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**CODE OF FEDERAL REGULATIONS**

# Title 2
## Federal Financial Assistance

Revised as of January 1, 2025

Containing a codification of documents
of general applicability and future effect

As of January 1, 2025

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*To cite the regulations in this volume use title, part and section number. Thus,* 2 CFR 1.100 *refers to title 2, part 1, section 100.*

# Explanation

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to display an OMB control number with their information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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Provisions of the Code that are no longer in force and effect as of the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on any given date in the past by using the appropriate List of CFR Sections Affected (LSA). For the convenience of the reader, a ''List of CFR Sections Affected'' is published at the end of each CFR volume. For changes to the Code prior to the LSA listings at the end of the volume, consult previous annual editions of the LSA. For changes to the Code prior to 2001, consult the List of CFR Sections Affected compilations, published for 1949-1963, 1964-1972, 1973-1985, and 1986-2000.

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The term ''[Reserved]'' is used as a place holder within the Code of Federal Regulations. An agency may add regulatory information at a ''[Reserved]'' location at any time. Occasionally ''[Reserved]'' is used editorially to indicate that a portion of the CFR was left vacant and not dropped in error.

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*What is incorporation by reference?* Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

*What is a proper incorporation by reference?* The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR part 51 are met. Some of the elements on which approval is based are:

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is adequately summarized in the preamble of the final rule and is available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Authorities and Rules. A list of CFR titles, chapters, subchapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of ''Title 3—The President'' is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the ''Contents'' entries in the daily Federal Register.

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OLIVER A. POTTS,
*Director*,
*Office of the Federal Register*
*January 1, 2025*.

## THIS TITLE

Title 2—FEDERAL FINANCIAL ASSISTANCE is composed of one volume. This volume is comprised of Subtitle A—Office of Management and Budget Guidance for Federal Financial Assistance and Subtitle B—Federal Agency Regulations for Grants and Agreements. The contents of this volume represent all current regulations codified under this title of the CFR as of January 1, 2025.

For this volume, Susannah C. Hurley was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

# Title 2—Federal Financial Assistance

SUBTITLE A—Office of Management and Budget Guidance for Federal Financial Assistance


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1.300 OMB responsibilities.
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AUTHORITY: 31 U.S.C. 503; 31 U.S.C. 1111; 31 U.S.C. 6307; 41 U.S.C. 1121; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737.

SOURCE: 89 FR 30108, Apr. 22, 2024, unless otherwise noted.

## Subpart A—Introduction to Title 2 of the CFR

EDITORIAL NOTE: 89 FR 101463, Dec. 16, 2024, updated the subject matter of Title 2 to ''Federal Financial Assistance'' (previously ''Grants and Agreements'').

### § 1.100 Content of this title.

This title contains:

(a) Office of Management and Budget (OMB) guidance to Federal agencies on government-wide policies for the award and administration of Federal financial assistance; and

(b) Federal agency regulations implementing that OMB guidance.

### § 1.105 Organization and subtitle content.

(a) This title is organized into two subtitles.

(b) The OMB guidance described in §1.100(a) is published in subtitle A. Publication of the OMB guidance in the CFR does not change its nature—it is guidance, not regulation.

(c) Each Federal agency that awards Federal financial assistance has a chapter in subtitle B in which it issues those regulations. The Federal agency regulations in subtitle B differ in nature from the OMB guidance in subtitle A because the OMB guidance is not regulatory. Federal agency regulations in subtitle B may give regulatory effect to the OMB guidance, to the extent that the agency regulations require compliance with all or portions of the OMB guidance. *See also* §1.220.

### § 1.110 Issuing authorities.

OMB issues this subtitle. Each Federal agency that has a chapter in subtitle B of this title issues that chapter.

## Subpart B—Introduction to Subtitle A

### § 1.200 Purpose of chapters I and II.

Chapters I and II of subtitle A provide OMB guidance to Federal agencies that helps ensure consistent and uniform government-wide policies and procedures for the management of the agencies' Federal financial assistance.

### § 1.205 Applicability to Federal financial assistance.

The types of instruments that are subject to the guidance in this subtitle vary from one portion of the guidance to another. All portions of the guidance apply to grants and cooperative agreements, and some portions also apply to other types of Federal financial assistance.

### § 1.210 Applicability to Federal agencies and others.

(a) This subtitle contains guidance that directly applies only to Federal agencies.

(b) The guidance in this subtitle may affect other entities through each Federal agency's implementation of the guidance, portions of which may apply to:

(1) The agency's awarding or administering officials;

(2) Recipients and subrecipients that receive or apply for the agency's Federal financial assistance or receive subawards under grants or cooperative agreements; or

(3) Any other entities involved in agency transactions subject to the guidance in this chapter.

### § 1.215 Relationship to previous issuances.

Although some of the guidance was organized differently within OMB circulars or other documents, much of the guidance in this subtitle existed prior to the establishment of title 2 of the CFR.

### § 1.220 Federal agency implementation of this subtitle.

A Federal agency that awards Federal financial assistance subject to the OMB guidance in this subtitle implements the guidance in agency regulations in subtitle B of this title and in guidance documents, policy documents, and procedural issuances, such as internal instructions to the agency's awarding and administering officials. An applicant, recipient, or subrecipient would see the effect of that implementation in the organization and content of the agency's announcements of funding opportunities and in its award terms and conditions.

### § 1.230 Maintenance of this subtitle.

OMB issues guidance in this subtitle after publication in the FEDERAL REGISTER. Any portion of the guidance that has a potential impact on the public is published with an opportunity for public comment.

### § 1.231 Severability.

The provisions of this subtitle are separate and severable from one another. If any provision of this subtitle is held invalid or unenforceable as applied to a particular person or circumstance, the provision should be construed so as to continue to give the maximum effect permitted by law as applied to other persons not similarly situated or to dissimilar circumstances. If any provision is determined to be wholly invalid and unenforceable, it should be severed from the remaining provisions of this subtitle, which should remain in effect.

## Subpart C—Responsibilities of OMB and Federal Agencies

### § 1.300 OMB responsibilities.

OMB is responsible for:

(a) Issuing and maintaining the guidance in this subtitle, as described in § 1.230;

(b) Interpreting the policy requirements in this subtitle;

(c) Reviewing Federal agency regulations implementing the requirements of this subtitle, as required by Executive Order 12866;

(d) Conducting broad oversight of government-wide compliance with the guidance in this subtitle; and

(e) Performing other OMB functions specified in this subtitle.

### § 1.305 Federal agency responsibilities.

The head of each Federal agency that awards and administers Federal financial assistance subject to the guidance in this subtitle is responsible for:

(a) Implementing the guidance in this subtitle;

(b) Ensuring that the Federal agency complies with their implementation of the guidance;

(c) Coordinating with the Council on Federal Financial Assistance, the Grants Quality Service Management Office, and other governance committees as appropriate; and

(d) Performing other functions specified in this subtitle.

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### Subpart C—Recipient Requirements of Subrecipients

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APPENDIX A TO PART 25—AWARD TERM

AUTHORITY: 31 U.S.C. 503; 31 U.S.C. 6101 note; 31 U.S.C. 6102; 31 U.S.C. 6307; 41 U.S.C. 2313; Pub. L. 109–282; Pub. L. 110–252; Pub. L. 113–101; Pub. L. 117–40.

SOURCE: 89 FR 30109, Apr. 22, 2024, unless otherwise noted.

## Subpart A—General

### § 25.100 Purpose of this part.

This part provides guidance to Federal agencies that:

(a) The unique entity identifier (UEI) is the universal identifier for Federal financial assistance applicants, as well as recipients and their direct subrecipients (first-tier subrecipients), and;

(b) The System for Award Management (*SAM.gov*) is the repository for standard information about applicants and recipients.

### § 25.105 Applicability.

(a) This part applies to a Federal agency's Federal financial assistance as defined in § 25.400. This part applies to all applicants for and recipients of Federal financial assistance unless exempted by Federal statute or § 25.110.

(b) Subrecipients are required to obtain a UEI in accordance with subpart C. This part does not apply to subrecipients of subrecipients (second-tier subrecipients) or contractors under Federal awards.

(c) This part does not apply to an individual who applies for or receives Federal financial assistance as a natural person (unrelated to any business or nonprofit organization an individual owns or operates).

(d) Because this part applies to loan guarantees and other guaranteed programs, recipients of the guarantee from the Federal agency (for example, lenders of guaranteed loans) are required to complete entity validations and acquire a UEI. Additionally, at the Federal agency's discretion, non-individual beneficiary borrowers (for example, small businesses or corporations) may be required by the Federal agency to obtain a UEI or register in *SAM.gov*.

### § 25.110 Exceptions to this part.

(a) *General exceptions.* (1) Under a condition identified in paragraph (a)(2) of this section, a Federal agency may exempt an applicant or recipient of Federal financial assistance from the requirement to obtain a UEI, register in *SAM.gov*, or both.

