FISCAL AND REGULATORY IMPACT ANALYSIS

Date: 12/10/15
Rule Change Title: Readoption of Uniform Administration of State Grants
Agency: Office of State Budget and Management
Agency Contact (name and phone and/or email): Erin Matteson, Assistant State Budget Officer, erin.matteson@osbm.nc.gov
Effective Date: 6/1/2016
Rule NCAC Citation: 09 NCAC 03M .0101-.0102, .0201-.0205, .0401, .0501, .0601, .0701-.0704, .0801-.0802
Statutory Authority: G.S. 143C-6-22; 143C-6-23
Statutory/ RRC Deadline (if any): Readopt by 4/30/16
X State Impact □ Local Government Impact □ Substantial Economic Impact

SUMMARY

1. Brief description of the rule change:
These rule changes modify the requirements for agency oversight and monitoring of awards of state funds to non-state entities and streamlines the reporting requirements for award recipients. The changes also clarify definitions, codify changes in organizational responsibility that already in practice, and updates references to related federal requirements.

2. Brief description of the problem the rule change is addressing:
The current rules governing administration of state awards do not accomplish their intended statutory purpose to improve monitoring and oversight of state awards to non-state entities. The reporting requirements result in duplicative reporting burden on recipients without a commensurate benefit. Ambiguity in the definitions results in inconsistent application of requirements on recipients.

3. Explanation of how the rule addresses the problem (versus alternatives, if applicable)?
The rule changes streamline the reporting requirements by setting minimum standards that can be met with existing reporting requirements that may already be required by the agency, federal government, or other statute. The rule changes also revise definitions and responsibilities to more clearly identify which entities are subject to requirements and to strengthen agency oversight and monitoring practices.

SUMMARY OF IMPACTS

Table 1: Estimated Costs and Benefits Summary - Net Present Value (at 7% discount rate)

<table>
<thead>
<tr>
<th>Entity Affected</th>
<th>Costs</th>
<th>Benefits</th>
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<tbody>
<tr>
<td></td>
<td>Estimate</td>
<td>Time Frame</td>
</tr>
<tr>
<td>State Government</td>
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<td>-</td>
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<td>Local Governments</td>
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<td>Federal Government</td>
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</tr>
<tr>
<td>TOTAL</td>
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□ Significant Unquantified Impacts

Fund Code(s) for Funds Needed to Cover State Costs: N/A
ANALYSIS:

Introduction
As part of the readoption process laid out in NCGS 150B-21.3A, OSBM is proposing to readopt the rules contained in Subchapter 03M of Title 09 of the North Carolina Administrative Code. These rules contain the requirements for agency oversight and monitoring of awards of state funds to non-state entities and state the responsibilities of award recipients and subrecipients.

The current rules do not accomplish their intended statutory purpose to improve monitoring and oversight of state awards to non-state entities. The reporting requirements result in duplicative reporting burden on recipients without a commensurate benefit. The rules focus primarily on after the fact reporting and do not adequately emphasize monitoring and oversight. These reports have become a “check the box” requirement and do not add any identifiable value to the process or result in performance improvements or fraud reduction. The current rules and process also blur the lines between agency and OSBM responsibility for oversight.

As a result, OSBM is proposing to make changes during the readoption process. Major changes include:

- Eliminating duplicative reporting burden on the award recipients and subrecipients by changing the annual reporting requirements to minimum standards that can be met through existing requirements that may already be mandated by the awarding agency, the Federal Government, or other statutes;
- Adding requirements for agencies to provide monitoring plans to OSBM for review and clarifying agency responsibilities for ensuring compliance by recipients with requirements of their award agreement or contract;
- Clarifying definitions and applicability of requirements;
- Clarifying agency and OSBM responsibilities for accountability and oversight of recipients;
- Updating references to Federal rules and changing terminology to be more consistent with Federal terminology governing financial assistance; and
- Making updates to reflect changes in responsibilities that were taken over by OSBM from the State Auditor several years ago.

