§ 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 postaward 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 requirements, 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 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 paragraph (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 $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