(i) If a Federal agency grants an exception under paragraph (a)(2) of this section, the Federal agency must use a generic entity identifier in the data it reports to *USAspending.gov* if reporting for a prime award of Federal financial assistance to the recipient is required by the Federal Funding Accountability and Transparency Act (Pub. L. 109–282, as amended, hereafter cited as ''Transparency Act''). Granting an exception under paragraph (a)(2) of this section does not impact a Federal agency's responsibility for reporting under the Transparency Act, except that it may

use a generic entity identifier in the circumstances described.

(ii) Federal agencies should use generic entity identifiers rarely as it prevents recipients from fulfilling reporting requirements such as subaward or executive compensation reporting required by the Transparency Act.

(2) A Federal agency may exempt an applicant, recipient, or subrecipient when:

(i) The Federal agency determines that it must protect information about the entity from disclosure in the national security or foreign policy interests of the United States or to avoid jeopardizing the personal safety of the entity's staff, partners, beneficiaries, and participants;

(ii)(A) All of the following conditions are met:

(*1*) The entity is a foreign organization or foreign public entity;

(*2*) The Federal award or subaward will be performed outside the United States;

(*3*) The Federal award or subaward will be less than $25,000; and

(*4*) The Federal agency deems it to be impractical for the entity to comply with the requirements of this part.

(B) The Federal agency must determine this exemption on a case-by-case basis while utilizing a risk-based approach;

(iii) For applicants or recipients, the Federal agency may exempt foreign organizations or foreign public entities from completing full registration in *SAM.gov* for a Federal award less than $500,000 that will be performed outside the United States. Foreign organizations or foreign public entities exempted from registering in *SAM.gov* under this provision must still obtain a UEI. The Federal agency must determine this exemption on a case-by-case basis while utilizing a risk-based approach; or

(iv) For applicants, the Federal agency determines that there are exigent circumstances that prohibit the applicant from receiving a UEI and registering in *SAM.gov* before receiving a Federal award. In these instances, Federal agencies must require the recipient to obtain a UEI and complete registration in *SAM.gov* within 30 days of the Federal award date.

(b) *Class exceptions.* OMB may approve additional exceptions for classes of Federal awards, applicants, or recipients subject to the requirements of this part when exceptions are not prohibited by statute.

## Subpart B—Policy

### § 25.200 Requirements for notice of funding opportunities, regulations, and application instructions.

(a) A Federal agency that issues Federal financial assistance (see § 25.400) must include the requirements of paragraph (b) of this section in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants that is issued on or after the effective date of this guidance. A notice of funding opportunity is any paper or electronic issuance that a Federal agency uses to announce a funding opportunity, whether it is called a ''program announcement,'' ''notice of funding availability,'' ''broad agency announcement,'' ''research announcement,'' ''solicitation,'' or any other term.

(b) The notice of funding opportunity, regulation, or other issuance must require each applicant that does not have an exemption under § 25.110 to:

(1) Be registered in *SAM.gov* before submitting an application;

(2) Maintain a current and active registration in *SAM.gov* at all times during which it has an active Federal award as a recipient or an application under consideration by a Federal agency. The applicant or recipient must review and update its information in *SAM.gov* annually from the date of initial registration or subsequent updates to ensure it is current, accurate, and complete. If applicable, this includes identifying the applicant's or recipient's immediate and highest-level owner and subsidiaries, as well as providing information on all predecessors that have received a Federal award or contract within the last three years; and

(3) Include its UEI in each application it submits to the Federal agency.

(c) For the purposes of this policy, the applicant must meet the Federal agency's eligibility criteria and have

the legal authority to apply for and receive the Federal award. For example, if a consortium applies for a Federal award to be made to the consortium as the recipient, the consortium must have a UEI. If a consortium is eligible to receive funding under a Federal agency program, but the agency's policy is to make the Federal award to a lead entity for the consortium, the UEI of the lead applicant must be used.

**§ 25.205 Effect of noncompliance with a requirement to obtain a UEI or register in *SAM.gov*.**

(a) Unless an entity is exempt under § 25.110, a Federal agency may not issue a Federal award or amend an existing Federal award to provide additional Federal funds if the entity is not in compliance with the requirements of this part. This does not apply to amendments to terminate or close out a Federal award.

(b) At the time a Federal agency is ready to make a Federal award, if the intended recipient has not complied with the requirements to obtain a UEI and maintain an active registration in *SAM.gov* with current information, the Federal agency may make a Federal award to another applicant.

**§ 25.210 Authority to modify agency application forms or formats.**

To implement the policies in §§ 25.200 and 25.205, a Federal agency may add a UEI field to information collections previously approved by OMB, with no further approval required.

**§ 25.215 Requirements for agency information systems.**

Each Federal agency that awards Federal financial assistance (see § 25.400) must ensure that its information systems are able to both accept and transmit the UEI as the universal identifier for Federal financial assistance applicants and recipients.

**§ 25.220 Use of award term.**

(a) A Federal agency must include the award term in Appendix A in all Federal financial assistance agreements (see § 25.400) to accomplish the purpose of § 25.100.

(b) A Federal agency may use different letters and numbers than those in Appendix A to designate the paragraphs of the award term.

## Subpart C—Recipient Requirements of Subrecipients

**§ 25.300 Requirement for recipients to ensure subrecipients have a unique entity identifier.**

(a) A recipient may not make a subaward to a subrecipient that has not obtained a UEI and provided it to the recipient. Subrecipients are not required to complete full registration in *SAM.gov* to obtain a UEI.

(b) A recipient must notify any potential subrecipients that the recipient cannot make a subaward unless the subrecipient obtains and provides a UEI to the recipient.

## Subpart D—Definitions

**§ 25.400 Definitions.**

Terms not defined in this part have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:

*Applicant* means any entity that applies for a Federal award directly to a Federal agency.

*Entity* includes:

(1) Whether for profit or nonprofit:

(i) A corporation;

(ii) An association;

(iii) A partnership;

(iv) A limited liability company;

(v) A limited liability partnership;

(vi) A sole proprietorship;

(vii) Any other legal business entity;

(viii) Any other grantee or contractor that is not excluded by paragraph (2);

(ix) Any State or locality; and

(x) any subcontractor or subgrantee that is not excluded by paragraph (2);

(2) Does not include:

(i) An individual recipient of Federal financial assistance; or

(ii) A Federal employee.

*Federal Award* means an award of Federal financial assistance that an entity receives from a Federal agency.

*Federal financial assistance* means:

(1) Assistance that entities receive or administer in the form of a:

(i) Grant;

(ii) Cooperative agreement (which does not include a cooperative research

and development agreement pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a);

(iii) Loan;

(iv) Loan guarantee;

(v) Subsidy;

(vi) Insurance;

(vii) Food commodity;

(viii) Direct appropriation;

(ix) Assessed or voluntary contribution; or

(x) Any other financial assistance transaction that authorizes the entity's expenditure of Federal funds.

(2) For the purposes of this part, the term ''Federal financial assistance'' does not include:

(i) Technical assistance that provides services in lieu of money; and

(ii) A transfer of title to federally-owned property provided in lieu of money, even if the award is called a grant.

*Recipient* means an entity that receives or administers a Federal Award directly from a Federal agency.

*System for Award Management (SAM.gov)* means the Federal repository into which an entity must provide the information required for the conduct of business as a recipient.

*Unique entity identifier* means the universal identifier assigned by *SAM.gov* to uniquely identify an entity.

### APPENDIX A TO PART 25—AWARD TERM

I. SYSTEM FOR AWARD MANAGEMENT (SAM.GOV) AND UNIVERSAL IDENTIFIER REQUIREMENTS

(a) *Requirement for System for Award Management.* (1) Unless exempt from this requirement under 2 CFR 25.110, the recipient must maintain a current and active registration in *SAM.gov.* The recipient's registration must always be current and active until the recipient submits all final reports required under this Federal award or receives the final payment, whichever is later. The recipient must review and update its information in *SAM.gov* at least annually from the date of its initial registration or any subsequent updates to ensure it is current, accurate, and complete. If applicable, this includes identifying the recipient's immediate and highest-level owner and subsidiaries and providing information about the recipient's predecessors that have received a Federal award or contract within the last three years.

(b) *Requirement for Unique Entity Identifier (UEI).* (1) If the recipient is authorized to make subawards under this Federal award, the recipient:

(i) Must notify potential subrecipients that no entity may receive a subaward until the entity has provided its UEI to the recipient.

(ii) Must not make a subaward to an entity unless the entity has provided its UEI to the recipient. Subrecipients are not required to complete full registration in *SAM.gov* to obtain a UEI.

(c) *Definitions.* For the purposes of this award term:

*System for Award Management (SAM.gov)* means the Federal repository into which a recipient must provide the information required for the conduct of business as a recipient. Additional information about registration procedures may be found in *SAM.gov* (currently at *https://www.sam.gov*).

*Unique entity identifier* means the universal identifier assigned by *SAM.gov* to uniquely identify an entity.

