grant accounting and sponsored programs
- Commercialization activities

- Pre- and post-award support
- Capital equipment purchase(s) directly related to expanding the research capacity of the university that benefits faculty and students
- Existing equipment maintenance and repair

\*15% of the funds are allocated to the PI(s). Additional funds beyond 15% may be requested by the PI(s) for other expenses with justification and approval by the ORSP for compliance.

*University – 25%*

- Facilities operation
- Electricity, water, natural gas, and other utilities
- Payroll processing, accounts payable, human resources, and other support services
- Depreciation and use allowances
- General administrative expenses
- Sponsored projects administration expenses
- Operation and maintenance expenses
- Library expenses, departmental administration expenses, and student administration expenses
- Rental of office space, research labs, and other rooms
- Waste management for research facilities

\*\*\*\*\*

**1. Definitions**

***Facilities and Administration Costs:*** The term “facilities and administration” refers to those costs that the university cannot charge to a grant or contract as a direct cost. These are the “overhead” or “indirect” costs for operating the university that include, but are not limited to:

- Electricity, water, natural gas, waste management, and other utilities
- Payroll processing, accounts payable, human resources and other support services
- Depreciation and use allowances
- General administration and general expenses
- Sponsored projects administration expenses
- Operation and maintenance expenses
- Library expenses, departmental administration expenses and student administration expenses
- Use of office space, research labs, and other rooms

**2. Procedures for Distribution of F&A Revenue**

- A. At the beginning of each fiscal year, the Business Office will calculate the total amount of Facilities and Administration Cost recovery from the prior year. The allocation percentages described above (e.g., 15% for the principal investigator, 25% university, and 60% for ORSP) will be based on this total amount recovered from the

prior year.

- B.** The University is required to develop an F&A rate proposal, on a periodic basis, which is submitted to the Department of Health and Human Services (DHHS) for review and subsequent negotiation. DHHS is the federal audit agency for New Mexico Highlands University. The negotiated F&A rate agreement contains rates for sponsored research, sponsored instruction, and other sponsored activities.
- C.** Money for principal investigators will go to a single fund. The current principal investigator on a given grant will receive 15% of the total F&A revenue recovered from their research project(s) the prior year. For multiple PIs, the percentages will be agreed upon at the time of writing the proposal and re-evaluated at the completion of each year as part of the annual grant progress report and PI evaluation process.
- D.** The Office of Research and Sponsored Projects will receive 60% of total F&A revenue received from research project as follows. The Office of Research and Sponsored Projects may expend indirect costs that include, but are not limited to:
  - Conducting pre-grant feasibility studies
  - Preparing competitive proposals for sponsored programs
  - Providing carry-over funding for research efforts to provide continuity between externally-funded projects
  - Supporting new researchers pending external funding
  - Supporting new student researcher based on internal merit review
  - Purchasing capital equipment directly related to expanding the research capacity of the institution
  - Research administrative costs including grant accounting and sponsored programs
  - Commercialization activities
  - Pre- and Post-award support
- E.** The University will receive 25% of total F&A revenue received from research project for operating the university that include, but are not limited to:
  - Facilities
  - Electricity, water, natural gas, and other utilities
  - Payroll processing, accounts payable, human resources, and other support services
  - Depreciation and use allowances
  - General administration and general expenses
  - Sponsored projects administration expenses
  - Operation and maintenance expenses
  - Library expenses, departmental administration expenses, and student administration expenses
  - Use of office space, research labs, and other rooms

## Appendix B – Proposal Routing Form

<i>Application Summary Details</i>	
<b>Application Deadline</b>	
<b>Project Period of Performance (est.)</b>	
<b>Project Total Cost</b>	
<b>Principal Investigator or Project Director</b>	
<b>Email</b>	
<b>Phone</b>	
<b>Co-Principal Investigator</b>	
<b>Email</b>	
<b>Phone</b>	
<b>School/College/Dept (Lead only, if multiple depts)</b>	
<b>Dean</b>	
<b>Email</b>	
<b>Phone</b>	
<b>Agency or Sponsor Name</b>	
<b>Agency Contact Name</b>	
<b>Agency Email</b>	
<b>Agency Phone</b>	
<b>Proposal Title</b>	
<b>Program Title (if different)</b>	

