

## CHAPTER IV—DEPARTMENT OF AGRICULTURE

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<i>Part</i>		<i>Page</i>
400	Uniform administrative requirements, cost principles, and audit requirements for Federal awards .....	259
401–414	[Reserved]	
415	General program administrative regulations .....	259
416	General program administrative regulations for grants and cooperative agreements to state and local governments .....	264
417	Nonprocurement debarment and suspension .....	265
418	New restrictions on lobbying .....	276
421	Requirements for drug-free workplace (financial assistance) .....	288
422	Research institutions conducting USDA-funded extramural research; research misconducts .....	289
423–499	[Reserved]	



## **PART 400—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

Sec.

400.1 What does this part do?

400.2 Conflict of interest.

AUTHORITY: 31 U.S.C. 503.

SOURCE: 79 FR 75982, Dec. 19, 2014, unless otherwise noted.

### **§ 400.1 What does this part do?**

This part adopts the OMB guidance in subparts A through F of 2 CFR part 200, as supplemented by this part, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards. It thereby gives regulatory effect for the USDA to the OMB guidance, as supplemented by this part.

### **§ 400.2 Conflict of interest.**

(a) Each USDA awarding agency must establish conflict of interest policies for its Federal awards.

(b) Non-Federal entities must disclose in writing any potential conflicts of interest to the USDA awarding agency or pass-through entity.

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees in the selection, award and administration of Federal awards. No employee, officer or agent may participate in the selection, award, or administration of a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a non-Federal entity considered for a Federal award. The non-Federal entity may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by offi-

cers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of the relationships with a parent company, affiliate, or subsidiary organization, is unable or appears to be unable to be impartial in conducting a Federal award action involving a related organization.

## **PARTS 401–414 [RESERVED]**

## **PART 415—GENERAL PROGRAM ADMINISTRATIVE REGULATIONS**

### **Subpart A—Application for Federal Assistance**

Sec.

415.1 Competition in the awarding of discretionary grants and cooperative agreements.

### **Subpart B—Miscellaneous**

415.2 Acknowledgement of Support on Publications and Audiovisuals.

### **Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities**

415.3 Purpose.

415.4 Definitions.

415.5 Applicability.

415.6 Secretary's general responsibilities.

415.7 Federal interagency coordination.

415.8 State selection of programs and activities.

415.9 Communication with State and local elected officials.

415.10 State comments on proposed Federal financial assistance and direct Federal development.

415.11 Processing comments.

415.12 Accommodation of intergovernmental concerns.

415.13 Interstate situations.

415.14 Simplification, consolidation, or substitution of State plans.

415.15 Waivers.

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 901–903; 7 CFR 2.28.

SOURCE: 79 FR 75982, Dec. 19, 2014, unless otherwise noted.

### Subpart A—Application for Federal Assistance

#### §415.1 Competition in the awarding of discretionary grants and cooperative agreements.

(a) *Standards for competition.* Except as provided in paragraph (d) of this section, awarding agencies shall enter into discretionary grants and cooperative agreements only after competition. An awarding agency's competitive award process shall adhere to the following standards:

(1) Potential applicants must be invited to submit proposals through publications such as the FEDERAL REGISTER, OMB-designated government-wide website as described in 2 CFR 200.204, professional trade journals, agency or program handbooks, the Assistance Listings, or any other appropriate means of solicitation. In so doing, awarding agencies should consider the broadest dissemination of project solicitations in order to reach the highest number of potential applicants.

(2) Proposals are to be evaluated objectively by independent reviewers in accordance with written criteria set forth by the awarding agency. Reviewers should make written comments, as appropriate, on each application. Independent reviewers may be from the private sector, another agency, or within the awarding agency, as long as they do not include anyone who has approval authority for the applications being reviewed or anyone who might appear to have a conflict of interest in the role of reviewer of applications. A conflict of interest might arise when the reviewer or the reviewer's immediate family members have been associated with the applicant or applicant organization within the past two years as an owner, partner, officer, director, employee, or consultant; has any financial interest in the applicant or applicant organization; or is negotiating for, or has any arrangement, concerning prospective employment.

(3) An unsolicited application, which is not unique and innovative, shall be competed under the project solicitation it comes closest to fitting. Awarding agency officials will determine the solicitation under which the applica-

tion is to be evaluated. When the awarding agency official decides that the unsolicited application does not fall under a recent, current, or planned solicitation, a noncompetitive award may be made, if appropriate to do so under the criteria of this section. Otherwise, the application should be returned to the applicant.