*Entity* is defined at 2 CFR 25.400 and includes all of the following types as defined in 2 CFR 200.1:

(1) Non-Federal entity;

(2) Foreign organization;

(3) Foreign public entity;

(4) Domestic for-profit organization; and

(5) Federal agency.

*Subaward* has the meaning given in 2 CFR 200.1.

*Subrecipient* has the meaning given in 2 CFR 200.1.

## PARTS 26–169 [RESERVED]

# PART 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

### Subpart A—General

Sec.
170.100 Purpose of this part.
170.105 Applicability.

### Subpart B—Policy

170.200 Federal agency reporting requirements.
170.210 Requirements for notices of funding opportunities, regulations, and application instructions.
170.220 Use of award term.

### Subpart C—Definitions

170.300 Definitions.
APPENDIX A TO PART 170—AWARD TERM

AUTHORITY: 31 U.S.C. 503; 31 U.S.C. 6102; 31 U.S.C. 6307; Pub. L. 109–282; Pub. L. 110–252, Pub. L. 113–101, Pub. L. 117–40.

SOURCE: 89 FR 30111, Apr. 22, 2024, unless otherwise noted.

## Subpart A—General

### § 170.100 Purpose of this part.

This part provides guidance to Federal agencies on establishing requirements for recipients of Federal awards to report 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 the Digital Accountability and Transparency Act of 2014 (Pub. L. 113–101) and other Public Laws, hereafter referred to as the ''Transparency Act.''

### § 170.105 Applicability.

(a) *Applicability in general.* This part applies to a Federal agency's Federal financial assistance as defined in § 170.300. This part applies to all recipients and subrecipients of Federal awards who meet the reporting requirements of paragraph (c) of this section, unless exempt under Federal statute or by paragraph (d) of this section.

(b) *Non-applicability to individuals.* This part does not apply to an individual who applies for or receives Federal financial assistance as a natural person (that is, unrelated to any business or nonprofit organization an individual owns or operates).

(c) *Reporting Requirements.* (1) The names and total compensation of an entity's five most highly compensated executives must be reported if:

(i) In the entity's preceding fiscal year, it received:

(A) 80 percent or more of its annual gross revenue in Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act, as defined at § 170.300; and

(B) $25,000,000 or more in annual gross revenue from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act, as defined at § 170.300; and

(ii) The public does not have access to information about the compensation of senior executives of the entity 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.

(2) [Reserved]

(d) *Class exceptions.* OMB may approve additional exceptions for classes of Federal awards or recipients when not prohibited by Federal statute.

## Subpart B—Policy

### § 170.200 Federal agency reporting requirements.

(a) Federal agencies must publicly report Federal awards that equal or exceed the micro-purchase threshold (see 2 CFR 200.1). Federal agencies must publish the required Federal award information on *USAspending.gov* in accordance with the guidance provided by OMB and the U.S. Department of the Treasury's Government-wide Spending Data Model (GSDM).

(b) Federal agencies should ensure that their agency-specific requirements do not require recipients to submit data that is the same as or similar to data required by the Transparency Act during a given reporting period.

### § 170.210 Requirements for notices of funding opportunities, regulations, and application instructions.

(a) A Federal agency that makes Federal awards subject to the Transparency Act must include the requirements of paragraph (b) of this section in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants under which Federal awards may be made that are subject to Transparency Act reporting requirements. A notice of funding opportunity is any paper or electronic issuance that a Federal agency uses to announce a funding opportunity, whether it is called a ''program announcement,'' ''notice of funding availability,'' ''broad agency announcement,'' ''research announcement,'' ''solicitation,'' or any other term.

(b) The notice of funding opportunity, regulation, or other issuance must require each applicant, to which this part applies, to have the necessary processes and systems in place to comply with this part if they receive a Federal award.

### § 170.220 Use of award term.

(a) A Federal agency must include the award term in Appendix A to this part in each Federal award to a recipient under which the total funding is anticipated to equal or exceed $30,000 in Federal funding.

(b) Consistent with paragraph (a) of this section, a Federal agency is not required to include the award term in Appendix A of this part if the total amount of Federal funding under the Federal award will not equal or exceed $30,000. However, the Federal agency must subsequently add the award term if increases to the Federal funding result in the award equaling or exceeding $30,000.

(c) A Federal agency may use different letters and numbers than those in Appendix A to designate the paragraphs of the award term.

## Subpart C—Definitions

### § 170.300 Definitions.

Terms not defined in this part have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:

*Applicant* means any entity that applies for a Federal award directly from a Federal agency.

*Entity* includes:

(1) Whether for profit or nonprofit:

(i) A corporation;

(ii) An association;

(iii) A partnership;

(iv) A limited liability company;

(v) A limited liability partnership;

(vi) A sole proprietorship;

(vii) Any other legal business entity;

(viii) Another grantee or contractor that is not excluded by subparagraph (2) or (3); and

(ix) Any State or locality;

(2) Does not include:

(i) An individual recipient of Federal financial assistance; or

(ii) A Federal employee.

*Federal Award* means an award of Federal financial assistance that an entity receives from a Federal agency.

*Executive* means an officer, managing partner, or any other employee holding a management position.

Federal financial assistance:

(1) Means assistance that entities receive or administer in the form of a:

(i) Grant;

(ii) Cooperative agreement (which does not include a cooperative research and development agreement pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a);

(iii) Loan;

(iv) Loan guarantee;

(v) Subsidy;

(vi) Insurance;

(vii) Food commodity;

(viii) Direct appropriation;

(ix) Assessed or voluntary contribution; or

(x) Any other financial assistance transaction that authorizes the entity's expenditure of Federal funds.

(2) For the purposes of this part, the term ''Federal financial assistance'' does not include:

(i) Technical assistance that provides services in lieu of money;

(ii) A transfer of title to federally-owned property provided in lieu of money, even if the award is called a grant;

(iii) Any classified Federal award; or

(iv) 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).

*Recipient* means an entity that receives or administers a Federal Award directly from a Federal agency.

*Total Compensation* means the cash and noncash dollar value an executive earns during an entity's preceding fiscal year. This includes all items of compensation as prescribed in 17 CFR 229.402(c)(2).

## Appendix A to Part 170—Award Term

### I. Reporting Subawards and Executive Compensation

(a) *Reporting of first-tier subawards*—(1) *Applicability.* Unless the recipient is exempt as provided in paragraph (d) of this award term, the recipient must report each subaward that equals or exceeds $30,000 in Federal funds for a subaward to an entity or Federal agency. The recipient must also report a subaward if a modification increases the Federal funding to an amount that equals or exceeds $30,000. All reported subawards should reflect the total amount of the subaward.

(2) *Reporting Requirements.* (i) The recipient must report each subaward described in

paragraph (a)(1) of this award term to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at *http://www.fsrs.gov*.

(ii) For subaward information, report no later than the end of the month following the month in which the subaward was issued. (For example, if the subaward was made on November 7, 2025, the subaward must be reported by no later than December 31, 2025).

(b) *Reporting total compensation of recipient executives for entities*—(1) *Applicability*. The recipient must report the total compensation for each of the recipient's five most highly compensated executives for the preceding completed fiscal year if:

(i) The total Federal funding authorized to date under this Federal award equals or exceeds $30,000;

(ii) in the preceding fiscal year, the recipient received:

(A) 80 percent or more of the recipient's annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; 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 after receiving this subaward. (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) *Reporting Requirements*. The recipient must report executive total compensation described in paragraph (b)(1) of this appendix:

(i) As part of the recipient's registration profile at *https://www.sam.gov*.

(ii) No later than the month following the month in which this Federal award is made, and annually after that. (For example, if this Federal award was made on November 7, 2025, the executive total compensation must be reported by no later than December 31, 2025.)

(c) *Reporting of total compensation of subrecipient executives*—(1) *Applicability*. Unless a first-tier subrecipient is exempt as provided in paragraph (d) of this appendix, the recipient must report the executive total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

(i) The total Federal funding authorized to date under the subaward equals or exceeds $30,000;

(ii) 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 awards (and subawards) subject to the Transparency Act; and,

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal awards (and subawards) subject to the Transparency Act; 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 1986after receiving this subaward. (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) *Reporting Requirements*. Subrecipients must report to the recipient their executive total compensation described in paragraph (c)(1) of this appendix. The recipient is required to submit this information to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at *http://www.fsrs.gov* no later than the end of the month following the month in which the subaward was made. (For example, if the subaward was made on November 7, 2025, the subaward must be reported by no later than December 31, 2025).

(d) *Exemptions*. (1) A recipient with gross income under $300,000 in the previous tax year is 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:

*Entity* includes:

(1) Whether for profit or nonprofit:

(i) A corporation;

(ii) An association;

(iii) A partnership;

(iv) A limited liability company;

(v) A limited liability partnership;

(vi) A sole proprietorship;

(vii) Any other legal business entity;

(viii) Another grantee or contractor that is not excluded by subparagraph (2); and

(ix) Any State or locality;

(2) Does not include:

(i) An individual recipient of Federal financial assistance; or

(ii) A Federal employee.

*Executive* means an officer, managing partner, or any other employee holding a management position.