Check as many as appropriate			
<input type="checkbox"/>	Research Project	<input type="checkbox"/>	Service Project
<input type="checkbox"/>	NMHU Subaward	<input type="checkbox"/>	Equipment – <b>Note 1</b>
<input type="checkbox"/>	In-kind Sharing / Matching – <b>Note 2</b>	<input type="checkbox"/>	Collaboration with Other Institution
<input type="checkbox"/>	On Campus	<input type="checkbox"/>	Off Campus
<b>Note 1</b> – Requires Review by Facilities and Approval by VPFA			
<b>Note 2</b> – Requires Review by VPFA and Cost Sharing Authorization Form			
Check One			
<input type="checkbox"/>	New	<input type="checkbox"/>	Supplement
<input type="checkbox"/>		<input type="checkbox"/>	Transfer
Project Location(s)			

## Conditions Requiring Special Consideration – Check Appropriate Boxes

**According to the Uniform Requirements for Federal Grants and university policy, prior written approval is required for the proposal elements listed below. See NMHU’s Research Handbook for more a complete list of prior written approvals. You may also contact the Office of Research and Sponsored Projects for more information.**

Yes	No		Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	Academic Faculty Release Time and Salaries? <i>See Research Handbook Section 3.3.8.</i>	<input type="checkbox"/>	<input type="checkbox"/>	Proprietary inventions or classified, restricted, sensitive information? <i>See Research Handbook Section 5</i>
<input type="checkbox"/>	<input type="checkbox"/>	Additional office/lab space required? * <i>See Research Handbook Section 3.2.2.3 and ORSP website on Space Policies</i>	<input type="checkbox"/>	<input type="checkbox"/>	Recombinant DNA/ Biohazards/Hazardous Materials/Waste/ Radioactive Materials? <i>See NMHU Environmental Health and Safety Policies</i>
<input type="checkbox"/>	<input type="checkbox"/>	Potential Conflict of Interest? <i>See Research Handbook Section 8</i>	<input type="checkbox"/>	<input type="checkbox"/>	Equipment maintenance? * <i>See Research Handbook Section 3.3. and Appendix A: Indirect Cost Allocation.</i>
<input type="checkbox"/>	<input type="checkbox"/>	Consultants and Non-Faculty Appointments? <i>See Research Handbook Section 9</i>	<input type="checkbox"/>	<input type="checkbox"/>	Food, Event or Clothing Costs? <i>See Research Handbook Section 3.2.2. and check with ORSP on current Purchasing, state or federal guidelines.</i>
<input type="checkbox"/>	<input type="checkbox"/>	Fixed Fee Contract? <i>See Research Handbook Section 3.5.</i>	<input type="checkbox"/>	<input type="checkbox"/>	Human Participants? <i>Ref: IRB</i>
<input type="checkbox"/>	<input type="checkbox"/>	Indirect Cost (F&A) less than current NMHU rate? <i>Ref: NICRA</i>	<input type="checkbox"/>	<input type="checkbox"/>	Laboratory Animals? <i>Ref: IACUC</i>
<input type="checkbox"/>	<input type="checkbox"/>	Other	<input type="checkbox"/>	<input type="checkbox"/>	Other

***Proposal Abstract or Summary (attach separate document to this form, if necessary).***

## Project Budget Planning Guidance

*Developing a budget is critical to proposal and project success. It is important to plan as closely as you can while allowing flexibility for fluctuating costs when estimating travel, salaries, equipment, etc.*

*It is best to use a budget format that is preferred by the funding agency. If no specific format is provided or known, ORSP can provide a spreadsheet with some common categories and planning tools. A budget summary table is provided on the next page for administration review.*

- Multi-year Projects. If planning a multi-year project, ensure you include an appropriate annual escalator for labor costs to account for pay increases. Check with ORSP for a current escalator rate.
- Budget Categories. The categories and individual items included in the table below are the most common items found in sponsored project and grant budgets.
- Cost-Sharing/Matching. Budgets with cost-sharing or cost-matching may require commitment letters prior to approval. The *Cost Sharing Agreement Authorization Form* must be included with this form.
- Indirect Cost Rate (IDC). The university's Negotiated Indirect Cost Rate Agreement (NICRA) should be the default rate and exclusion guidance for sponsored grants and projects. However, many agencies may directly specify different rates and exclusions. If so, that agency guidance shall prevail.

