

CAPLAW

Community Action Program Legal Services, Inc.

SAMPLE SUBAWARD AGREEMENT

This sample subaward agreement was developed by Community Action Program Legal Services, Inc. (“CAPLAW”) and has not been approved by any outside authority, such as the U.S. Department of Health and Human Services. You should review this sample subaward agreement thoughtfully and modify it as necessary to meet the individual needs of your organization and to comply with any laws and regulations that apply to your organization’s particular situation, as well as the terms and conditions of the funding agreements covered by this subaward agreement. CAPLAW strongly recommends that when working with this sample subaward agreement, you consult with an attorney in your state who is well-versed in the laws affecting Community Action Agencies (CAAs) and state contract law.

This subaward agreement contains bracketed text and footnotes corresponding to specific provisions, both of which are intended to help you better understand the subaward agreement and how to adapt it to the needs of your organization. You should update this text and delete any brackets when finalizing the subaward agreement.

This publication is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (T/TA) Center. It was created by Community Action Program Legal Services, Inc. (CAPLAW) in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement – Grant Award Number 90ET0441-01. Any opinion, findings, conclusions, or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration for Children and Families.

SAMPLE SUBAWARD AGREEMENT

THIS SUBAWARD AGREEMENT (this “Agreement”) is entered into as of [DATE], by and between [CAA], a [STATE] nonprofit corporation with principal offices at [ADDRESS] (“[CAA]”), and [SUBRECIPIENT] (“Subrecipient”), a [STATE] nonprofit corporation with principal offices at [ADDRESS]. This Agreement shall govern certain activities and responsibilities to be carried out by Subrecipient on behalf of [CAA], a grantee of the [U.S. Department of Health and Human Services (“[HHS]”)].¹

WHEREAS, [CAA] provides comprehensive family planning services through its [family planning program] and has been awarded a grant to [assist in the establishment and operation of a comprehensive family planning services delivery system] with a project period of [START DATE] through [END DATE] by [HHS, Office of the Assistant Secretary for Health, Office of Population Affairs]², Grant No. [], CFDA # [], (the “Prime Award”), pursuant to the provisions of the [Public Health Service Act (42 U.S.C. § 300, et seq.) and the regulations promulgated thereunder (42 C.F.R. Parts 50 and 59) (referred to collectively herein as “Title X”)]³, in a notice of award attached hereto as Exhibit A (the “Notice of Prime Award”);⁴

WHEREAS, [CAA] desires to [provide comprehensive family planning services in neighborhood-oriented health settings that are providing primary care];

WHEREAS, Subrecipient [has been and is operating a community health center, school-based health center or hospital outpatient department which provides primary care in such a neighborhood-oriented setting];

WHEREAS, [CAA] desires to grant a “subaward” (as defined in the [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, 45 C.F.R. Part 75] (the “Uniform Guidance”))⁵ of the Prime Award (the “Subaward”) to Subrecipient to [offer the family planning services described herein] in accordance with the requirements of [Title X] and the regulations and guidelines promulgated thereunder and by [HHS], as well as other applicable law; and

WHEREAS, certain information required by the Uniform Guidance, [45 C.F.R. § 75.352], to be included in this Agreement with respect to the Subaward is set forth in the Subaward Data attached hereto as Exhibit B and is incorporated herein by reference.⁶

¹ Provide a general statement of the purpose of the subaward agreement. Note that this sample subaward agreement describes the purposes of the agreement in a series of “Whereas” clauses, but this is not required. The specific services to be performed under the subaward agreement will be detailed in a separate section.

² Identify the federal awarding agency.

³ Identify the federal prime award authorizing statute and implementing regulations.

⁴ Identify the prime award(s), including any state or local prime award(s) if the pass-through entity is blending several funding streams to pay for services under the subaward agreement.

⁵ Be sure to check whether the federal awarding agency has adopted its own version of the Uniform Guidance (e.g., HHS’s codification of the Uniform Guidance is at 45 C.F.R. Part 75).

⁶ Pass-through entities must include specific award identification information for all federal prime awards, as required by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”), 2 C.F.R. § 200.331(a)(1). This sample subaward agreement includes all of the

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, [CAA] and Subrecipient hereby agree as follows:

1. **TERM.** This Agreement shall govern the performance of the parties for the period [START DATE] (the “Effective Date”) through [END DATE], unless earlier terminated by either party in accordance with the terms of this Agreement (such period of performance, the “Agreement Term”).

2. **SCOPE OF SERVICES AND BUDGET; PRIOR APPROVAL FOR CHANGES.**

a. **Scope of Services and Budget.** Subrecipient shall, in a satisfactory manner as determined by [CAA], perform all activities described in the scope of services as approved by [CAA] and attached hereto as Exhibit C, as may be amended from time to time (the “Approved Services”) in accordance with the program budget as approved by [CAA] and attached hereto as Exhibit D, as may be amended from time to time (the “Approved Budget”).

b. **Prior Approval for Changes.** Subrecipient may not transfer allocated funds among cost categories within a budgeted program account without the prior written approval of [CAA]; nor shall Subrecipient make any changes, directly or indirectly, in program design or in the Approved Services or in the Approved Budget without the prior written approval of [CAA].