OSBM has received input from agencies and the nonprofit community over the years that concurs with the findings mentioned above regarding the shortcomings of the current rules. The proposed rule changes were developed in conjunction with an agency work group.


**Estimated Impact**

The proposed changes would impact OSBM, State agencies that award funds, the award recipients and subrecipients, as well as the public. The following section discuss in greater detail the impacts to these parties.

Local governments that are subject to reporting and audit requirements of the Local Government Commission are exempt from the requirements; therefore, OSBM estimates there would be no impact to any unit of local government as a result of the proposed changes.

**OSBM**

The proposed rule change would result in the following changes to OSBM responsibilities:

- Reduce staff time for support of centralized reporting systems and help desk functions, as well as from debating unclear definitions and applicability of requirements,
- Impose new requirement to develop guidelines for monitoring plans,
- Require OSBM to conduct periodic audits of agency compliance with requirements, and
- Potentially increase manual additions/removals from the Suspension of Funding List.

While, the proposed changes transfer the responsibility to the awarding agencies of recovering state funds from recipients when necessary, OSBM does not estimate any savings from this change. This is based on past experience where OSBM has very rarely engaged in the recovery of funds and on another statutory mandate for agency heads to report misuse of funds directly to the State Bureau of Investigation, not OSBM. If there is any impact, it would be nonsignificant.

OSBM believes these changes can be accommodated by redirecting existing staff resources and would not require new resources at this time. Given the proposed changes it is likely that the Office would save some staff time on the net, valued at about $37 per hour on average; however, the number of hours saved are likely to be small, so it is unlikely for the savings to be significant.

**Other State Agencies**

The primary impact on agencies would be the requirement to change internal processes. Potential activities that may be required include:

- Evaluating existing reporting requirements and making necessary adjustments to ensure minimum requirements are met,
- Establishing processes for ensuring compliance with requirements and reporting issues of noncompliance to OSBM,
- Developing a documented monitoring plan if one is not already in place, and
- Requiring agency internal auditors to conduct periodic compliance audits with new requirements.
We do not believe agencies would require new resources to meet these requirements, but would likely have to adopt changes in policies and procedures and potentially redirect some staff. From our discussions with agencies, most agencies already have processes in place to monitor and track recipients that would enable them to meet the proposed rule changes without significant impact. It is best practice to have a monitoring plan in place, so this impact should be limited to the new requirement to submit reports to OSBM. Most of the agencies participating in the work group that helped draft the proposed changes indicated that the rules would eliminate duplicative efforts, so they are likely to result in time savings. However, there is no information to determine what those savings may be. Given the average state employee total compensation (salary plus benefits), the saving per hour would be about $32.30.¹

OSBM is proposing to repeal rule .0501 as a measure to clean up outdated rules in the Code. The grant reporting system and associated responsibilities were transferred from the Office of the State Auditor to the Office of State Budget and Management through an interagency agreement, so the Office of the State Auditor has not been performing those activities since 2009. Therefore, there is no impact as a result of this repeal.

As mentioned in the OSBM impact section, agencies have already been recovering state funds from recipients in certain situations and reporting directly to the SBI on misuse of funds due to requirements in a different statute; thus, the proposed language in rule .0802 would not result in an additional burden on state agencies.

Non-state entities (award recipients)
As a result of the proposed changes, most recipients would have a reduction in burden since a large percentage of programs already have reporting requirements in place that would meet the minimum requirements, therefore negating the need for a separate annual report. For Fiscal Year 2015, there were 2,714 grant awards in the NCGrants reporting system. Based on our best professional judgement, we estimate that at least 70% of these awards are already subject to more frequent and/or more detailed reporting that would satisfy the proposed minimum standards. Assuming on average that it takes an hour to submit online reports for each award and given that the growth in the number of awarded grants is generally flat, we estimate a savings of 1,900 hours. While some recipients use administrative assistants to file the reports, other smaller entities may have their head of the organization perform the filing; therefore, the value of an hour of their time saved could range between about $23 and $44 (includes average

hourly wages and 43% benefits based on US Bureau of Labor Statistics data. Thus, OSBM estimates that the annual savings to award recipients would be about $43,700-83,600.