(b) *Project solicitations.* A project solicitation by the awarding agency shall include or reference the following, as appropriate:

(1) A description of the eligible activities which the awarding agency proposes to support and the program priorities;

(2) Eligible applicants;

(3) The dates and amounts of funds expected to be available for awards;

(4) Evaluation criteria and weights, if appropriate, assigned to each;

(5) Methods for evaluating and ranking applications;

(6) Name and address where proposals should be mailed or emailed and submission deadline(s);

(7) Any required forms and how to obtain them;

(8) Applicable cost principles and administrative requirements;

(9) Type of funding instrument intended to be used (grant or cooperative agreement); and

(10) The Assistance Listings number and title.

(c) *Approval of applications.* The final decision to award is at the discretion of the awarding/approving official in each agency. The awarding/approving official shall consider the ranking, comments, and recommendations from the independent review group, and any other pertinent information before deciding which applications to approve and their order of approval. Any appeals by applicants regarding the award decision shall be handled by the awarding agency using existing agency appeal procedures or good administrative practice and sound business judgment.

(d) *Exceptions.* The awarding/approving official may make a determination in writing that competition is not deemed appropriate for a particular transaction. Such determination shall be limited to transactions where it can

## Department of Agriculture

## § 415.4

be adequately justified that a non-competitive award is in the best interest of the Government and necessary to the accomplishment of the goals of the program. Reasons for considering non-competitive awards may include, but are not necessarily limited to, the following:

- (1) Nonmonetary awards of property or services;
- (2) Awards of less than \$75,000;
- (3) Awards to fund continuing work already started under a previous award;
- (4) Awards which cannot be delayed due to an emergency or a substantial danger to health or safety;
- (5) Awards when it is impracticable to secure competition; or
- (6) Awards to fund unique and innovative unsolicited applications.

[79 FR 75982, Dec. 19, 2014, as amended at 85 FR 72912, Nov. 16, 2020]

### Subpart B—Miscellaneous

#### § 415.2 Acknowledgement of USDA Support on Publications and Audiovisuals.

(a) *Definitions.* (1) “Audiovisual” means a product containing visual imagery or sound or both. Examples of audiovisuals are motion pictures, live or prerecorded radio or television programs, slide shows, filmstrips, audio recordings, and multimedia presentations.

(2) “Production of an audiovisual” means any of the steps that lead to a finished audiovisual, including design, layout, script-writing, filming, editing, fabrication, sound recording or taping. The term does not include the placing of captions for the hearing impaired on films or videotapes not originally produced for use with the hearing impaired.

(3) “Publication” means a published book, periodical, pamphlet, brochure, flier, or similar item. It does not include any audiovisuals.

(b) *Publications.* Recipients shall have an acknowledgement of USDA awarding agency support placed on any publications written or published with grant support and, if feasible, on any publication reporting the results of, or describing, a grant-supported activity.

(c) *Audiovisuals.* Recipients shall have an acknowledgement of USDA awarding agency support placed on any audiovisual which is produced with grant support and which has a direct production cost to the recipient of over \$5,000. Unless the other provisions of the grant award make it apply, this requirement does not apply to:

(1) Audiovisuals produced as research instruments or for documenting experimentation or findings and not intended for presentation or distribution to the general public.

(2) [Reserved]

(d) *Waivers.* USDA awarding agencies may waive any requirement of this section.

### Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities

#### § 415.3 Purpose.

(a) The regulations in this part implement Executive Order 12372, “Intergovernmental Review of Federal Programs”, issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on State processes and on State, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) The regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

#### § 415.4 Definitions.

As used in this part, the following definitions apply:

*Department* means the U.S. Department of Agriculture.

*Order* means Executive Order 12372, issued July 14, 1982, and amended April

## §415.5

8, 1983, and titled Intergovernmental Review of Federal Programs.

*Secretary* means the Secretary of the U.S. Department of Agriculture or an official or employee of the Department acting for the Secretary under a delegation of authority.

*State* means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and the U.S. Virgin Islands.

### §415.5 Applicability.

The Secretary publishes in the FEDERAL REGISTER a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

### §415.6 Secretary's general responsibilities.

(a) The Secretary provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the Department.

(b) If a State adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Secretary, to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Allows the States to simplify and consolidate existing Federally required State plan submissions;

(5) Where State planning and budgeting systems are sufficient and where permitted by law, encourages the sub-

## 2 CFR Ch. IV (1-1-21 Edition)

stitution of State plans for Federally required State plans;

(6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

### §415.7 Federal interagency coordination.

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

### §415.8 State selection of programs and activities.

(a) A State may select any program or activity published in the FEDERAL REGISTER in accordance with §415.5 for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the secretary of the Department's programs and activities selected for that process.

(c) A State may notify the Secretary of changes in its selections at any time. For each change, the State shall submit to the Secretary an assurance that the State has consulted with elected local officials regarding the change. The Department may establish deadlines by which States are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a State's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.