3. **COMPENSATION.**

a. **Payment of Funds.** [CAA] agrees to reimburse⁷ Subrecipient for costs actually incurred and paid by Subrecipient in accordance with the Approved Budget attached hereto as Exhibit D and for the performance of the Approved Services under this Agreement in an amount not to exceed \$[] (the “Total Agreement Funds”). The amount of Total Agreement Funds, however, is subject to adjustment by [CAA] if a substantial change is made in the Approved Services that affects this Agreement or if this Agreement is terminated prior to the expiration of the Agreement as provided in Section 1 above. Program funds shall not be expended prior to the Effective Date, or following the earlier of the expiration or termination of this Agreement. Costs incurred shall only be as necessary and allowable to carry out the purposes and activities of the Approved Services and may not exceed the maximum limits set in the Approved Budget. Expenses charged against the Total Agreement Funds shall be incurred in accordance with [Title X], the Uniform Guidance, the Prime Award and the authorizations, restrictions and requirements contained in the Notice of Prime Award and any amendments thereto and other applicable laws, regulations, grant terms and conditions or policies.

information required by HHS’s codification of the Uniform Guidance, 45 C.F.R. Part 75, in a separate exhibit attached to the agreement, but pass-through entities may also include this information in the body of the agreement.

⁷ This subaward agreement is set up to pay the subrecipient on a reimbursement basis. However, CAAs may elect to pay the subrecipient on an advance basis. As a general rule, subrecipients should be paid on an advance basis if they meet certain requirements. 2 C.F.R. § 200.305(b).

b. Invoices. On or before the twentieth (20th) day of each month and in any event no later than thirty (30) days after the earlier of the expiration or termination of this Agreement, Subrecipient shall submit invoices, [in a form supplied by [CAA]]⁸, for the most recent month ended, to [CAA], setting forth actual expenditures of Subrecipient in accordance with this Agreement. Within ten (10) working days from the date it receives such invoice, [CAA] may disapprove the requested compensation. If the compensation is so disapproved, [CAA] shall notify Subrecipient as to the disapproval. If payment is approved, no notice will be given.

c. Contingency. The payment of funds to Subrecipient under the terms of this Agreement shall be contingent on the receipt of such funds by [CAA] from applicable state and federal funding sources and shall be subject to Subrecipient's continued eligibility to receive funds under the applicable provisions of state and federal laws and the Notice of Prime Award. If the amount of funds that [CAA] receives from state and federal funding sources is reduced, [CAA] reserves the right to reduce the amount of funds awarded under, or to terminate, this Agreement. [CAA] also reserves the right to deny payment for Subrecipient's expenditures for Approved Services where invoices and/or other reports are not submitted by the deadlines specified Sections 3(b) above and 4(d) below.

4. FINANCIAL ACCOUNTABILITY AND GRANT ADMINISTRATION.

a. Financial Management. Subrecipient shall maintain a financial management system and financial records and shall administer funds received pursuant to this Agreement in accordance with all applicable federal and state requirements, including without limitation: [(i) the Uniform Guidance, 45 C.F.R. Part 75; (ii) the [HHS Grants Policy Statement]⁹; (iii) the [Title X] statute, regulations and guidelines; and (iv) the Notice of Prime Award].¹⁰ Subrecipient shall adopt such additional financial management procedures as may from time to time be prescribed by [CAA] if required by applicable laws, regulations or guidelines from its federal and state government funding sources. Subrecipient shall maintain detailed, itemized documentation and records of all income received and expenses incurred pursuant to this Agreement.

b. Limitations on Expenditures. Subrecipient shall not be reimbursed or otherwise compensated for any expenditures incurred or services provided prior to the Effective Date, or following the earlier of the expiration or termination of this Agreement. [CAA] shall only reimburse Subrecipient for documented expenditures incurred during the Agreement Term that are: (i) reasonable and necessary to carry out the [CAA] Family Planning Services; (ii) documented by contracts or other evidence of liability consistent with established [CAA] and Subrecipient procedures; and (iii) incurred in accordance with all applicable requirements for the expenditure of funds payable under this Agreement.

⁸ Pass-through entity should consider whether it makes sense to provide the subrecipient with a form invoice that the subrecipient must adhere to in order to receive payments.

⁹ The HHS Grants Policy Statement only applies to discretionary grant and cooperative agreement awards. Check whether the federal awarding agency has a similar document with general terms and conditions applicable to its awards.