*Subaward* has the meaning given in 2 CFR 200.1.

*Subrecipient* has the meaning given in 2 CFR 200.1.

*Total Compensation* means the cash and noncash dollar value an executive earns during an entity's preceding fiscal year. This includes all items of compensation as prescribed in 17 CFR 229.402(c)(2).

[89 FR 30111, Apr. 22, 2024, as amended at 89 FR 79732, Oct. 1, 2024]

## PARTS 171–174 [RESERVED]

## PART 175—AWARD TERM FOR TRAFFICKING IN PERSONS

Sec.


### Subpart A—General

175.100 Purpose of this part.
175.105 Statutory requirement.

### Subpart B—Guidance

175.200 Use of award term.
175.205 Referral.

### Subpart C—Definitions

175.300 Definitions.

APPENDIX A TO PART 175—AWARD TERM


AUTHORITY: 22 U.S.C. 7104(g); 22 U.S.C. 7104a; 22 U.S.C. 7104b; 22 U.S.C. 7104c; 31 U.S.C. 503; 31 U.S.C. 6307; 31 U.S.C. 1111; 41 U.S.C. 1121; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737.

SOURCE: 89 FR 30113, Apr. 22, 2024, unless otherwise noted.

## Subpart A—General

### § 175.100 Purpose of this part.

This part establishes a Federal award term for grants and cooperative agreements to implement the requirements in 22 U.S.C. 7104(g); 22 U.S.C. 7104a; 22 U.S.C. 7104b; and 22 U.S.C. 7104c.

### § 175.105 Statutory requirement.

(a) Federal agencies are required to include in each Federal grant or cooperative agreement a condition that authorizes the Federal agency to terminate the award or take any remedial actions authorized by 22 U.S.C. 7104b(c), without penalty, if a private entity receiving funds under the award as a recipient or subrecipient engages in:

(1) Severe forms of trafficking in persons;

(2) The procurement of a commercial sex act during the period of time that the grant or cooperative agreement is in effect;

(3) The use of forced labor in the performance of the grant or cooperative agreement; or

(4) Acts that directly support or advance trafficking in persons, including the following acts:

(i) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;

(ii) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:

(A) exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant or cooperative agreement; or

(B) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;

(iii) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;

(iv) Charging recruited employees a placement or recruitment fee; or

(v) Providing or arranging housing that fails to meet the host country's housing and safety standards.

(b) Compliance plan and certification requirement:

(1) *Certification.* Prior to receiving a grant or cooperative agreement, if the estimated value of services required to be performed under the grant or cooperative agreement outside the United States exceeds $500,000, a recipient must certify that:

(i) The recipient has implemented a plan to prevent the activities described

in paragraph (a) of this section, and is in compliance with this plan;

(ii) The recipient has implemented procedures to prevent any activities described in paragraph (a) of this section and to monitor, detect, and terminate any subrecipient, contractor, subcontractor, or employee of the recipient engaging in any activities described in paragraph (a) of this section; and

(iii) To the best of the recipient's knowledge, neither the recipient, nor any subrecipient, contractor, or subcontractor of the recipient or any agent of the recipient or of such a subrecipient, contractor, or subcontractor, is engaged in any of the activities described in paragraph (a) of this section.

(2) *Annual certification.* The recipient must submit an annual certification consistent with paragraph (b)(1) of this section for each year the award is in effect.

(3) *Compliance plan.* Any plan or procedures implemented pursuant to paragraph (b) must be appropriate to the size and complexity of the grant or cooperative agreement and to the nature and scope of its activities, including the number of non-United States citizens expected to be employed.

(4) *Copies of the compliance plan.* The recipient must provide a copy of the plan to the grant officer upon request, and as appropriate, must post the useful and relevant contents of the plan or related materials on its website and at the workplace.

(5) *Minimum requirements of the compliance plan.* The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform recipient employees about the Government's policy prohibiting trafficking-related activities described in paragraph (a) of this section, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at *http://www.state.gov/j/tip/.*

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employees or potential employees and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the recipient, subrecipient, contractor, or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents, subrecipients, contractors, or subcontractors at any tier and at any dollar value from engaging in trafficking in persons, including activities in paragraph (a) of this section, and to monitor, detect, and terminate any agents, subgrants, or subrecipient, contractor, or subcontractor employees that have engaged in such activities.

(c) Notification to Inspectors General and cooperation with government. The head of a Federal agency making or awarding a grant or cooperative agreement must require that the recipient of the grant or cooperative agreement:

(1) Immediately inform the Federal agency and Inspector General of the Federal agency of any information it receives from any source that alleges credible information that the recipient, any subrecipient, contractor, or subcontractor of the recipient, or any agent of the recipient or of such a subrecipient, contractor, or subcontractor, has engaged in conduct described in paragraph (a) of this section; and

(2) Fully cooperate with any Federal agencies responsible for audits, investigations, or corrective actions relating to trafficking in persons.

## Subpart B—Guidance

### § 175.200 Use of award term.

(a) To implement the requirements of 22 U.S.C. 7104(g) a Federal agency must include the award term in Appendix A of this part for the following Federal awards:

(1) A grant or cooperative agreement to a private entity, as defined in § 175.300; and

(2) A grant or cooperative agreement to a State, local government, Indian Tribe, foreign public entity, or any other recipient if funding under the award could be provided to a subrecipient that is a private entity.

(b) A Federal agency may use different letters and numbers than those in Appendix A to designate the paragraphs of the award term. A Federal agency may also include additional information in the award term, consistent with the statutory authority of this part, such as further information on the compliance plan and certification requirements in §175.105(b).

### §175.205 Referral.

A Federal agency official should inform the agency's suspension and debarment official if an award is terminated based on a violation of a prohibition in the award term under Appendix A.

## Subpart C—Definitions

### §175.300 Definitions.

Terms not defined in this part have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:

*Abuse or threatened abuse of law or legal process* means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

*Coercion* means:

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

*Commercial sex act* means any sex act on account of which anything of value is given to or received by any person.

*Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

*Involuntary servitude* includes a condition of servitude induced by means of:

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

*Private Entity* means any entity, including for-profit organizations, nonprofit organizations, institutes of higher education, and hospitals. The term does not include foreign public entities, Indian Tribes, local governments, or states as defined in 2 CFR 200.1.

*Recruitment Fee* means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for:

(i) Advertising;

(ii) Obtaining permanent or temporary labor certification, including any associated fees;

(iii) Processing applications and petitions;

(iv) Acquiring visas, including any associated fees;

(v) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vi) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(vii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(viii) Language interpretation or translation, arranging for or accompanying on travel, or providing other

advice to employees or potential employees;

(ix) Government-mandated fees, such as border crossing fees, levies, or worker welfare fund;

(x) Transportation and subsistence costs:

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xi) Security deposits, bonds, and insurance; and

(xii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is:

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to:

(A) Agents;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/affiliates of the employer;

(F) Any agent or employee of such entities; and

(G) Subcontractors at all tiers.

*Severe forms of trafficking in persons* means:

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

*Sex trafficking* means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

## APPENDIX A TO PART 175—AWARD TERM

### I. TRAFFICKING IN PERSONS

(a) *Provisions applicable to a recipient that is a private entity.* (1) Under this award, the recipient, its employees, subrecipients under this award, and subrecipient's employees must not engage in:

(i) Severe forms of trafficking in persons;

(ii) The procurement of a commercial sex act during the period of time that this award or any subaward is in effect;

(iii) The use of forced labor in the performance of this award or any subaward; or

(iv) Acts that directly support or advance trafficking in persons, including the following acts:

(A) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;

(B) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:

*(1)* Exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant or cooperative agreement; or

*(2)* The employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;

(C) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;

(D) Charging recruited employees a placement or recruitment fee; or

(E) Providing or arranging housing that fails to meet the host country's housing and safety standards.

(2) The Federal agency may unilaterally terminate this award or take any remedial actions authorized by 22 U.S.C. 7104b(c), without penalty, if any private entity under this award:

(i) Is determined to have violated a prohibition in paragraph (a)(1) of this appendix; or

(ii) Has an employee that is determined to have violated a prohibition in paragraph (a)(1) of this this appendix through conduct that is either:

(A) Associated with the performance under this award; or

(B) Imputed to the recipient or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, ''OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),'' as implemented by our agency at [agency must insert reference here to its regulatory implementation of the OMB guidelines in 2 CFR part 180 (for example, ''2 CFR part XX'')].

(b) *Provision applicable to a recipient other than a private entity.* (1) The Federal agency may unilaterally terminate this award or take any remedial actions authorized by 22 U.S.C. 7104b(c), without penalty, if a subrecipient that is a private entity under this award:

(i) Is determined to have violated a prohibition in paragraph (a)(1) of this appendix; or

(ii) Has an employee that is determined to have violated a prohibition in paragraph (a)(1) of this appendix through conduct that is either:

(A) Associated with the performance under this award; or

(B) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, ''OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),'' as implemented by our agency at [agency must insert reference here to its regulatory implementation of the OMB guidelines in 2 CFR part 180 (for example, ''2 CFR part XX'')].

