

## OSBM Proposed Rule Text

1 09 NCAC 03A .0103 is proposed for repeal as follows:

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3 **09 NCAC 03A .0103 BUDGET MANUAL**

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5 *History Note: Authority G.S. 143-2;*

6 *Eff. February 1, 1976;*

7 *Readopted Eff. February 27, 1979;*

8 *Amended Eff. April 1, 1989.*

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 subgrantees~~subrecipients.

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

*Eff. July 1, 2005;*

*Amended Eff. October 1, 2007.*

09 NCAC 03M .0102 is proposed for amendment as follows:

### **09 NCAC 03M .0102      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)~~(3) "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)~~(4) "Contract" means a legal instrument that is used to reflect a relationship between the agency, grantee, and subgrantee and a recipient, or between a recipient and subrecipient.
- (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.
- (6) "Contractor requirements" means Article 3, 3C, 3D, 3E, 3G, or 8 of Chapter 143 of the General Statutes and related Administrative Code Rules.
- ~~(6)~~(7) "Fiscal Year" means the annual operating year of the non-State entity.
- ~~(7) "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.~~
- (8) "Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.
- ~~(9) "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.~~
- ~~(10) "Grantee" has the meaning in G.S. 143C-6-23(a)(2).~~

1 ~~(11) "Grantor" means an entity that provides resources, generally financial, to another entity in order to~~  
2 ~~achieve a specified goal or objective.~~

3 ~~(12)(9) "Non-State Entity" has the meaning in G.S. 143C-1-1(d)(18).~~

4 (10) "Recipient" means a non-State entity that receives State financial assistance directly from a State  
5 agency to carry out part of a State program. For purposes of this subchapter, "recipient" also includes  
6 a non-State entity that would be considered a "subrecipient" under the Code of Federal Regulations,  
7 2 CFR, Part 200, for Federal funds subawarded by a recipient State agency.

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

9 ~~(14)(11) "Single Audit" means an audit that includes an examination of an organization's financial~~  
10 ~~statements, internal controls, and compliance with the requirements of Federal or State awards.~~

11 ~~(15) "Special Appropriation" means a legislative act authorizing the expenditure of a designated amount~~  
12 ~~of public funds for a specific purpose~~

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

16 ~~(16)(13) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected~~  
17 ~~by the State of North Carolina. State funds include federal financial assistance received by the State~~  
18 ~~and transferred or disbursed to non-State entities. Both Federal and State funds maintain their~~  
19 ~~identity as they are subgranted-disbursed as financial assistance to other organizations.~~

20 ~~(17)(14) "Subgrantee" has the meaning in G.S. 143C-6-23(a)(3).~~ "Subrecipient" means a non-State entity that  
21 receives State financial assistance from a recipient to carry out part of a State program; but does not  
22 include an individual that is a beneficiary of such program.

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

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

26 *Eff. July 1, 2005;*

27 *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;  
Eff. July 1, 2005.*

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;*  
*Eff. July 1, 2005.*

1 09 NCAC 03M .0203 is proposed for repeal as follows:

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3 **09 NCAC 03M .0203      *SUBGRANTEE RESPONSIBILITIES***

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

6                      *Eff. July 1, 2005.*

09 NCAC 03M .0205 is proposed for readoption with amendments as follows:

**09 NCAC 03M .0205     MINIMUM REPORTING THRESHOLDS AND FORMATS REQUIREMENTS**  
**FOR GRANTEE RECIPIENTS AND SUBGRANTEES SUBRECIPIENTS**

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

(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:~~ year.

(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 an 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:~~ year.

(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.~~



1 ~~All reporting requirements shall be filed with both the funding agency and the Office of the State~~  
2 ~~Auditor within nine months after the end of the grantee's fiscal year in which the State funds were~~  
3 ~~received.~~

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

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

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

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

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

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

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

24 ~~(b)(e)~~ Unless prohibited by law, the costs of audits made in accordance with the provisions of this rule are allowable  
25 charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as  
26 determined in accordance with cost principles outlined in the Office of Budget and Management (OMB) Circular A-  
27 87, Code of Federal Regulations, 2 CFR Part 200. The cost of any audit not conducted in accordance with this  
28 Subchapter is unallowable and shall not be charged to State grants, financial assistance.

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

31 ~~(4)(f)~~ Notwithstanding the provisions of this Subchapter, a grantee-recipient may satisfy the reporting requirements  
32 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  
33 the same funds.

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

36 (g) The reporting and audit requirements of this subchapter do not apply to:

- 1        (1) Financial assistance to non-State entities subject to the audit and other reporting requirements of the
- 2        Local Government Commission;
- 3        (2) Tuition assistance to students;
- 4        (3) Public assistance payments from Federal entitlement programs to or on behalf of enrolled
- 5        individuals, or
- 6        (4) State funds disbursed to a contractor as defined in this subchapter.