¹⁰ Include applicable statutes, regulations and guidelines that address financial management systems and financial records.

c. Indirect Cost Rate. The Subaward Data attached hereto as Exhibit B contains information on [CAA]’s indirect cost rate under the Notice of Prime Award. The indirect cost rate information, if any, indicated in the Approved Budget attached hereto as Exhibit D shall apply to the Subaward.

d. Financial and Other Reports. Subrecipient shall submit to [CAA] such reports and back-up data as may be required by [HHS] or [CAA], including without limitation such reports which enable [CAA] to submit its own [quarterly financial and annual programmatic reports]¹¹ to [HHS] and the reports required in accordance with the following schedule:

<u>REPORT</u>	<u>DEADLINE</u>
[INSERT APPLICABLE REPORT]	[INSERT APPLICABLE DEADLINE]

This provision shall survive the expiration or termination of this Agreement with respect to any reports which Subrecipient is required to submit to [CAA] following the expiration or termination of this Agreement.

e. Improper Payments. Any item of expenditure by Subrecipient under the terms of this Agreement which is found by auditors, investigators, and other authorized representatives of [CAA], [HHS], the U.S. Government Accountability Office or the Comptroller General of the United States to be improper, unallowable, in violation of federal or state law or the terms of the Notice of Prime Award or this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of Subrecipient, shall become Subrecipient’s liability, to be paid by Subrecipient from funds other than those provided by [CAA] under this Agreement or any other agreements between [CAA] and Subrecipient. This provision shall survive the expiration or termination of this Agreement.

f. Audited Financial Statements. In any fiscal year in which Subrecipient expends \$750,000 or more in federal awards during such fiscal year, including awards received as a subrecipient, Subrecipient must comply with the federal audit requirements contained in the Uniform Guidance, [45 CFR Part 75], including the preparation of an audit by an independent Certified Public Accountant in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501-7507, and with Generally Accepted Accounting Principles.¹² If Subrecipient expends less than \$750,000 in federal awards in any fiscal year, it is exempt from federal audit requirements, but its records must be available for review by [CAA] and appropriate officials of [HHS], the U.S. Government Accountability Office and the Comptroller General of the United States, and it must still have a financial audit performed for that year by an independent Certified Public Accountant. Subrecipient shall provide [CAA] with a copy of Subrecipient’s most recent audited financial statements, federal Single Audit report, if applicable (including financial

¹¹ Ensure that the frequency of subrecipient reporting is sufficient for the pass-through entity to meet its own reporting requirements under the prime award.

¹² Note that this assumes that the subrecipient’s fiscal year began on or after December 26, 2014, the effective date of the Uniform Guidance. If the subrecipient’s fiscal year began prior to December 26, 2014, the subrecipient will be subject to the Single Audit requirements of OMB Circular A-133, “Audits of States, Local Governments and Non-Profit Organizations,” if it expends \$500,000 or more in federal awards during such fiscal year, including awards as a subrecipient.

statements, schedule of expenditures of federal awards, schedule of findings and questioned costs, summary of prior audit findings, and corrective action plan, if applicable), and management letter within thirty (30) days after execution of this Agreement and thereafter within nine (9) months following the end of Subrecipient's most recently ended fiscal year.

g. Closeout. Final payment request(s) under this Agreement must be received by [CAA] no later than thirty (30) days from the earlier of the expiration date or termination date of this Agreement. No payment request will be accepted by [CAA] after this date without authorization from [CAA]. In consideration of the execution of this Agreement by [CAA], Subrecipient agrees that acceptance of final payment from [CAA] will constitute an agreement by Subrecipient to release and forever discharge [CAA], its agents, employees, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which Subrecipient has at the time of acceptance of final payment or may thereafter have, arising out of or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this Agreement. Subrecipient's obligations to [CAA] under this Agreement shall not terminate until all closeout requirements are completed to the satisfaction of [CAA]. Such requirements shall include, without limitation, submitting final reports to [CAA] and providing any closeout-related information requested by [CAA] by the deadlines specified by [CAA]. This provision shall survive the expiration or termination of this Agreement.

5. COOPERATION IN MONITORING AND EVALUATION.

a. [CAA] Responsibilities. [CAA] shall monitor, evaluate and provide guidance and direction to Subrecipient in the conduct of Approved Services performed under this Agreement. [CAA] has the responsibility to determine whether Subrecipient has spent funds in accordance with applicable laws, regulations, including the federal audit requirements and agreements and shall monitor the activities of Subrecipient to ensure that Subrecipient has met such requirements. [CAA] may require Subrecipient to take corrective action if deficiencies are found.

b. Subrecipient Responsibilities.

i. Subrecipient shall permit [CAA] to carry out monitoring and evaluation activities, including any performance measurement system required by applicable law, regulation, funding sources guidelines or by the terms and conditions of the applicable Notice of Prime Award, and Subrecipient agrees to ensure, to the greatest extent possible, the cooperation of its agents, employees and board members in such monitoring and evaluation efforts. This provision shall survive the expiration or termination of this Agreement.

ii. Subrecipient shall cooperate fully with any reviews or audits of the activities under this Agreement by authorized representatives of [CAA], [HHS], the U.S. Government Accountability Office or the Comptroller General of the United States and Subrecipient agrees to ensure to the extent possible the cooperation of its agents, employees and board members in any such reviews and audits. This provision shall survive the expiration or termination of this Agreement.

6. RECORD RETENTION AND ACCESS. Subrecipient shall maintain all records, books, papers and other documents related to its performance of Approved Services under this Agreement (including without limitation personnel, property, financial and medical records) for a period of []¹³ years following the date that [CAA] makes the last payment to Subrecipient under this Agreement, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Agreement. Subrecipient shall make all records, books, papers and other documents that relate to this Agreement available at all reasonable times for inspection, review and audit by the authorized representatives of [CAA], [HHS], the U.S. Government Accountability Office and the Comptroller General of the United States.