(c) *Provisions applicable to any recipient.* (1) The recipient must inform the Federal agency and the Inspector General of the Federal agency immediately of any information you receive from any source alleging a violation of a prohibition in paragraph (a)(1) of this appendix.

(2) The Federal agency's right to unilaterally terminate this award as described in paragraphs (a)(2) or (b)(1) of this appendix:

(i) Implements the requirements of 22 U.S.C. 78, and

(ii) Is in addition to all other remedies for noncompliance that are available to the Federal agency under this award.

(3) The recipient must include the requirements of paragraph (a)(1) of this award term in any subaward it makes to a private entity.

(4) If applicable, the recipient must also comply with the compliance plan and certification requirements in 2 CFR 175.105(b).

(d) *Definitions.* For purposes of this award term:

*Employee* means either:

(1) An individual employed by the recipient or a subrecipient who is engaged in the performance of the project or program under this award; or

(2) Another person engaged in the performance of the project or program under this award and not compensated by the recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing requirements.

*Private Entity* means any entity, including for-profit organizations, nonprofit organizations, institutions of higher education, and hospitals. The term does not include foreign public entities, Indian Tribes, local governments, or states as defined in 2 CFR 200.1.

The terms ''severe forms of trafficking in persons,'' ''commercial sex act,'' ''sex trafficking,'' ''Abuse or threatened abuse of law or legal process,'' ''coercion,'' ''debt bondage,'' and ''involuntary servitude'' have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

# PART 176—AWARD TERMS FOR ASSISTANCE AGREEMENTS THAT INCLUDE FUNDS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, PUBLIC LAW 111–5

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APPENDIX TO SUBPART B OF PART 176—U.S. STATES, OTHER SUB-FEDERAL ENTITIES, AND OTHER ENTITIES SUBJECT TO U.S. OBLIGATIONS UNDER INTERNATIONAL AGREEMENTS (AS OF FEBRUARY 16, 2010)

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176.180 Procedure.
176.190 Award term—Wage rate requirements under Section 1606 of the Recovery Act.

**Subpart D—Single Audit Information for Recipients of Recovery Act Funds**

176.200 Procedure.
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AUTHORITY: American Recovery and Reinvestment Act of 2009, Public Law 111–5; Federal Funding Accountability and Transparency Act of 2006, (Pub. L. 109–282), as amended.

SOURCE: 74 FR 18450, Apr. 23, 2009, unless otherwise noted.

### § 176.10 Purpose of this part.

This part establishes Federal Governmentwide award terms for financial assistance awards, namely, grants, cooperative agreements, and loans, to implement the cross-cutting requirements of the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (Recovery Act). These requirements are cross-cutting in that they apply to more than one agency's awards.

### § 176.20 Agency responsibilities (general).

(a) In any assistance award funded in whole or in part by the Recovery Act, the award official shall indicate that the award is being made under the Recovery Act, and indicate what projects and/or activities are being funded under the Recovery Act. This requirement applies whenever Recovery Act funds are used, regardless of the assistance type.

(b) To maximize transparency of Recovery Act funds required for reporting by the assistance recipient, the award official shall consider structuring assistance awards to allow for separately tracking Recovery Act funds.

(c) Award officials shall ensure that recipients comply with the Recovery Act requirements of Subpart A. If the recipient fails to comply with the reporting requirements or other award terms, the award official or other authorized agency action official shall take the appropriate enforcement or termination action in accordance with 2 CFR 215.62 or the agency's implementation of the OMB Circular A–102 grants management common rule. OMB Circular A–102 is available at *http://www.whitehouse.gov/omb/circulars/a102/a102.html*.

(d) The award official shall make the recipient's failure to comply with the reporting requirements a part of the recipient's performance record.

### § 176.30 Definitions.

As used in this part—

*Award* means any grant, cooperative agreement or loan made with Recovery Act funds. Award official means a person with the authority to enter into, administer, and/or terminate financial assistance awards and make related determinations and findings.

*Classified* or *''classified information''* means any knowledge that can be communicated or any documentary material, regardless of its physical form or characteristics, that—

(1)(i) Is owned by, is produced by or for, or is under the control of the United States Government; or

(ii) Has been classified by the Department of Energy as privately generated restricted data following the procedures in 10 CFR 1045.21; and

(2) Must be protected against unauthorized disclosure according to Executive Order 12958, Classified National Security Information, April 17, 1995, or classified in accordance with the Atomic Energy Act of 1954.

*Recipient* means any entity other than an individual that receives Recovery Act funds in the form of a grant, cooperative agreement or loan directly from the Federal Government.

*Recovery funds* or *Recovery Act funds* are funds made available through the appropriations of the American Recovery and Reinvestment Act of 2009, Public Law 111–5.

*Subaward* means—

(1) A legal instrument to provide support for the performance of any portion of the substantive project or program for which the recipient received this award and that the recipient awards to an eligible subrecipient;

(2) The term does not include the recipient's procurement of property and services needed to carry out the project or program (for further explanation, see §____.210 of the attachment to OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations''). OMB Circular A–133 is available at *http://www.whitehouse.gov/omb/circulars/a133/a133.html*.

(3) A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

*Subcontract* means a legal instrument used by a recipient for procurement of property and services needed to carry out the project or program.

*Subrecipient* or *Subawardee* means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in §____.210 of OMB Circular A–133.

## Subpart A—Reporting and Registration Requirements Under Section 1512 of the American Recovery and Reinvestment Act of 2009

### § 176.40 Procedure.

The award official shall insert the standard award term in this subpart in all awards funded in whole or in part with Recovery Act funds, except for those that are classified, awarded to individuals, or awarded under mandatory and entitlement programs, except as specifically required by OMB, or expressly exempted from the reporting requirement in the Recovery Act.

### § 176.50 Award term—Reporting and registration requirements under section 1512 of the Recovery Act.

Agencies are responsible for ensuring that their recipients report information required under the Recovery Act in a timely manner. The following award term shall be used by agencies to implement the recipient reporting and registration requirements in section 1512:

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier recipients must maintain current registrations in the System of Award Management (*http://www.ccr.gov*) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (*http://www.dnb.com*) is one of the requirements for registration in the System of Award Management.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at *http://*

*www.FederalReporting.gov* and ensure that any information that is pre-filled is corrected or updated as needed.

## Subpart B—Buy American Requirement Under Section 1605 of the American Recovery and Reinvestment Act of 2009

### § 176.60 Statutory requirement.

Section 1605 of the Recovery Act prohibits use of recovery funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for waiver under three circumstances:

(a) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(b) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or

(c) Applying the domestic preference would be inconsistent with the public interest.

### § 176.70 Policy.

Except as provided in § 176.80 or § 176.90—

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work (see definitions at §§ 176.140 and 176.160) unless—

(1) The public building or public work is located in the United States; and

(2) All of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States.

(i) Production in the United States of the iron or steel used in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project.

(ii) There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States.

(b) Paragraph (a) of this section shall not apply where the Recovery Act requires the application of alternative Buy American requirements for iron, steel, and manufactured goods.

### § 176.80 Exceptions.

(a) When one of the following exceptions applies in a case or category of cases, the award official may allow the recipient to use foreign iron, steel and/or manufactured goods in the project without regard to the restrictions of section 1605 of the Recovery Act:

(1) *Nonavailability.* The head of the Federal department or agency may determine that the iron, steel or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at 48 CFR 25.104(a) and the procedures at 48 CFR 25.103(b)(1) also apply if any of those articles are manufactured goods needed in the project.

(2) *Unreasonable cost.* The head of the Federal department or agency may determine that the cost of domestic iron, steel, or relevant manufactured goods will increase the cost of the overall project by more than 25 percent in accordance with § 176.110.

(3) *Inconsistent with public interest.* The head of the Federal department or agency may determine that application of the restrictions of section 1605 of the Recovery Act would be inconsistent with the public interest.

(b) When a determination is made for any of the reasons stated in this section that certain foreign iron, steel, and/or manufactured goods may be used—

(1) The award official shall list the excepted materials in the award; and

(2) The head of the Federal department or agency shall publish a notice in the FEDERAL REGISTER within two weeks after the determination is made, unless the item has already been determined to be domestically nonavailable. A list of items that are not domestically available is at 48 CFR 25.104(a). The FEDERAL REGISTER notice or information from the notice may be posted by OMB to Recovery.gov. The notice shall include—

(i) The title ''Buy American Exception under the American Recovery and Reinvestment Act of 2009'';

(ii) The dollar value and brief description of the project; and

(iii) A detailed written justification as to why the restriction is being waived.

### § 176.90 Acquisitions covered under international agreements.

Section 1605(d) of the Recovery Act provides that the Buy American requirement in section 1605 shall be applied in a manner consistent with U.S. obligations under international agreements.