*If you need assistance with budget planning, the ORSP staff are available.*

Labor Costs	Student/Participant Support Costs
<ul style="list-style-type: none"> <li>• Position(s) Title / Role</li> <li>• Full-time / Part-time</li> <li>• Salary(ies)</li> <li>• New Hire(s) / Supplemental Contract(s)</li> <li>• Fringe Benefits (Rate)</li> <li>• Stipends</li> <li>• Speaker Fee</li> <li>• Consultants</li> </ul>	<ul style="list-style-type: none"> <li>• Student Salary(ies)</li> <li>• Student Stipends</li> <li>• Graduate Assistants</li> <li>• Student Aid</li> <li>• Tuition</li> <li>• Scholarships</li> <li>• Student Travel</li> </ul>
Equipment & Supplies	Miscellaneous
<ul style="list-style-type: none"> <li>• Equipment &lt;\$5,000</li> <li>• Equipment &gt;=\$5,000</li> <li>• Maintenance &amp; Repair / Warranty</li> <li>• Supplies (Consumables)</li> </ul>	<ul style="list-style-type: none"> <li>• Sub-Contracts</li> <li>• Printing &amp; Reproduction</li> <li>• Dues / Registration</li> <li>• Software / License Fees</li> <li>• Postage / Freight Charges</li> <li>• Advertising / Publicity</li> <li>• Telecommunications / Internet Support</li> <li>• NM Gross Receipts Tax</li> </ul>
Travel Expenses	Indirect Costs
<ul style="list-style-type: none"> <li>• Travel In-State</li> <li>• Travel Out-of-State</li> </ul>	<ul style="list-style-type: none"> <li>• Project Rate</li> <li>• Inclusions / Exclusions</li> </ul>



Proposed Estimated Budget			
Estimated Total Request		Estimated First Year	
Proposed Start Date		Proposed End Date	
Indirect Cost Rate (IDC)		Fringe Benefit Rate	

Category	First Year	Matching/In Kind	Total Amount	IDC Excluded
Faculty (Teaching)				
Faculty (Non-Teaching)				
Professional Staff				
Secretarial/Clerical				
Technician				
Faculty/Staff Stipends				
Fringe Benefits				
Faculty/Staff Travel (Domestic)				
Faculty/Staff Travel (International)				
Supplies (Office, Lab, etc.)				
Equipment (less than \$5,000)				
Equipment (\$5,000 or greater)				
Maintenance & Repair / Warranty				
Consultants				
Speaker Fees				
Subawards (include a separate budget sheet)				
UG Student Salaries				
GR Student Salaries				
Student Stipends				
Student Aid/Scholarships/Tuition				
Student Travel (Domestic)				
Student Travel (International)				
Printing & Reproduction				
Publication				
Dues / Registration				
Software / License Fees				
Postage / Freight Charges				
Advertising / Publicity				
NM Gross Receipts Tax				
Telecom / Internet Support				
Telephone / Cellphone				

	First Year	Matching	Total
Total Direct Costs (TDC)			
Exclusions (Exc)			
Modified Total Direct Costs (MTDC = TDC-Exc)			
Indirect Costs (IDC)			
<b>Grand Total (TDC + IDC)</b>			

**Principal Investigator/Principal Director Certification**

I the undersigned, do hereby certify that the information provided about this project is accurate and all appropriate disclosures have been made. Furthermore, I certify that this project complies with NMHU's policy, the terms and conditions of the sponsored project, all applicable laws and regulations.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ADMINISTRATION APPROVALS** (*Signatures below indicate the review and approval of this proposal.*)

<b>Department Chair (Lead Department)</b>	<b>Department Chair (Secondary Department)</b>
Signature/Date	Signature/Date
<b>Dean (Lead College/School)</b>	<b>Dean (Secondary College/School)</b>
Signature/Date	Signature/Date
<b>AVP for Academic Affairs, Grants, and Contracts</b>	
Signature/Date	
<b>VPAA/Provost</b>	
Signature/Date	
<b>VPFA (Required if proposal includes institutional match, additional space or renovation)</b>	
Signature/Date	