7. INDEPENDENT CONTRACTOR RELATIONSHIP. The relationship of Subrecipient to [CAA] is that of an independent contractor and not of an employee/employer. It is expressly understood that any individual performing services under this Agreement on behalf of Subrecipient shall not be deemed to be an employee or independent contractor of [CAA], and such individual shall not be entitled to tax withholding, workers' compensation, unemployment compensation or any employee benefits, statutory or otherwise, from [CAA]. Subrecipient agrees that it is solely responsible for the reporting and payment of income, social security and other employment taxes due to the proper taxing authorities with respect to such personnel. Subrecipient agrees to indemnify, defend and hold harmless [CAA] and its directors, officers, employees and agents from and against any and all costs, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney's fees, relating to the reporting and payment of income, social security and other employment taxes and the provision of employee benefits (including but not limited to workers' compensation, unemployment insurance and health insurance coverage or assessable payments required under the Patient Protection and Affordable Care Act, P.L. 111-148) with respect to such individual performing services under this Agreement on behalf of Subrecipient. This provision shall survive the expiration or termination of this Agreement.

8. COMPLIANCE WITH GRANT AGREEMENT AND APPLICABLE LAWS.

a. **Compliance with Prime Award and Subaward.** Subrecipient shall perform all activities funded by this Agreement in accordance with: (i) the Notice of Prime Award attached hereto as Exhibit A, including any amendments thereto; (ii) the Subaward Data attached hereto as Exhibit B, including any amendments thereto; (iii) the Approved Services attached hereto as Exhibit C, including any amendments thereto; (iv) the Approved Budget attached hereto as Exhibit D, including any amendments thereto and (v) the applicable contract provisions for non-federal entity contracts under federal awards required under Appendix II to the Uniform Guidance and attached hereto as Exhibit E (the "Required Contract Provisions") (each of (i) – (v) above is hereby incorporated by reference into this Agreement). In addition, Subrecipient shall

¹³ The Uniform Guidance, 2 C.F.R. § 200.333, requires that all non-federal entity records pertinent to a federal award be retained for a period of three years from the date of submission of the final expenditure report, except in certain circumstances such as litigation or audits that began prior to the expiration of the three-year period. However, funds passed through a state may be subject to longer record retention requirements, so use the longest retention period applicable here.

cooperate fully with [CAA] in its efforts to comply with the requirements of the Notice of Prime Award, including any amendments thereto.

b. Compliance with Applicable Laws. Subrecipient shall perform all activities funded by this Agreement in accordance with all applicable federal, state and local laws, including without limitation laws which regulate the use of funds allocated under [Title X]. The term “federal, state and local laws” as used in this Agreement shall mean all applicable statutes, rules, regulations, executive orders, directives or other laws, including all laws as presently in effect and as may be amended or otherwise altered during the Agreement Term, as well as all such laws which may be enacted or otherwise become effective during the Agreement Term. The term “federal, state and local laws” shall include, without limitation:¹⁴

i. Authorizing Statute and Regulations. [FEDERAL AWARD AUTHORIZING STATUTE AND REGULATIONS, AS WELL AS PROGRAM POLICIES AND GUIDELINES ISSUED BY FEDERAL AWARDING AGENCY];

ii. Grants Administration Regulations. [FEDERAL AGENCY GRANTS ADMINISTRATION REGULATIONS];¹⁵

iii. Administrative Requirements; Cost Principles; Audit Requirements. Subrecipient shall comply with the [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, 45 C.F.R. Part 75];¹⁶

iv. Restrictions on Lobbying. Subrecipient shall comply with the restrictions on lobbying set forth in [45 C.F.R. Part 93].¹⁷ If the Subaward exceeds \$100,000, Subrecipient must execute and deliver to [CAA] the certification attached hereto as Exhibit F (“Certification Regarding Lobbying”). In addition, Subrecipient shall comply with the applicable restrictions on lobbying contained in the federal appropriations act through which funds for the Subaward were appropriated, [the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235), Division G, Title II];¹⁸

¹⁴ All compliance requirements in this section should flow from the federal prime award. In general, the requirements that apply to the pass-through entity, including public policy requirements that may be attached to the expenditure of federal funds, also apply to subrecipients and contractors under grants, unless an exception is specified.

¹⁵ E.g., HHS Grants Policy Statement.

¹⁶ Be sure to check whether the federal awarding agency has adopted its own version of the Uniform Guidance (e.g., HHS’s codification of the Uniform Guidance is at 45 C.F.R. Part 75).

¹⁷ Applicants for (and recipients of) federal grants, cooperative agreements, contracts, and loans are prohibited by 31 U.S.C. 1352, “Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,” from using appropriated federal funds to pay for certain lobbying activities. Pass-through entities should check to see whether the federal awarding agency has adopted regulations that implement these government-wide lobbying restrictions (e.g., 45 C.F.R. Part 93 for HHS awards) and require subrecipients to comply with the applicable rules. Note that contracts and subawards exceeding \$100,000 must require the contractor or subrecipient to make the certification specified in the federal awarding agency’s regulations on “New Restrictions on Lobbying” (e.g., 45 C.F.R. Part 93 for HHS awards).