(a) The Buy American requirement set out in §176.70 shall not be applied where the iron, steel, or manufactured goods used in the project are from a Party to an international agreement, listed in paragraph (b) of this section, and the recipient is required under an international agreement, described in the appendix to this subpart, to treat the goods and services of that Party the same as domestic goods and services. As of January 1, 2010, this obligation shall only apply to projects with an estimated value of $7,804,000 or more and projects that are not specifically excluded from the application of those agreements.

(b) The international agreements that obligate recipients that are covered under an international agreement to treat the goods and services of a Party the same as domestic goods and services and the respective Parties to the agreements are:

(1) The World Trade Organization Government Procurement Agreement (Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei (Taiwan), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);

(2) The following Free Trade Agreements:

(i) Dominican Republic-Central America-United States Free Trade Agreement (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua);

(ii) North American Free Trade Agreement (NAFTA) (Canada and Mexico);

(iii) United States-Australia Free Trade Agreement;

(iv) United States-Bahrain Free Trade Agreement;

(v) United States-Chile Free Trade Agreement;

(vi) United States-Israel Free Trade Agreement;

(vii) United States-Morocco Free Trade Agreement;

(viii) United States-Oman Free Trade Agreement;

(ix) United States-Peru Trade Promotion Agreement; and

(x) United States-Singapore Free Trade Agreement.

(3) United States-European Communities Exchange of Letters (May 15, 1995): Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom; and

(4) Agreement between the Government of Canada and the Government of the United States of America on Government Procurement.

[74 FR 18450, Apr. 23, 2009, as amended at 75 FR 14323, Mar. 25, 2010]

### § 176.100 Timely determination concerning the inapplicability of section 1605 of the Recovery Act.

(a) The head of the Federal department or agency involved may make a determination regarding inapplicability of section 1605 to a particular case or to a category of cases.

(b) Before Recovery Act funds are awarded by the Federal agency or obligated by the recipient for a project for the construction, alteration, maintenance, or repair of a public building or public work, an applicant or recipient may request from the award official a determination concerning the inapplicability of section 1605 of the Recovery Act for specifically identified items.

(c) The time for submitting the request and the information and supporting data that must be included in the request are to be specified in the agency's and recipient's request for applications and/or proposals, and as appropriate, in other written communications. The content of those communications should be consistent with the notice in § 176.150 or § 176.170, whichever applies.

(d) The award official must evaluate all requests based on the information provided and may supplement this information with other readily available information.

(e) In making a determination based on the increased cost to the project of using domestic iron, steel, and/or manufactured goods, the award official must compare the total estimated cost of the project using foreign iron, steel and/or relevant manufactured goods to the estimated cost if all domestic iron, steel, and/or relevant manufactured goods were used. If use of domestic iron, steel, and/or relevant manufactured goods would increase the cost of the overall project by more than 25 percent, then the award official shall determine that the cost of the domestic iron, steel, and/or relevant manufactured goods is unreasonable.

### § 176.110 Evaluating proposals of foreign iron, steel, and/or manufactured goods.

(a) If the award official receives a request for an exception based on the cost of certain domestic iron, steel, and/or manufactured goods being unreasonable, in accordance with § 176.80, then the award official shall apply evaluation factors to the proposal to use such foreign iron, steel, and/or manufactured goods as follows:

(1) Use an evaluation factor of 25 percent, applied to the total estimated cost of the project, if the foreign iron, steel, and/or manufactured goods are to be used in the project based on an exception for unreasonable cost requested by the applicant.

(2) Total evaluated cost = project cost estimate + (.25 × project cost estimate, if paragraph (a)(1) of this section applies).

(b) Applicants or recipients also may submit alternate proposals based on use of equivalent domestic iron, steel, and/or manufactured goods to avoid possible denial of Recovery Act funding for the proposal if the Federal Government determines that an exception permitting use of the foreign item(s) does not apply.

(c) If the award official makes an award to an applicant that proposed foreign iron, steel, and/or manufactured goods not listed in the applicable notice in the request for applications or proposals, then the award official must add the excepted materials to the list in the award term.

### § 176.120 Determinations on late requests.

(a) If a recipient requests a determination regarding the inapplicability of section 1605 of the Recovery Act after obligating Recovery Act funds for a project for construction, alteration, maintenance, or repair (late request), the recipient must explain why it could not request the determination before making the obligation or why the need for such determination otherwise was not reasonably foreseeable. If the award official concludes that the recipient should have made the request before making the obligation, the award official may deny the request.

(b) The award official must base evaluation of any late request for a determination regarding the inapplicability of section 1605 of the Recovery Act on information required by § 176.150(c) and (d) or § 176.170(c) and (d) and/or other readily available information.

(c) If a determination, under § 176.80 is made after Recovery Act funds were obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official must amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When

the basis of the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or manufactured goods. When the basis for the exception is the unreasonable cost of domestic iron, steel, and/or manufactured goods the award official shall adjust the award amount or the budget, as appropriate, by at least the differential established in §176.110(a).

### §176.130 Noncompliance.

The award official must—

(a) Review allegations of violations of section 1605 of the Recovery Act;

(b) Unless fraud is suspected, notify the recipient of the apparent unauthorized use of foreign iron, steel, and/or manufactured goods and request a reply, to include proposed corrective action; and

(c) If the review reveals that a recipient or subrecipient has used foreign iron, steel, and/or manufactured goods without authorization, take appropriate action, including one or more of the following:

(1) Process a determination concerning the inapplicability of section 1605 of the Recovery Act in accordance with §176.120.

(2) Consider requiring the removal and replacement of the unauthorized foreign iron, steel, and/or manufactured goods.

(3) If removal and replacement of foreign iron, steel, and/or manufactured goods used in a public building or a public work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Federal Government, the award official may determine in writing that the foreign iron, steel, and/or manufactured goods need not be removed and replaced. A determination to retain foreign iron, steel, and/or manufactured goods does not constitute a determination that an exception to section 1605 of the Recovery Act applies, and this should be stated in the determination. Further, a determination to retain foreign iron, steel, and/or manufactured goods does not affect the Federal Government's right to reduce the amount of the award by the cost of the steel, iron, or manufactured goods that are used in the project or to take enforcement or termination action in accordance with the agency's grants management regulations.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate remedies, such as withholding cash payments pending correction of the deficiency, suspending or terminating the award, and withholding further awards for the project. Also consider preparing and forwarding a report to the agency suspending or debarring official in accordance with the agency's debarment rule implementing 2 CFR part 180. If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

### §176.140 Award term—Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009.

When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the award term described in the following paragraphs:

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation,

bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.* (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

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[*Award official to list applicable excepted materials or indicate ''none''*]

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron,

steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON

| Description | Unit of measure | Quantity | Cost (dollars)* |
|---|---|---|---|
| *Item 1:* | | | |
| Foreign steel, iron, or manufactured good | ____ | ____ | ____ |
| Domestic steel, iron, or manufactured good | ____ | ____ | ____ |
| *Item 2:* | | | |
| Foreign steel, iron, or manufactured good | ____ | ____ | ____ |
| Domestic steel, iron, or manufactured good | ____ | ____ | ____ |

*[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]*

*[Include other applicable supporting information.]*

*[*Include all delivery costs to the construction site.]*

### § 176.150 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009.

When requesting applications or proposals for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair of a public building or public work, and do not involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the notice described in the following paragraphs in their solicitations:

(a) *Definitions.* Manufactured good, public building and public work, and steel, as used in this notice, are defined in the 2 CFR 176.140.

(b) *Requests for determinations of inapplicability.* A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by paragraphs at 2 CFR 176.140(c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(c) *Evaluation of project proposals.* If the Federal Government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost, if foreign iron, steel, or manufactured goods are used in the project based on unreasonable cost of comparable manufactured domestic iron, steel, and/or manufactured goods.

(d) *Alternate project proposals.* (1) When a project proposal includes foreign iron, steel, and/or manufactured goods not listed by the Federal Government at 2 CFR 176.140(b)(2), the applicant also may submit an alternate proposal based on use of equivalent domestic iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the applicant shall submit a separate cost comparison table prepared in accordance with 2 CFR

176.140(c) and (d) for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal Government determines that a particular exception requested in accordance with 2 CFR 176.140(b) does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic iron, steel, and/or manufactured goods, and the applicant shall be required to furnish such domestic items.

### § 176.160 Award term—Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.

When awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that involves iron, steel, and/or manufactured goods materials covered under international agreements, the agency shall use the award term described in the following paragraphs:

(a) *Definitions.* As used in this award term and condition—

*Designated country*—(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei (Taiwan), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom; or

(4) An Agreement between Canada and the United States of America on Government Procurement country (Canada).