Public Interest
Increased emphasis on agency monitoring and oversight will increase the likelihood of identifying instances of misuse of funds, whether from fraud or mismanagement. It is difficult to estimate the percentage of fraud or misuse that is currently undetected. There is a wide range of estimates for the rate of improper payments in government assistance programs. We do not have data on improper payment rates across all of the programs the State administers, but the average annual rate across all Federal programs (including State administered programs) has ranged from 3-5% over the last ten years. For FY2015, payments to non-state entities totaled $637.6 million. Using a conservative range of 2-5%, the estimated range of potential loss to the state from improper payments (due to fraud or error) is $12.8 to $31.9 million. We conservatively estimate that improved monitoring and oversight procedures will enable the state to avoid 1% of these potential losses, resulting in a cost avoidance of $128,000 to $319,000.

Conclusion
As a result of readopting the rules in Subchapter 03M with the proposed amendments, OSBM estimates that oversight and monitoring of awards would improve and the reporting process would be streamlined. Table 1 presents the estimated impact by affected entity. For the purposes of this analysis, we assume no growth in this impacts since any growth would like be small. The five-year net present value of the benefits, estimated using a 7% discount rate, could range between about $704,000 and $1,651,000.

Table 1. Summary of Estimated Impact

<table>
<thead>
<tr>
<th>Costs</th>
<th>Annual Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Agencies (OSBM + Others)</td>
<td>Unquantified</td>
</tr>
<tr>
<td>Benefits</td>
<td></td>
</tr>
<tr>
<td>Non-State Entities</td>
<td>$43,700 - 83,600</td>
</tr>
<tr>
<td>Public Interest</td>
<td>$128,000 - 319,000</td>
</tr>
<tr>
<td>Total Benefits</td>
<td>$171,700 - 402,600</td>
</tr>
</tbody>
</table>

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APPENDIX:

Proposed rule text

09 NCAC 03M .0101 is proposed for amendment as follows:

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

SECTION .0100 - ORGANIZATION AND FUNCTION

09 NCAC 03M .0101 PURPOSE

Pursuant to G.S. 143C-6-23, the rules in this Subchapter establish reporting requirements for non-State entities that receive, hold, use, or expend State funds and ensure the uniform administration of State grants-financial assistance by all grantor State agencies, grantee recipients, and subgrantee subrecipients.

History Note:
Authority G.S. 143C-6-22; 143C-6-23;
Eff. July 1, 2005;
09 NCAC 03M .0102 is proposed for amendment as follows:

**DEFINITIONS**

As used in this Subchapter:

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

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

3. "Certification of Compliance" means a report provided by the grantor agency to the Office of the State Auditor that states that the grantee has met the reporting requirements established by this Subchapter and included a statement of certification by the grantor agency and copies of the submitted grantee reporting package.

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

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


7. "Fiscal Year" means the annual operating year of the non-State entity.

8. "Financial Assistance" means assistance that non-State entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance. Financial assistance does not include amounts received as reimbursement for services rendered to individuals for Medicare and Medicaid patient services.

9. "Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.

10. "Grant" means financial assistance provided by an agency, grantee, or subgrantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or subgrantee during the performance of the grant.

11. "Grantee" has the meaning in G.S. 143C-6-23(a)(2).
"Grantor" means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective.

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

"Recipient" means a non-State entity that receives State financial assistance directly from a State agency to carry out part of a State program. For purposes of this subchapter, "recipient" also includes a non-State entity that would be considered a "subrecipient" under the Code of Federal Regulations, 2 CFR, Part 200, for Federal funds subawarded by a recipient State agency.

"Public Authority" has the meaning in G.S. 159-7(10).

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

"Special Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose.

"State financial assistance" means State funds disbursed as a grant, cooperative agreement, non-cash contribution, food commodities, or direct appropriation to a recipient or subrecipient as defined in subdivision (10) and (14).