¹⁸ Insert the applicable federal appropriations act.

v. Covenant Against Contingent Fees. Subrecipient represents and warrants that no person or entity has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. In the event of a breach or violation of this representation and warranty, [CAA] shall have the right to annul this Agreement without liability or, in its discretion, to offset against amounts it owes Subrecipient under this Agreement or otherwise recover from Subrecipient the full amount of such commission, percentage, brokerage, or contingent fee, and to seek any other legal remedies available to it as a result of such breach;

vi. Suspension and Debarment. Subrecipient represents that neither it nor any of its principals has been debarred, suspended or determined ineligible to participate in federal assistance awards or contracts as defined in regulations implementing Office of Management and Budget Guidelines on Governmentwide Debarment and Suspension (Nonprocurement) in Executive Order 12549. Subrecipient further agrees that it will notify [CAA] immediately if it or any of its principals is placed on the list of parties excluded from federal procurement or nonprocurement programs available at www.sam.gov;

vii. DUNS Number. Subrecipient agrees and acknowledges that [CAA] may not grant the Subaward and Subrecipient may not receive the Subaward unless Subrecipient has provided its Data Universal Numbering System (“DUNS”) number to [CAA]. The DUNS number is the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify business entities;

viii. Federal Funding Accountability and Transparency Act of 2006. Subrecipient agrees to provide [CAA] with all information requested by [CAA] to enable [CAA] to comply with the reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282, as amended by section 6202 of P.L. 110-252);

ix. Regulations on Nondiscrimination. Subrecipient shall comply with the [HHS] regulations on nondiscrimination in [HHS] programs or activities receiving federal financial assistance at [45 C.F.R. Parts 80, 84, 86 and 91];¹⁹

x. Drug-Free Workplace. Subrecipient shall comply with the requirements of the Drug-Free Workplace Act of 1988, 42 U.S.C. § 701 *et seq.* and 2 C.F.R. 182, and the applicable [HHS] regulations set forth in [45 C.F.R. Part 82], which require all programs and activities receiving federal assistance to maintain a drug-free workplace;²⁰

¹⁹ Certain federal statutes, including Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, 1682, 1683, 1685 and 1686, and the Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*, prohibit discrimination under any program or activity receiving federal financial assistance. The bracketed provisions are the implementing regulations for HHS and should be updated for the applicable federal awarding agency.

²⁰ The bracketed provisions are the implementing regulations for HHS and should be updated for the applicable federal awarding agency.

xi. Equal Treatment for Faith-Based Organizations. Subrecipient shall comply with the [HHS] regulations regarding the equal treatment of religious organizations in [HHS] programs, [45 C.F.R. Part 87];²¹

xii. Pro-Children Act of 1994. In accordance with 20 U.S.C. 6081 et seq., Subrecipient certifies that Subrecipient, its employees, agents, contractors, and subcontractors will not permit smoking in any portion of an indoor facility owned or leased or contracted for by Subrecipient and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18;²²

xiii. Policies on Limited English Proficient Persons. Subrecipient must have written policies that are consistent with the [HHS Office for Civil Rights policy document, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (August 4, 2003)];²³

xiv. Licenses, Certifications, Permits, Accreditation. Subrecipient shall procure and keep current any license, certification, permit or accreditation required by federal, state or local law and shall submit to [CAA] proof of any licensure, certification, permit or accreditation upon request; and

xv. Other [CAA] Agreements. Subrecipient shall fulfill all other agreements with [CAA] and shall comply with all federal, state and local laws applicable to programs funded by such agreements.

9. EMPLOYMENT LAWS AND POLICIES.

a. Non-Discrimination in Employment. Subrecipient shall not discriminate against any qualified employee or applicant for employment because of [race, color, creed, national origin, ancestry, age, sex, sexual orientation, religion, genetic information, or disability].²⁴ Subrecipient shall comply with all applicable provisions of federal, state and local laws prohibiting discrimination in employment.

b. Salary Limitation. Funds provided to Subrecipient under this Agreement shall not be used to pay the salary of an individual at a rate in excess of [federal Executive Level II].²⁵

²¹ The bracketed provisions are the implementing regulations for HHS and should be updated for the applicable federal awarding agency.

²² The Pro-Children Act of 1994, 20 U.S.C. 7183, imposes restrictions on smoking in facilities where federally funded children's services are provided.

²³ Recipients of federal financial assistance must take reasonable steps to ensure that people with limited English proficiency have meaningful access to health and social services and that there is effective communication between the service provider and individuals with limited English proficiency. The bracketed provisions are the implementing regulations for HHS and should be updated for the applicable federal awarding agency.

²⁴ Conform list of protected classes to requirements under state law.

²⁵ Check to see whether the federal prime award has a salary limitation based on the federal award authorizing statute or the federal appropriations act.

(This amount reflects an individual's base salary exclusive of fringe benefits and any income that an individual may be permitted to earn outside of his or her duties to Subrecipient.)