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

9        *Eff. July 1, 2005.*

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-Register~~ each State assistance program with the Office of State Budget and Management's Community Resources Information System (CRIS); and ~~Management in the format and method specified by the Office of State Budget and Management;~~
  - (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~~
  - ~~(B)(D)~~ ~~follow-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 31<sup>st</sup> 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 31<sup>st</sup> 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)(6)~~ Ensure that funds are spent consistent with the purposes for which they were ~~granted-~~awarded.

- 1       ~~(8) Not disburse funds to grantees that are not in compliance with the reporting requirements for funds~~  
2       ~~received during the prior fiscal year. Agencies shall consult with the Office of State Budget and~~  
3       ~~Management in making this determination.~~
- 4       ~~(9)(7) Determine that the applicable reporting requirement requirements have been met by the grantee~~  
5       ~~recipient and that all reports have been completed and submitted. For grantees receiving less than~~  
6       ~~five hundred thousand dollars (\$500,000), the grantor agency shall complete a Certification of~~  
7       ~~Compliance to the Office of the State Auditor, submitted in accordance with the recipient's contract.~~
- 8       ~~(10) Conduct periodic monitoring reviews to ensure that State awards are used for authorized purposes~~  
9       ~~in compliance with laws, regulations, and the provisions of grant agreements and that performance~~  
10      ~~goals are achieved.~~
- 11      ~~(11)(8) Monitor compliance by grantees recipients with all terms of a contract. Upon determination of~~  
12      ~~noncompliance the agency shall give the grantee 60 days written notice to come into compliance.~~  
13      ~~After the 60 day period, the grantor agency shall: the agency shall take appropriate action as~~  
14      ~~specified in Section .0800 of this Subchapter.~~
- 15      ~~(A) terminate the contract and take action to retrieve unexpended funds or unauthorized~~  
16      ~~expenditures;~~
- 17      ~~(B) suspend payments pending negotiation of a plan of corrective action; or~~
- 18      ~~(C) offset future payments with the amount improperly spent.~~
- 19      ~~(9) Require agency internal~~  
20      ~~auditors to conduct periodic audits of agency compliance with requirements of this~~  
21      ~~Subchapter.~~
- 22      ~~(9) Require agency internal auditors to conduct periodic audits of agency compliance with requirements~~  
23      ~~of this Subchapter.~~
- 24      ~~(10) Provide all requested documentation when subject to an audit of compliance with the requirements~~  
25      ~~of this Subchapter. Audits may be conducted by the Office of State Budget and Management, the~~  
26      ~~Office of the State Auditor, or the agency's internal auditor.~~
- 27      (b) Each ~~non-State entity recipient~~ shall ensure that ~~subgrantees subrecipients~~ have complied with the applicable  
28      provisions of this Subchapter. Failure to comply with such provisions shall be the basis for an audit exception.

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

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;*  
*Eff. July 1, 2005.*

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)~~(2) 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.~~
- (3) Periodically audit State agencies to ensure compliance with requirements outlined in Section .0401 of this Subchapter.
- ~~(5)~~(4) ~~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 that 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.
- ~~(6)~~(5) Take appropriate administrative action, 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.
- ~~(7)~~(6) 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.

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

1 09 NCAC 03M .0701 is proposed for repeal as follows:  
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3 **SECTION .0700 - CONTRACTING, MONITORING, AND OVERSIGHT**  
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5 **09 NCAC 03M .0701 GRANT DOCUMENTATION**  
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7 *History Note: Authority G.S. 143C-6-22; 143C-6-23;*  
8 *Eff. July 1, 2005.*



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;*

*Eff. July 1, 2005.*

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-disbursing 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 grants-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 grantee-The recipient~~ or ~~subgrantee-subrecipient~~ is not relieved of any of the duties and responsibilities of the original contract; and

(b) ~~the subgrantee~~ 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.*

1     09 NCAC 03M .0704 is proposed for repeal as follows:

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3     **09 NCAC 03M .0704       GRANT MONITORING AND EVALUATION**

4

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

6                     *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.

~~(a)(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~~ Communicating the requirements to the non-State entity;

(2) ~~requiring~~ Requiring a response from the non-State entity upon a determination of noncompliance; and

(3) ~~suspend~~ 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; and/or

(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;

1           (2) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures;

2                   or

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

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

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

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

14  
15 *History Note:*     *Authority G.S. 143C-6-22; 143C-6-23;*  
16                   *Eff. July 1, 2005.*

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~~ Is unable to fulfill the obligations of the contractual agreement;

(2) ~~is~~ Is unable to accomplish the purposes of the ~~grant; award;~~

(3) ~~is~~ Is noncompliant with the reporting requirements; or

(4) ~~has~~ 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.

~~(b)~~(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~~ General, and State Bureau of Investigation.

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

*Eff. July 1, 2005.*