United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 30 2014

Department of the Interior Guidance (DIG) Release 2014-01

Subject: **Financial Assistance Liability and Insurance**

References: 2 CFR 215.31, Uniform Administrative Requirements for Grants and Agreements with Institutions of Education, Hospitals and other Nonprofit Organizations;
2 CFR 220, Cost Principles for Educational Institutions;
2 CFR 225, Cost Principles – States, Local and Indian Tribal Governments;
505 DM 2, Cooperative Agreements, Grants and Contracts, Agreement Structure and Contents;
Federal Torts Claims Act, 28 USC 2671; and
Department of the Interior Motor Vehicle Management Handbook

1. **Purpose:** The purpose of this DIG is to provide guidance to grants management specialists and contract specialists regarding the inclusion of indemnification language in partner, grant, and cooperative agreements when applicable. Guidance to determine applicable situations based on conducting a risk assessment and sample clause language is provided in Section 4 of this DIG.

2. **Effective Date:** Effective immediately upon issuance.

3. **Background:** Indemnity insurance is a type of traditional insurance in which a fee is paid to an insurance company. Indemnity insurance functions as a source of financial support in the event that a policy holder is held responsible any damages. A federal grant or cooperative agreement indemnification clause is added to award agreements to assure that a single entity (recipient) is held liable for any losses, claims or damages that result from activities outlined in the agreement. A reverse or reflexive indemnity clause is a type of clause allows Party A to indemnify Party B against losses incurred as a result of Party B's own acts and/or omissions (mostly Party B's own negligence).

4. **Policy:** Grants management and contract specialists should conduct a pre-award recipient risk assessment as shown in Table A below, and include language similar to what is provided Table B, Sample Agreement Indemnification Clause Language, in grant and cooperative agreements after determining the need based on the results of the risk assessment. Sample language should only be used as a guide; each situation is unique and information should be customized.

Table A.

Risk Assessment	
Please answer the question below and take the recommended action: *Will the recipient or its sub-recipients use equipment, vehicles, hazardous materials or engage in high-risk activities, which have the potential for claims brought by third parties for death, bodily injury, property damage, or other loss resulting in one or more award activities?*	
YES	NO
Evaluate how likely and severe the risk and decide what measures should be in place to effectively prevent or control the harm from happening. Specialists have the discretion to adjust the dollar amount of the liability insurance based on accessing the risk level and making a good business judgment. Include language similar to the sample agreement indemnification clause language provided in Table B.	It is not necessary to include language as provided in Table B.

Table B.

Sample Agreement Indemnification Clause Language
Grants management and contract specialists may insert the following indemnification language into grant or cooperative agreements; please customize this language based on the situation: **ARTICLE VIII – INSURANCE AND LIABILITY** (a) Insurance. The recipient shall be required to (1) obtain liability insurance or (2) demonstrate present financial resources in an amount determined sufficient by the Government to cover claims brought by third parties for death, bodily injury, property damage, or other loss resulting from one or more identified activities carried out in connection with this financial assistance agreement. (b) Insured. The federal government shall be named as an additional insured under the recipient's insurance policy. (c) Indemnification. The recipient hereby agrees to indemnify the federal government, <Bureau Name> or from any act or omission of <Recipient Name>, its officers, employees, or (members, participants, agents, representatives, agents as appropriate) (1) against third party claims for damages arising from one or more identified activities carried out in connection with this financial assistance agreement and (2) for damage or loss to government property resulting from such an activity. This obligation shall survive the termination of this Agreement.

1. To purchase public and employee liability insurance at its own expense from a responsible company or companies with a minimum limitation of one million dollars ($1,000,000) per person for any one claim, and an aggregate limitation of Three Million Dollars ($3,000,000) for any number of claims arising from any one incident. The policies shall name the United States as an additional insured, shall specify that the insured shall have no right of subrogation against the United States for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk. Prior to beginning the work authorized herein, <Recipient Name>shall provide the <Bureau Name> with confirmation of such insurance coverage.

2. To pay the United States the full value for all damage to the lands or other property of the United States caused by <Recipient Name, its officers, employees, or representatives> [as in Paragraph 1].

3. To provide workers' compensation protection to <Recipient Name> officers, employees, and representatives.

4. To cooperate with the <Bureau Name> in the investigation and defense of any claims that may be filed with the <Bureau Name> arising out of the activities of the <Recipient Name>, its agents, and employees.

5. In the event of damage to or destruction of the buildings and facilities assigned for the use of <Recipient Name> in whole or in part by any cause whatsoever, nothing herein contained shall be deemed to require the <Bureau Name> to replace or repair the buildings or facilities. If the <Bureau Name> determines in writing, after consultation with <Recipient Name> that damage to the buildings or portions thereof renders such buildings unsuitable for continued use by <Recipient Name>, the <Bureau Name> shall assume sole control over such buildings or portions thereof. If the buildings or facilities rendered unsuitable for use are essential for conducting operations authorized under this Agreement, then failure to substitute and assign other facilities acceptable to <Recipient Name> will constitute termination of this Agreement by the <Bureau Name>.

(d) Flow-down: For the purposes of this clause, "recipient" includes such subrecipients, contractors, or subcontractors as, in the judgment of the recipient and subject to the Government's determination of sufficiency, have sufficient resources and/or maintain adequate and appropriate insurance to achieve the purposes of this clause.

(e) Identified activities: [Enumerate as appropriate]

This guidance applies to any eligible type of entity (e.g., corporation, nonprofit, State, tribe or individual) that applies for an award or any subcontractor(s) or subrecipient(s) the prime recipient engages to perform the project activities or tasks approved under the grant or cooperative agreement. Recipient costs related to acquiring insurance coverage are allowable under the relevant Cost Principles as part of the recipient's proposed and approved budget.

5. **Legal Information:** Consistent with Section 2.8 of 505 DM 2, the Office of the Solicitor will assist bureaus and offices with any legal questions and technical assistance related to liability and insurance.

6. **Additional Information:** Please disseminate this guidance throughout your bureau. If you have any questions about this DIG please contact Anita Hairston, Financial Assistance Program Manager, Office of Acquisition and Property Management, at (202) 513-0871 or by e-mail at anita_hairston@ios.doi.gov.

Debra E. Sonderman, Director
Office of Acquisition and Property Management and
Senior Procurement Executive