10. CONFIDENTIALITY; PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION.²⁶

11. PUBLICITY; PUBLIC ANNOUNCEMENTS. [When issuing statements, press releases, requests for proposals, bid solicitation, and other documents describing project or programs funded in whole or in part with federal money, Subrecipient shall clearly state: (i) the percentage of the total cost of the program or project which will be financed with federal money; (ii) the dollar amount of federal funds for the project or program; and (iii) the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.]²⁷

12. INTELLECTUAL PROPERTY RIGHTS.²⁸ [CAA] shall own all rights, title and interest relating to any and all inventions, works of authorship, designs, know-how, ideas and information made or conceived or reduced to practice, in whole or in part, by or for or on behalf of Subrecipient during the term of this Agreement that relate to the subject matter of or arise out of or in connection with the Approved Services (“Work Product”). All Work Product is work made for hire to the extent allowed by law and, in addition, Subrecipient hereby makes all assignments necessary to accomplish the foregoing ownership. Subrecipient shall assist [CAA] to further evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce and defend any rights assigned. Subrecipient hereby irrevocably designates and appoints [CAA] as its agents and attorneys-in-fact, coupled with an interest, to act for and on Subrecipient's behalf to execute and file any document and to do all other lawfully permitted acts to further the foregoing with the same legal force and effect as if executed by Subrecipient and all other creators or owners of the applicable Work Product. Subrecipient represents and warrants that all Work Product created for [CAA] under this Agreement is original and does not infringe on the rights of any third party. Subrecipient further agrees to indemnify and hold harmless [CAA] against any damages or losses related to any claims of intellectual property infringement by the Work Product. The parties also acknowledge and agree that [the federal awarding agency] reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for federal purposes: (i) the copyright in the Work Product; and (ii) any rights of copyright to which [CAA], Subrecipient or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. This provision shall survive the expiration or termination of this Agreement.

²⁶ Pass-through entities should include a confidentiality provision that requires the subrecipient to protect and safeguard personally identifiable information created, obtained, or maintained in the course of providing services under the subaward agreement in compliance with federal, state and local laws.

²⁷ Note that certain federal awarding agencies require that award recipients include an acknowledgment of federal funding. This provision has been drafted to reflect the requirements for HHS Title X grant recipients. Check the federal prime award for any such applicable language.

²⁸ Note that federal awarding agencies often require that recipients include a statement with any work product developed in whole or in part with federal funds describing how the work was funded.

13. **INDEMNIFICATION.**²⁹ Subrecipient shall defend and hold [CAA], its employees, officers, directors, agents and representatives harmless from any and all costs, losses, damages, liabilities, expenses, demands, and judgments, including court costs and attorney's fees, which they may suffer arising from any act or omission or neglect of Subrecipient, its employees, officers, directors, agents or representatives, or anyone else for whose acts Subrecipient may be responsible, in the performance of Subrecipient's obligations under this Agreement. This provision shall survive the expiration or termination of this Agreement.

14. **INSURANCE.**³⁰ Subrecipient shall, at all times throughout the Agreement Term, carry insurance in such form and in such amounts as [CAA] may from time to time reasonably require against other insurable hazards and casualties that are commonly insured against in the performance of similar services as are to be provided under this Agreement. At a minimum, Subrecipient shall maintain during the Agreement Term at least the following types and limits of insurance coverage:³¹

- a. Workers' compensation in amounts no less than required by law;
- b. Employer's Liability Insurance with a limit of \$[1,000,000];
- c. Commercial general liability insurance, including personal injury, contractual liability and property damage, with limits of \$[1,000,000] per occurrence and \$[3,000,000] aggregate;
- d. Abuse and molestation insurance with a limit of \$[1,000,000] per claim;
- e. Professional liability insurance on a claims made basis with a limit of not less than \$[1,000,000] per occurrence and \$[3,000,000] aggregate; and
- f. Umbrella liability insurance with a limit of \$[5,000,000] per occurrence and in the aggregate.

All policies (other than workers' compensation and employer's liability insurance) providing such coverage shall name [CAA] as an additional insured with respect to Subrecipient's performance of services under this Agreement. Subrecipient shall provide [CAA] with certificates of insurance evidencing such coverage within thirty (30) days after execution of this Agreement, which certificates shall provide that [CAA] shall receive thirty (30) days' advance written notice of any pending cancellation or non-renewal of any of the coverages required by [CAA] pursuant to this Agreement. Insurance coverages that expire before the expiration of the Agreement Term shall be promptly renewed by Subrecipient so that there is no gap in coverage and certificates of insurance evidencing such renewal coverage shall be provided to [CAA] (by a copy provided to [CAA] pursuant to the notice provisions set forth in Section 16(f)) immediately upon renewal. Subrecipient's failure to maintain insurance in the form and/or amounts required by [CAA] pursuant to this Agreement shall be deemed a material breach of this Agreement and [CAA] shall have the right thereupon to terminate this Agreement immediately in addition to any other remedy provided herein.

²⁹ Note that Section 10 (Indemnification) and Section 11 (Insurance) are both drafted as only requiring the subrecipient to indemnify the pass-through entity and to carry liability insurance. The subrecipient may negotiate these provisions to make the obligations mutual.

³⁰ See note on Insurance above.