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

"Subgrantee" has the meaning in G.S. 143C-6-23(a)(3). "Subrecipient" means a non-State entity that receives State financial assistance from a recipient to carry out part of a State program; but does not include an individual that is a beneficiary of such program.

"Unit of Local Government" has the meaning in G.S. 159-7(15).

History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005; Amended Eff. October 1, 2007.
09 NCAC 03M .0201 is proposed for readoption with amendments as follows:

SECTION .0200 - RESPONSIBILITIES OF GRANTEES, RECIPIENTS AND SUBGRANTEES, SUBRECIPIENTS

09 NCAC 03M .0201 ALLOWABLE USES OF STATE FUNDS
Expenditures of State funds by any grantee, recipient or subrecipient shall be in accordance with the Cost Principles outlined in the Office of Management and Budget (OMB) Circular A-87, Code of Federal Regulations, 2 CFR, Part 200. If the grant funding includes federal sources, the grantee, recipient or subrecipient shall ensure adherence to the cost principles established by the Federal Office of Management and Budget, Code of Federal Regulations, 2 CFR, Part 200.

History Note: Authority G.S. 143C-6-22; 143C-6-23;
09 NCAC 03M .0202 is proposed for readoption with amendments as follows:

09 NCAC 03M .0202 GRANTEE/SUBGRANTEE/RECIPIENT/SUBRECIPIENT RESPONSIBILITIES
A grantee or subgrantee recipient or subrecipient that receives State funds financial assistance shall ensure that those funds are utilized for the their intended purpose of the grant and shall expend those funds in compliance with reporting requirements established by this Subchapter. Subchapter and their contract. Grantees Recipients and subgrantees subrecipients shall:

(1) Provide the information required by the grantor disbursing agency in order to comply with the procedures for disbursement of grant funds.

(2) Maintain reports and accounting records that support the allowable expenditure of State funds. All Recipients and subrecipients shall make available all reports and records shall be made available for inspection by both the awarding agency agency, the Office of State Budget and Management, and the Office of the State Auditor for oversight, monitoring, and evaluation purposes.

(3) Ensure that subgrantees subrecipients comply with all reporting requirements of the grantee established by this Subchapter and their contract and report to the appropriate disbursing entity.

History Note: Authority G.S. 143C-6-22; 143C-6-23;
09 NCAC 03M .0203 is proposed for repeal as follows:

09 NCAC 03M .0203   SUBGRANTEE RESPONSIBILITIES

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

MINIMUM REPORTING THRESHOLDS AND FORMATS REQUIREMENTS FOR GRANTEE-RECIPIENTS AND SUBGRANTEE-SUBRECIPIENTS

(a) For the purposes of this Subchapter, there are three reporting thresholds established for grantee-recipients and subgrantee-subrecipients receiving State financial assistance. Reporting levels are based on the level of State financial assistance funds from all funding sources. The reporting threshold levels are:

(1) Less than $25,000 - Level I – A grantee-recipient/subrecipient that receives, holds, uses, or expends State financial assistance funds in an amount less than twenty-five thousand dollars ($25,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including:

(A) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted; and

(B) An accounting of the State funds received, used, or expended.

All reporting requirements shall be filed with the funding agency within six months after the end of the grantee's fiscal year in which the State funds were received.

(2) $25,000 up to $500,000 - Level II – A grantee-recipient/subrecipient that receives, holds, uses, or expends State financial assistance funds in an amount of at least twenty-five thousand ($25,000) and up to or greater, but less than five hundred thousand dollars ($500,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including:

(A) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted;

(B) An accounting of the State funds received, used, or expended; and

(C) A description of activities and accomplishments undertaken by the grantee with the State funds.

All reporting requirements shall be filed with the funding agency within six months after the end of the grantee's fiscal year in which the State funds were received.

(3) Greater than $500,000 - Level III – A grantee-recipient/subrecipients that receives, holds, uses, or expends State financial assistance funds and in the amount equal to or greater than five hundred thousand dollars ($500,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including:

(A) A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted;

(B) An audit prepared and completed by a licensed Certified Public Accountant for the grantee consistent with the reporting requirement of this Subchapter; and

(C) A description of activities and accomplishments undertaken by the grantee with the State funds.
All reporting requirements shall be filed with both the funding agency and the Office of the State Auditor within nine months after the end of the grantee’s fiscal year in which the State funds were received.

