

## Subchapter D—Post-award responsibilities

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### PART 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

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#### APPENDIX A TO PART 170—AWARD TERM

AUTHORITY: Pub. L. 109–282; 31 U.S.C. 6102.

SOURCE: 75 FR 55669, Sept. 14, 2010, unless otherwise noted.

#### Subpart A—General

##### § 170.100 Purposes of this part.

This part provides guidance to agencies to establish requirements for re-

ipients' reporting of information on subawards and executive total compensation, as required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of Public Law 110–252, hereafter referred to as “the Transparency Act”.

##### § 170.105 Types of awards to which this part applies.

This part applies to an agency's grants, cooperative agreements, loans, and other forms of Federal financial assistance subject to the Transparency Act, as defined in § 170.320.

##### § 170.110 Types of entities to which this part applies.

(a) *General.* Through an agency's implementation of the guidance in this part, this part applies to all entities, other than those excepted in paragraph (b) of this section, that—

- (1) Apply for or receive agency awards; or
- (2) Receive subawards under those awards.

(b) *Exceptions.* (1) None of the requirements in this part apply to an individual who applies for or receives an award as a natural person (*i.e.*, unrelated to any business or non-profit organization he or she may own or operate in his or her name).

(2) None of the requirements regarding reporting names and total compensation of an entity's five most highly compensated executives apply unless in the entity's preceding fiscal year, it received—

- (i) 80 percent or more of its annual gross revenue in Federal procurement

contracts (and subcontracts) and Federal financial assistance awards subject to the Transparency Act, as defined at § 170.320 (and subawards); and

(ii) \$25,000,000 or more in annual gross revenue from Federal procurement contracts (and subcontracts) and Federal financial assistance awards subject to the Transparency Act, as defined at § 170.320; and

(3) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

#### § 170.115 Deviations.

Deviations from this part require the prior approval of the Office of Management and Budget (OMB).

### Subpart B—Policy

#### § 170.200 Requirements for program announcements, regulations, and application instructions.

(a) Each agency that makes awards of Federal financial assistance subject to the Transparency Act must include the requirements described in paragraph (b) of this section in each program announcement, regulation, or other issuance containing instructions for applicants:

(1) Under which awards may be made that are subject to Transparency Act reporting requirements; and

(2) That either:

(i) Is issued on or after the effective date of this part; or

(ii) Has application or plan due dates after October 1, 2010.

(b) The program announcement, regulation, or other issuance must require each entity that applies and does not have an exception under § 170.110(b) to ensure they have the necessary processes and systems in place to comply with the reporting requirements should they receive funding.

(c) Federal agencies that obtain post-award data on subaward obligations outside of this policy should take the necessary steps to ensure that their recipients are not required, due to the combination of agency-specific and Transparency Act reporting require-

ments, to submit the same or similar data multiple times during a given reporting period.

#### § 170.220 Award term.

(a) To accomplish the purposes described in § 170.100, an agency must include the award term in appendix A to this part in each award to a non-Federal entity under which the total funding will include \$25,000 or more in Federal funding at any time during the project or program period.

(b) An agency—

(1) Consistent with paragraph (a) of this section, is not required to include the award term in appendix A to this part if it determines that there is no possibility that the total amount of Federal funding under the award will equal or exceed \$25,000. However, the agency must subsequently amend the award to add the award term if changes in circumstances increase the total Federal funding under the award to \$25,000 or more during the project or program period.

### Subpart C—Definitions

#### § 170.300 Agency.

*Agency* means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

#### § 170.305 Award.

*Award*, for the purposes of this part, effective October 1, 2010, means a grant or cooperative agreement. On future dates to be specified by OMB in policy memoranda available at the OMB Web site, award also will include other types of awards of Federal financial assistance subject to the Transparency Act, as defined in § 170.320.

#### § 170.310 Entity.

*Entity* has the meaning given in 2 CFR part 25.

#### § 170.315 Executive.

*Executive* means officers, managing partners, or any other employees in management positions.

## § 170.320

### § 170.320 Federal financial assistance subject to the Transparency Act.

*Federal financial assistance subject to the Transparency Act* means assistance that non-Federal entities described in § 170.105 receive or administer in the form of—

- (a) Grants;
  - (b) Cooperative agreements (which does not include cooperative research and development agreements pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a));
  - (c) Loans;
  - (d) Loan guarantees;
  - (e) Subsidies;
  - (f) Insurance;
  - (g) Food commodities;
  - (h) Direct appropriations;
  - (i) Assessed and voluntary contributions; and
  - (j) Other financial assistance transactions that authorize the non-Federal entities' expenditure of Federal funds.
- (b) Does not include—
- (1) Technical assistance, which provides services in lieu of money;
  - (2) A transfer of title to Federally owned property provided in lieu of money, even if the award is called a grant;
  - (3) Any classified award; or
  - (4) Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

EDITORIAL NOTE: At 75 FR 55669, Sept. 14, 2010, § 170.320 was added with two paragraphs (b)s.

### § 170.325 Subaward.

*Subaward* has the meaning given in paragraph e.3 of the award term in appendix A to this part.

### 170.330 Total compensation.

*Total Compensation* has the meaning given in paragraph e.5 of the award term in appendix A to this part.

#### APPENDIX A TO PART 170—AWARD TERM

I. Reporting Subawards and Executive Compensation.

a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates

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\$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. *Where and when to report.*

i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. *Reporting Total Compensation of Recipient Executives.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

- i. the total Federal funding authorized to date under this award is \$25,000 or more;
- ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at <http://www.ccr.gov>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. *Reporting of Total Compensation of Sub-recipient Executives.*

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier sub-recipient under this award, you shall report the names and total compensation of each of

the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions*

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. *Definitions.* For purposes of this award term:

1. *Entity* means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. *Executive* means officers, managing partners, or any other employees in management positions.

3. *Subaward.*

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. \_\_\_\_ .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. *Subrecipient* means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. *Salary and bonus.*

ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

v. *Above-market earnings on deferred compensation which is not tax-qualified.*

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## PARTS 171–174 [RESERVED]

### PART 175—AWARD TERM FOR TRAFFICKING IN PERSONS

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175.20 Referral.

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