³¹ Insurance coverage and amounts are provided as examples only; pass-through entity should negotiate appropriate coverage types and limits with the subrecipient. CAAs should consult with an insurance professional familiar with their policies.

15. TERMINATION.³²

a. By [CAA]. [CAA] may, by giving written notice to Subrecipient, terminate this Agreement in whole or in part for cause, which shall include, without limitation: (i) failure for any reason of Subrecipient to fulfill timely and properly any of its obligations under this Agreement, including failure to comply with any provision of Section 8 of this Agreement; (ii) Subrecipient's default, breach or any intervening casualty which poses an immediate threat to life, health or safety; (iii) Subrecipient's breach of its representations, warranties and certifications contained in this Agreement; (iv) the suspension or debarment or determination that Subrecipient or any of its principals are ineligible to participate in federal assistance awards or contracts; (v) Subrecipient's failure to maintain the insurance coverage in the form and/or amounts required by [CAA] pursuant to this Agreement; (vi) the submission by Subrecipient to [HHS] or [CAA] of reports that are incorrect or incomplete in any material respect; (vii) ineffective or improper use by Subrecipient of funds received under this Agreement; (viii) suspension, termination, in whole or in part of, or absence or reduction of appropriations for, grants or reimbursements to [CAA] under [Title X]; (ix) the necessity for termination and/or amendment of this Agreement so as to make any terms of this Agreement consistent with federal, state or local laws; (vi) fraudulent activities on the part of Subrecipient; and (x) the filing of bankruptcy, receivership or dissolution by or with respect to Subrecipient. [CAA] may also terminate this Agreement in whole or in part without cause upon thirty (30) days' written notice to Subrecipient.³³

b. By Subrecipient. If Subrecipient is unable or unwilling to comply with any additional conditions or requirements which may arise as a result of changes in or additions to any federal, state or local laws after the commencement of the Agreement Term, including without limitation those applied by [HHS] in their grants and reimbursements to [CAA], and which thereby become applicable to Subrecipient during the Agreement Term, Subrecipient shall terminate this Agreement by giving written notice to [CAA]. The effective date of such notice of termination shall be no earlier than thirty (30) days from the date of the notice.

c. Transfer of Performance Upon Termination. Upon giving or receiving notice of termination, [CAA] may require Subrecipient to ensure that adequate arrangements have been made for the transfer of performance of the Approved Services to another entity or to [CAA], including the reasonable payments of any costs involved in such transfer out of compensation otherwise due Subrecipient under this Agreement.

d. Disposition of Property. In the event of any termination of this Agreement, all property and finished or unfinished documents, data, studies, and reports purchased or prepared by Subrecipient under this Agreement shall be disposed of according to [Title X directives]³⁴,

³² Note that the subrecipient may have specific termination rights under the federal award authorizing statute or implementing regulations (e.g., termination and appeals procedures for Head Start delegate agencies) that are not reflected here.

³³ Note that this termination provision has been drafted to be favorable to the pass-through entity. In some cases, it may be more appropriate to give the subrecipient an opportunity to cure the breach before the pass-through entity has the right to terminate this Agreement.

³⁴ Check federal prime award and/or the federal award authorizing statute for disposition instructions.

and Subrecipient shall be entitled to compensation for any unreimbursed expenses reasonably and necessarily incurred in satisfactory performance of this Agreement during the Agreement Term.

e. Liability for Default. Whether or not this Agreement is terminated, Subrecipient shall be liable to [CAA] for damages sustained by [CAA] by virtue of any breach of this Agreement by Subrecipient and [CAA] shall be liable to Subrecipient for damages sustained by Subrecipient by virtue of any breach of this Agreement by [CAA]. This shall include, without limitation, liability of Subrecipient for the disallowance by [HHS] of the reimbursement of charges submitted by [CAA] for services provided by Subrecipient under this Agreement where the disallowance is in any way attributable to Subrecipient, including the provision or maintenance by Subrecipient of inadequate or erroneous records or billing documentation of services provided. If any such reimbursement of charges is disallowed as a result of an audit by [HHS] of Subrecipient or [CAA], the amount disallowed must be paid by Subrecipient to [CAA] from funds other than those provided by [CAA] under this Agreement.

16. GENERAL PROVISIONS.

a. Governing Law. This Agreement shall be governed by the laws of the State of [], without giving effect to the conflicts of laws provisions thereof.

b. Integration. This Agreement supersedes all oral agreements, negotiations and representations between the parties pertaining to the subject matter of this Agreement.

c. Severability. If any provision of this Agreement is found to be invalid, the remaining provisions shall remain in full force and effect.

d. Waiver of Breach. The waiver by either party of any breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach by the other party of the same or of different provisions.

e. Binding Effect; Assignment. Except as otherwise provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of the parties and their respective and permitted successors, transferees and assigns. Subrecipient shall not assign, subcontract or transfer any of its rights, responsibilities or obligations under this Agreement without [CAA]'s prior written consent, which [CAA] may withhold in its sole discretion. Should Subrecipient assign, subcontract or transfer any of its rights, responsibilities or obligations hereunder with such consent from [CAA], Subrecipient and the party to which it proposes to assign or subcontract its responsibilities or services hereunder must enter into a written agreement that is consistent with this Agreement and the various requirements specified hereunder (including but not limited to [Title X] program requirements) and that is approved by [CAA] prior to its execution.