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

(1) All recipients and subrecipients shall provide a certification that State funds received or held, were used for the purposes for which they were awarded.

(2) All recipients and subrecipients shall provide an accounting of all State funds received, held, used, or expended.

(3) Level II and III recipients and subrecipients shall report on activities and accomplishments undertaken by the recipient, including reporting on any performance measures established in the contract.

(4) Level III recipients and subrecipients shall have a single or program-specific audit prepared and completed in accordance with Generally Accepted Government Auditing Standards, also known as the Yellow Book.

(c) All reporting shall be filed with the disbursing agency in the format and method specified by the agency no later than three months after the end of the recipient’s fiscal year. Audits must be provided to the funding agency no later than nine months after the end of the recipient’s fiscal year. Agencies may exceed these minimum requirements through more frequent or more detailed reporting as deemed appropriate by the agency or as required by other statute or regulation. Agencies do not need to require separate, annual reporting if the same information is already required through more frequent reporting.

(d) Agency established reporting requirements to meet these minimum standards shall be specified in each recipient’s contract.

(b)(e) Unless prohibited by law, the costs of audits made in accordance with the provisions of this rule are allowable charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in the Office of Budget and Management (OMB) Circular A-87, Code of Federal Regulations, 2 CFR Part 200. The cost of any audit not conducted in accordance with this Subchapter is unallowable and shall not be charged to State grants, financial assistance.

(e) The audit requirements in this Subchapter do not replace a request for submission of audit reports by grantor agencies in connection with requests for direct appropriation of state aid by the General Assembly.

(d)(f) Notwithstanding the provisions of this Subchapter, a grantee recipient may satisfy the reporting requirements of Part (a)(3)(B), (b)(4) of this Rule by submitting a copy of the report required under the federal law with respect to the same funds.

(e) All grantees and subgrantees shall use the forms of the Office of State Budget and Management and of the Office of the State Auditor in making reports to the awarding agencies and the Office of the State Auditor.

(g) The reporting and audit requirements of this subchapter do not apply to:
(1) Financial assistance to non-State entities subject to the audit and other reporting requirements of the
Local Government Commission;
(2) Tuition assistance to students;
(3) Public assistance payments from Federal entitlement programs to or on behalf of enrolled
individuals, or
(4) State funds disbursed to a contractor as defined in this subchapter.

History Note: Authority G.S. 143C-6-22; 143C-6-23;
09 NCAC 03M .0401 is proposed for readoption with amendments as follows:

SECTION .0400 - RESPONSIBILITIES OF AGENCIES

09 NCAC 03M .0401 AGENCY RESPONSIBILITIES

(a) An agency that receives State funds and disburses those funds to a grantee-recipient shall:

(1) Notify each grantee-recipient, at the time the grant-award of State financial assistance is made, of the purpose of the grant-award and the reporting requirements established in this Subchapter.

(2) Prior to disbursing any grant State financial assistance funds:

(A) Register each State assistance program with the Office of State Budget and Management’s Community Resources Information System (CRIS); and

(B) Execute a contract with the recipient that complies with the requirements of this Subchapter;

(C) Report each individual award to the Office of State Budget and Management in the format and method specified by the Office of State Budget and Management; and

(D) Follow the procedures for disbursement of grant State financial assistance funds.

(3) Develop compliance supplement reports that describe standards of compliance and audit procedures to give direction to independent auditors. This report shall be provided to the State and Local Government Finance Division with the North Carolina Department of State Treasurer for inclusion in the North Carolina State Compliance Supplement.

(4) Provide the Office of the State Auditor with a listing of each grantee to which the agency disbursed State funds during the prior fiscal year by October 31st of each year including detailed information regarding the purpose and amount of the grant awarded.

(5) Provide the Office of State Budget and Management with a listing of every grantee to which the agency disbursed State funds during the prior fiscal year by January 31st of each year. This report shall be consistent with the disbursement report previously provided to the Office of the State Auditor including whether the grantee has complied with the reporting requirements established in this Subchapter.

(4) Develop a monitoring plan for each State assistance program the agency oversees and submit the plan to the Office of State Budget and Management for approval.

(5) Perform monitoring and oversight functions as specified in agency monitoring plans to ensure that State financial assistance is used for authorized purposes in compliance with laws, regulations, and the provisions of contracts, and that performance goals are achieved.

(6) Hold grantees accountable for the expenditure of State funds by performing monitoring and oversight functions as required in this Subchapter.

(7) Ensure that funds are spent consistent with the purposes for which they were granted. awarded.
Not disburse funds to grantees that are not in compliance with the reporting requirements for funds received during the prior fiscal year. Agencies shall consult with the Office of State Budget and Management in making this determination.

Determine that the applicable reporting requirements have been met by the grantee recipient and that all reports have been completed and submitted. For grantees receiving less than five hundred thousand dollars ($500,000), the grantor agency shall complete a Certification of Compliance to the Office of the State Auditor submitted in accordance with the recipient’s contract.

Conduct periodic monitoring reviews to ensure that State awards are used for authorized purposes in compliance with laws, regulations, and the provisions of grant agreements and that performance goals are achieved.

Monitor compliance by grantees recipients with all terms of a contract. Upon determination of noncompliance the agency shall give the grantee 60 days written notice to come into compliance. After the 60-day period, the grantor agency shall: the agency shall take appropriate action as specified in Section .0800 of this Subchapter.

(A) terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures;

(B) suspend payments pending negotiation of a plan of corrective action; or

(C) offset future payments with the amount improperly spent.

Require agency internal auditors to conduct periodic audits of agency compliance with requirements of this Subchapter.

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

Each non-State entity recipient shall ensure that subgrantees subrecipients have complied with the applicable provisions of this Subchapter. Failure to comply with such provisions shall be the basis for an audit exception.
09 NCAC 03M.0501 is proposed for repeal as follows:

SECTION .0500 - RESPONSIBILITIES OF THE OFFICE OF THE STATE AUDITOR

09 NCAC 03M.0501 OFFICE OF THE STATE AUDITOR RESPONSIBILITIES

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

09 NCAC 03M .0601 is proposed for readoption with amendments as follows:

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

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

The Office of State Budget and Management shall:

1. Provide consultation to agencies as to whether grantees have complied with the required reporting requirements. guidelines to agencies for developing monitoring plans and establishing reporting processes that meet minimum requirements established in this Subchapter.

2. Consult with agencies to ensure that all grantees found in noncompliance have their funding ceased immediately upon that determination and ensure that no further funding will be provided until the grantee is in compliance.

3. Maintain a Suspension of Funding list readily accessible to any interested party that identifies any grantee-recipient found in noncompliance, noncompliance with the requirements of this Subchapter or the terms of their contract. This list shall serve as notice to other agencies that no further State grant-financial assistance funding may shall be provided to that grantee-recipient until they are removed from the list.

4. Maintain a Community Resources Information System database to record grant documentation required by this Subchapter.

5. Periodically audit State agencies to ensure compliance with requirements outlined in Section .0401 of this Subchapter.

6. In conjunction with the grantor agency, ensure reporting requirements have been met. Upon notification from a disbursing agency that a recipient is no longer noncompliant, validate that all issues of noncompliance have been addressed prior to the removal of any grantee or their recipient from the Suspension of Funding listing. A grantee found in noncompliance-recipient may appeal to the Office of State Budget and Management for corrective action and reinstatement from the Suspension of Funding list-list if they believe they have been suspended in error. Once removed from the Suspension of Funding list, the grantee-recipient is eligible for current and future grants of State funds. State financial assistance.

7. Take appropriate administrative action when the Director of the Budget finds that the grantee recipient has spent or encumbered State funds for an unauthorized purpose, which includes reporting ensuring criminal violations are reported to the Attorney General and the State Bureau of Investigation. Investigation by the disbursing agency.