f. Notices. Notices required by this Agreement shall be made in writing and delivered via U.S. mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means (provided that receipt is confirmed). Any notice delivered or

sent as described above shall be effective on the date received. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

If to [CAA]:

[NAME]
[TITLE]
[AGENCY]
[STREET ADDRESS]
[CITY, STATE, ZIP]
[TELEPHONE #]
[FAX #]
[E-MAIL ADDRESS]

If to Subrecipient:

[NAME]
[TITLE]
[AGENCY]
[STREET ADDRESS]
[CITY, STATE, ZIP]
[TELEPHONE #]
[FAX #]
[E-MAIL ADDRESS]

g. Amendment. Any amendment to this Agreement, including to the Approved Services and the Approved Budget, shall be reduced to writing, signed by an authorized representative of each party, and attached to this Agreement.

h. Counterpart Execution; Facsimile Execution. This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the other parties by facsimile or other electronic transmission and such facsimile or other electronic execution shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile executions, electronic executions or a combination of the foregoing, shall be construed together and shall constitute one and the same agreement.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, each of the parties has executed this Agreement by its duly authorized officer as of the day and year first written above.

[NAME OF CAA]

[NAME OF SUBRECIPIENT]:

By: _____
Name:
Title:

By: _____
Name:
Title:

SUBAWARD AGREEMENT

List of Exhibits

- | | |
|-------------------------|---|
| <u>Exhibit A</u> | Notice of Prime Award |
| <u>Exhibit B</u> | Subaward Data |
| <u>Exhibit C</u> | Approved Services |
| <u>Exhibit D</u> | Approved Budget |
| <u>Exhibit E</u> | Required Contract Provisions |
| <u>Exhibit F</u> | Certification Regarding Lobbying |

Exhibit A

Notice of Prime Award

Exhibit B

Subaward Data³⁵

(i)	Subrecipient Name	[Insert Subrecipient name, which must match the name associated with its unique entity identifier]
(ii)	Subrecipient Unique Entity Identifier:	[Insert Subrecipient DUNS #]
(iii)	Federal Award Identification Number (FAIN):	[Insert Federal Award Identification #]
(iv)	Federal Award Date of Award to the Recipient by the Federal Agency:	[Insert date]
(v)	Subaward Period of Performance Start Date:	[Insert date]
	Subaward Period of Performance End Date:	[Insert date]
(vi)	Amount of Federal Funds Obligated by this Action by the Pass-Through Entity to the Subrecipient:	[Insert Total Agreement Funds]
(vii)	Total Amount of Federal Funds Obligated to the Subrecipient by the Pass-Through Entity Including the Current Obligation:	[If additional federal awards have been awarded to the Subrecipient, insert total amount, including the Total Agreement Funds specified above]
(viii)	Total Amount of the Federal Award Committed to the Subrecipient by the Pass-Through Entity:	[Insert amount]
(ix)	Federal Award Project Description:	[Insert description]
(x)	Name of Federal Awarding Agency:	[Insert name]
	Name of Pass-Through Entity:	[CAA]
	Contact Information for Federal Awarding Official:	[Insert contact information]
	Contact Information for [CAA] Authorizing Official:	[Insert contact information]
	Contact Information for [CAA] Project Director:	[Insert contact information]
(xi)	CFDA Number and Name:	[Insert CFDA number and name]

³⁵ This information is required by the Uniform Guidance, 2 C.F.R. § 200.331(a)(1). The Uniform Guidance also requires that if any of these data elements change, the pass-through entity must 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 prime award and subaward.

(xii)	Identification of Whether Subaward is R&D:	[Indicate whether subaward is R&D]
(xiii)	Indirect Cost Rate for [CAA] Federal Award:	[Insert [CAA] indirect cost rate]
	Subrecipient Indirect Costs:	See <u>Exhibit D</u> – Approved Budget

Exhibit C

Approved Services

Exhibit D

Approved Budget

Exhibit E

Required Contract Provisions

(Appendix II to Part 75 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards)³⁶

- A. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, as amended by Executive Order 11375, and implementing regulations at 41 CFR part 60.
- D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

³⁶ These contract provisions are taken from HHS’s codification of the Uniform Guidance (45 C.F.R. Part 75). Be sure to check whether the federal awarding agency has adopted its own version of the Uniform Guidance and use the contract provisions required by that version.

- E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR part 401 and any implementing regulations issued by the awarding agency.
- G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a

member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

J. See §75.331 Procurement of recovered materials.

Exhibit F

Certification Regarding Lobbying³⁷

Certification for Contracts, Grants, Loans, and Cooperative Agreements.

The undersigned, on behalf of [Subrecipient], certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[NAME OF SUBRECIPIENT]

By: _____

Name:

Title:

Date: _____

³⁷ Note that contracts and subawards exceeding \$100,000 must require the contractor or subrecipient to make the certification specified in the federal awarding agency's regulations on "New Restrictions on Lobbying." This certification is taken from HHS's implementing regulations, 45 C.F.R. Part 93.