8. If the grant-funds are a pass-through of funds granted awarded by an agency of the United States, consult with the granting-awarding agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking actions authorized by this Subchapter.
History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005.
09 NCAC 03M .0701 is proposed for repeal as follows:

SECTION .0700 - CONTRACTING, MONITORING, AND OVERSIGHT

09 NCAC 03M .0701 GRANT DOCUMENTATION

History Note: Authority G.S. 143C-6-22; 143C-6-23;
09 NCAC 03M .0702 is proposed for readoption without amendments as follows:

09 NCAC 03M .0702 SUBORDINATION OF OTHER CONTRACTS AGREEMENTS

No contract agreements shall act to eliminate or diminish the requirements contained in this Subchapter.

History Note: Authority G.S. 143C-6-22; 143C-6-23;
09 NCAC 03M .0703 is proposed for readoption with amendments as follows:

**09 NCAC 03M .0703 REQUIRED CONTRACT PROVISIONS**

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

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

History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005.
09 NCAC 03M .0704 is proposed for repeal as follows:

**GRANT MONITORING AND EVALUATION**

*History Note: Authority G.S. 143C-6-22; 143C-23; Eff. July 1, 2005.*
09 NCAC 03M .0801 is proposed for readoption with amendments as follows:

SECTION .0800 - SANCTIONS

09 NCAC 03M .0801 NONCOMPLIANCE WITH RULES

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

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

1. communicating the requirements to the non-State entity;
2. requiring a response from the non-State entity upon a determination of noncompliance;
3. suspending payments to the non-State entity until the non-State entity is in compliance.

(b) Prior to disbursing any State funds, the grantor agency shall verify that the grantee has complied with the reporting requirements for the most recent applicable reporting period. The agency shall consult with the Office of State Budget and Management during this verification process. A grantor agency shall not disburse funds to any grantee that has been determined by the grantor agency to be noncompliant with the reporting requirements established by this Subchapter.

(c) If the grantor agency finds that a non-State entity has used State funds for an unauthorized purpose, the grantor agency shall report such findings to the Attorney General, the Office of the State Budget and Management, the Office of the State Auditor, and the Office of the State Controller.

(d) If a grantee has not met the reporting requirements established by this Subchapter and fails to submit revised reports in accordance with a grantor agency determination letter, the grantor agency shall suspend further payments to the grantee and report the grantee to the Office of the State Auditor and the Office of the State Controller.

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

1. Suspend payments until the matter has been fully investigated and corrective action has been taken;
2. Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures;
3. Report possible violations of criminal statutes involving misuse of State property to the State Bureau of Investigation in accordance with G.S. 143B-920.

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

1. Suspend payments pending negotiation of a plan of corrective action;
(2) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures; 

or

(3) Offset future payments with any amounts improperly spent.

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

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

(g) The Office of State Budget and Management will notify the agency of the finding and provide 60 days to take corrective action. After the 60-day period, the Office of State Budget and Management will conduct a follow-up audit to determine if appropriate corrective action has been taken. If an awarding agency fails to take appropriate corrective action or is repeatedly found to be out of compliance with the requirements of this Subchapter, the Office of State Budget and Management shall notify the head of the agency and the State Auditor of the finding.

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

09 NCAC 03M.0802 is proposed for readoption with amendments as follows:

09 NCAC 03M.0802 RECOVERY OF STATE FUNDS

(a) The Office of State Budget and Management shall be assisted by the Attorney General in the grant recovery and return of disbursing agency shall take appropriate administrative action to recover State funds in the event a grantee recipient or subgrantee-subrecipient:

(1) is unable to fulfill the obligations of the contractual agreement;
(2) is unable to accomplish the purposes of the grant-award;
(3) is noncompliant with the reporting requirements; or
(4) has inappropriately used the State funds.

(b) The disbursing agency shall be assisted by the Attorney General in the recovery and return of State funds if legal action is required.

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

History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005.