*Designated country iron, steel, and/or manufactured goods*—(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

*Domestic iron, steel, and/or manufactured good*—(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

*Foreign iron, steel, and/or manufactured good* means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

*Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

*Public building* and *public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and

multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

*Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. As of January 1, 2010, this obligation shall only apply to projects with an estimated value of $7,804,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

[*Award official to list applicable excepted materials or indicate ''none''*]

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods.. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON

| Description | Unit of measure | Quantity | Cost (dollars)* |
|---|---|---|---|
| *Item 1:* | | | |
| Foreign steel, iron, or manufactured good | ____ | ____ | ____ |
| Domestic steel, iron, or manufactured good | ____ | ____ | ____ |
| *Item 2:* | | | |
| Foreign steel, iron, or manufactured good | ____ | ____ | ____ |
| Domestic steel, iron, or manufactured good | ____ | ____ | ____ |

*[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]*
*[Include other applicable supporting information.]*
*[*Include all delivery costs to the construction site.]*

[74 FR 18450, Apr. 23, 2009, as amended at 75 FR 14323, Mar. 25, 2010]

### § 176.170 Notice of Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.

When requesting applications or proposals for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair of a public building or public work, and involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the notice described in the following paragraphs in the solicitation:

(a) *Definitions. Designated country iron, steel, and/or manufactured goods, foreign iron, steel, and/or manufactured good, manufactured good, public building* and *public work*, and *steel*, as used in this provision, are defined in 2 CFR 176.160(a).

(b) *Requests for determinations of inapplicability.* A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) should submit the request to the

award official in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by 2 CFR 176.160 (c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(c) *Evaluation of project proposals.* If the Federal Government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost if foreign iron, steel, or manufactured goods are used based on unreasonable cost of comparable domestic iron, steel, or manufactured goods.

(d) *Alternate project proposals.* (1) When a project proposal includes foreign iron, steel, and/or manufactured goods, other than designated country iron, steel, and/or manufactured goods, that are not listed by the Federal Government in this Buy American notice in the request for applications or proposals, the applicant may submit an alternate proposal based on use of equivalent domestic or designated country iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the applicant shall submit a separate cost comparison table prepared in accordance with paragraphs 2 CFR 176.160(c) and (d) for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal Government determines that a particular exception requested in accordance with 2 CFR 176.160(b) does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic or designated country iron, steel, and/or manufactured goods, and the applicant shall be required to furnish such domestic or designated country items.

APPENDIX TO SUBPART B OF 2 CFR PART 176—U.S. STATES, OTHER SUB-FEDERAL ENTITIES, AND OTHER ENTITIES SUBJECT TO U.S. OBLIGATIONS UNDER INTERNATIONAL AGREEMENTS (AS OF FEBRUARY 16, 2010)

| States | Entities covered | Exclusions | Relevant international agreements |
|---|---|---|---|
| Arizona | Executive branch agencies | | —WTO GPA.<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |
| Arkansas | Executive branch agencies, including universities but excluding the Office of Fish and Game. | Construction services | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Peru TPA.<br>—U.S.-Singapore FTA. |
| California | Executive branch agencies | | —WTO GPA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |
| Colorado | Executive branch agencies | | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Peru TPA.<br>—U.S.-Singapore FTA. |

| States | Entities covered | Exclusions | Relevant international agreements |
|---|---|---|---|
| Connecticut | —Department of Administrative Services<br>—Department of Transportation..<br>—Department of Public Works..<br>—Constituent Units of Higher Education. | | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |
| Delaware | —Administrative Services (Central Procurement Agency).<br>—State Universities.<br>—State Colleges. | Construction-grade steel (including requirements on subcontracts); motor vehicles; coal. | —WTO GPA.<br>—DR-CAFTA (except Honduras).<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |
| Florida | Executive branch agencies | Construction-grade steel (including requirements on subcontracts); motor vehicles; coal. | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Peru TPA.<br>—U.S.-Singapore FTA. |
| Georgia | —Department of Administrative Services.<br>—Georgia Technology Authority. | Beef; compost; mulch | —U.S.-Australia FTA. |
| Hawaii | Department of Accounting and General Services. | Software developed in the State; construction. | —WTO GPA.<br>—DR-CAFTA (except Honduras).<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |
| Idaho | Central Procurement Agency (including all colleges and universities subject to central purchasing oversight). | | —WTO GPA.<br>—DR-CAFTA (except Honduras).<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |
| Illinois | —Department of Central Management Services. | Construction-grade steel (including requirements on subcontracts); motor vehicles; coal. | —WTO GPA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Peru TPA.<br>—U.S.-Singapore FTA.<br>—U.S.-EC.<br>Exchange of Letters (applies to EC Member States for procurement not covered by WTO GPA and only where the State considers out-of-State suppliers). |
| Iowa | —Department of General Services<br>—Department of Transportation.<br>—Board of Regents' Institutions (universities). | Construction-grade steel (including requirements on subcontracts); motor vehicles; coal. | —WTO GPA.<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |
| Kansas | Executive branch agencies | Construction services; automobiles; aircraft. | —WTO GPA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |
| Kentucky | Division of Purchases, Finance and Administration Cabinet. | Construction projects | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |
| Louisiana | Executive branch agencies | | —WTO GPA. |

| States | Entities covered | Exclusions | Relevant international agreements |
|---|---|---|---|
| | | | —DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |
| Maine | —Department of Administrative and Financial Services<br>—Bureau of General Services (covering State government agencies and school construction).<br>— Department of Transportation.. | Construction-grade steel (including requirements on subcontracts); motor vehicles; coal. | —WTO GPA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |
| Maryland | —Office of the Treasury<br>—Department of the Environment..<br>—Department of General Services..<br>—Department of Housing and Community Development..<br>—Department of Human Resources..<br>—Department of Licensing and Regulation..<br>—Department of Natural Resources..<br>—Department of Public Safety and Correctional Services..<br>—Department of Personnel. ..<br>—Department of Transportation.. | Construction-grade steel (including requirements on subcontracts); motor vehicles; coal. | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |
| Massachusetts | —Executive Office for Administration and Finance.<br>—Executive Office of Communities and Development.<br>—Executive Office of Consumer Affairs.<br>—Executive Office of Economic Affairs.<br>—Executive Office of Education.<br>—Executive Office of Elder Affairs.<br>—Executive Office of Environmental Affairs.<br>—Executive Office of Health and Human Service.<br>—Executive Office of Labor.<br>—Executive Office of Public Safety.<br>—Executive Office of Transportation and Construction. | ..... | —WTO GPA.<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |
| Michigan | Department of Management and Budget. | Construction-grade steel (including requirements on subcontracts); motor vehicles; coal. | —WTO GPA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |
| Minnesota | Executive branch agencies .... | ..... | —WTO GPA.<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |
| Mississippi | Department of Finance and Administration. | Services ..... | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Peru TPA.<br>—U.S.-Singapore FTA. |
| Missouri | —Office of Administration .....<br>—Division of Purchasing and Materials Management. | ..... | —WTO GPA.<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |
| Montana | Executive branch agencies .... | Goods ..... | —WTO GPA.<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |

| States | Entities covered | Exclusions | Relevant international agreements |
|---|---|---|---|
| Nebraska | Central Procurement Agency | | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |
| New Hampshire | Central Procurement Agency | Construction-grade steel (including requirements on subcontracts), motor vehicles; coal. | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |
| New York | —State agencies<br>—State university system.<br>—Public authorities and public benefit corporations, with the exception of those entities with multi-State mandates. | Construction-grade steel (including requirements on subcontracts); motor vehicles; coal; transit cars, buses and related equipment. | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Peru TPA.<br>—U.S.-Singapore FTA. |
| North Dakota | | | —U.S.-EC Exchange of Letters (applies to EC Member States and only where the State considers out-of-State suppliers). |
| Oklahoma | Department of Central Services and all State agencies and departments subject to the Oklahoma Central Purchasing Act. | Construction services; construction-grade steel (including requirements on subcontracts); motor vehicles; coal. | —WTO GPA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Peru TPA.<br>—U.S.-Singapore FTA. |
| Oregon | Department of Administrative Services. | | —WTO GPA.<br>—DR-CAFTA (except Honduras).<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |
| Pennsylvania | Executive branch agencies, including:<br>—Governor's Office.<br>—Department of the Auditor General..<br>—Treasury Department.<br>—Department of Agriculture.<br>—Department of Banking.<br>—Pennsylvania Securities Commission.<br>—Department of Health.<br>—Department of Transportation.<br>—Insurance Department.<br>—Department of Aging.<br>—Department of Correction.<br>—Department of Labor and Industry.<br>—Department of Military Affairs.<br>—Office of Attorney General.<br>—Department of General Services.<br>—Department of Education.<br>—Public Utility Commission.<br>—Department of Revenue.<br>—Department of State.<br>—Pennsylvania State Police.<br>—Department of Public Welfare.<br>—Fish Commission.<br>—Game Commission.<br>—Department of Commerce.<br>—Board of Probation and Parole.<br>—Liquor Control Board.<br>—Milk Marketing Board. | Construction-grade steel (including requirements on subcontracts); motor vehicles; coal. | —WTO GPA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |

| States | Entities covered | Exclusions | Relevant international agreements |
|---|---|---|---|
| | —Lieutenant Governor's Office.<br>—Department of Community Affairs.<br>—Pennsylvania Historical and Museum Commission.<br>—Pennsylvania Emergency Management Agency.<br>—State Civil Service Commission.<br>—Pennsylvania Public Television Network.<br>—Department of Environmental Resources.<br>—State Tax Equalization Board.<br>—Department of Public Welfare.<br>—State Employees' Retirement System.<br>—Pennsylvania Municipal Retirement Board.<br>—Public School Employees' Retirement System.<br>—Pennsylvania Crime Commission.<br>—Executive Offices. | | |
| Rhode Island | Executive branch agencies | Boats, automobiles, buses and related equipment. | —WTO GPA.<br>—DR-CAFTA (except Honduras).<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |
| South Dakota | Central Procuring Agency (including universities and penal institutions). | Beef | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |
| Tennessee | Executive branch agencies | Services; construction | —WTO GPA-U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |
| Texas | Texas Building and Procurement Commission. | | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Peru TPA.<br>—U.S.-Singapore FTA. |
| Utah | Executive branch agencies | | —WTO GPA.<br>—DR-CAFTA (except Honduras).<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Peru TPA.<br>—U.S.-Singapore FTA. |
| Vermont | Executive branch agencies | | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |
| Washington | Executive branch agencies, including:<br>—General Administration.<br>—Department of Transportation.<br>—State Universities. | Fuel; paper products; boats; ships; and vessels. | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |

| States | Entities covered | Exclusions | Relevant international agreements |
|---|---|---|---|
| West Virginia | ..... | ..... | —U.S.-EC Exchange of Letters (applies to EC Member States and only where the State considers out-of-State suppliers). |
| Wisconsin | Executive branch agencies, including:<br>—Department of Administration.<br>—State Correctional Institutions.<br>—Department of Development.<br>—Educational Communications Board.<br>—Department of Employment Relations.<br>—State Historical Society.<br>—Department of Health and Social Services.<br>—Insurance Commissioner.<br>—Department of Justice.<br>—Lottery Board.<br>—Department of Natural Resources.<br>—Administration for Public Instruction.<br>—Racing Board.<br>—Department of Revenue.<br>—State Fair Park Board.<br>—Department of Transportation.<br>—State University System. | ..... | —WTO GPA.<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |
| Wyoming | —Procurement Services Division<br>—Wyoming Department of Transportation.<br>—University of Wyoming. | Construction-grade steel (including requirements on subcontracts); motor vehicles; coal. | —WTO GPA.<br>—DR-CAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Singapore FTA. |

| Other sub-federal entities | Entities covered | Exclusions | Relevant international agreements |
|---|---|---|---|
| Puerto Rico | —Department of State<br>—Department of Justice.<br>—Department of the Treasury.<br>.....<br>—Department of Labor and Human Resources.<br>—Department of Natural and Environmental Resources.<br>—Department of Consumer Affairs.<br>—Department of Sports and Recreation. | Construction services .....<br><br>—Department of Economic Development and Commerce. | —DR-CAFTA.<br>—U.S.-Peru TPA. |
| Port Authority of New York and New Jersey. | ..... | Restrictions attached to Federal funds for airport projects; maintenance, repair and operating materials and supplies. | —WTO GPA (except Canada).<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |
| Port of Baltimore | ..... | Restrictions attached to Federal funds for airport projects. | —WTO GPA (except Canada).<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |
| New York Power Authority | ..... | Restrictions attached to Federal funds for airport projects; conditions specified for the State of New York | —WTO GPA (except Canada).<br>—U.S.-Chile FTA.<br>—U.S.-Singapore FTA. |

| States | Entities covered | Exclusions | Relevant international agreements |
|---|---|---|---|
| Massachusetts Port Authority .. | ..... | ..... | U.S.-EC Exchange of Letters (applies to EC Member States and only where the Port Authority considers out-of-State suppliers). |
| Boston, Chicago, Dallas, Detroit, Indianapolis, Nashville, and San Antonio. | ..... | ..... | U.S.-EC Exchange of Letters (only applies to EC Member States and where the city considers out-of-city suppliers). |
| **Other entities** | **Entities covered** | **Exclusions** | **Relevant international agreements** |
| Rural Utilities Service (waiver of Buy American restriction on financing for all power generation projects). | Any recipient ..... | ..... | —WTO GPA.<br>—DR-CAFTA.<br>—NAFTA.<br>—U.S.-Australia FTA.<br>—U.S.-Bahrain FTA.<br>—U.S.-Chile FTA.<br>—U.S.-Morocco FTA.<br>—U.S.-Oman FTA.<br>—U.S.-Peru TPA.<br>—U.S.-Singapore FTA. |
| Rural Utilities Service (waiver of Buy American restriction on financing for telecommunications projects). | Any recipient ..... | ..... | —NAFTA.<br>—U.S.-Israel FTA. |
| U.S. Department of Agriculture, Rural Utilities Services, *Water and Waste Disposal Programs* (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009). | Any recipient ..... | ..... | U.S.-Canada Agreement. |
| U.S. Department of Agriculture, Rural Housing Service, *Community Facilities Program* (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009). | Any recipient ..... | ..... | U.S.-Canada Agreement. |
| U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, *Energy Efficiency and Conservation Block Grants* (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009). | Any recipient ..... | ..... | U.S.-Canada Agreement. |
| U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, *State Energy Program* (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009 (ARRA). | Any recipient ..... | ..... | U.S.-Canada Agreement. |

| States | Entities covered | Exclusions | Relevant international agreements |
|---|---|---|---|
| U.S. Department of Housing and Urban Development, Office of Community Planning and Development, *Community Development Block Grants Recovery* (CDBG–R) (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009). | Any recipient | | U.S.-Canada Agreement. |
| U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, *Public Housing Capital Fund* (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009). | Any recipient | | U.S.-Canada Agreement. |
| U.S. Environmental Protection *Clean Water and Drinking Water State Revolving Funds* Agency for projects funded by reallocated ARRA funds where the contracts are signed after February 17, 2010 (exclusion of Canadian iron, steel and manufactured products from domestic purchasing restriction in Section 1605 of American Recovery and Reinvestment Act of 2009). | Any recipient | | U.S.-Canada Agreement. |

*General Exceptions:* The following restrictions and exceptions are excluded from U.S. obligations under international agreements:

1. The restrictions attached to Federal funds to States for mass transit and highway projects.

2. Dredging.

*The World Trade Organization Government Procurement Agreement (WTO GPA) Parties:* Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei (Taiwan), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom.

*The Free Trade Agreements and the respective Parties to the agreements are:*

(1) Dominican Republic-Central America-United States Free Trade Agreement (DR–CAFTA): Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua;

(2) North American Free Trade Agreement (NAFTA): Canada and Mexico;

(3) United States-Australia Free Trade Agreement (U.S.-Australia FTA);

(4) United States-Bahrain Free Trade Agreement (U.S.-Bahrain FTA);

(5) United States-Chile Free Trade Agreement (U.S.-Chile FTA);

(6) United States-Israel Free Trade Agreement (U.S.-Israel FTA);

(7) United States-Morocco Free Trade Agreement (U.S.-Morocco FTA);

(8) United States-Oman Free Trade Agreement (U.S.-Oman FTA);

(9) United States-Peru Trade Promotion Agreement (U.S.-Peru TPA); and

(10) United States-Singapore Free Trade Agreement (U.S.-Singapore FTA).

*United States-European Communities Exchange of Letters (May 30, 1995) (U.S.-EC Exchange of Letters*) applies to EC Member States: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

*Agreement between the Government of Canada and the Government of the United States of*

*America on Government Procurement (Feb. 10, 2010) (U.S.-Canada Agreement):* Applies only to Canada.

[75 FR 14324, Mar. 25, 2010]

## Subpart C—Wage Rate Requirements Under Section 1606 of the American Recovery and Reinvestment Act of 2009

### § 176.180 Procedure.

The award official shall insert the standard award term in this subpart in all awards funded in whole or in part with Recovery Act funds.

### § 176.190 Award term—Wage rate requirements under Section 1606 of the Recovery Act.

When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use the award term described in the following paragraphs:

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of $2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

## Subpart D—Single Audit Information for Recipients of Recovery Act Funds

### § 176.200 Procedure.

The award official shall insert the standard award term in this subpart in all awards funded in whole or in part with Recovery Act funds.

### § 176.210 Award term—Recovery Act transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients.

The award term described in this section shall be used by agencies to clarify recipient responsibilities regarding tracking and documenting Recovery Act expenditures:

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 ''Uniform Administrative Requirements for Grants and Agreements'' and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A–102 is available at *http://www.whitehouse.gov/omb/circulars/a102/a102.html*.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. OMB Circular A–133 is available at *http://www.whitehouse.gov/omb/circulars/a133/*

*a133.html*. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF–SAC by CFDA number, and inclusion of the prefix ''ARRA-'' in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF–SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

## PARTS 177–179 [RESERVED]

# PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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APPENDIX A TO PART 180—COVERED TRANSACTIONS

AUTHORITY: 31 U.S.C. 503; 31 U.S.C. 6102; 31 U.S.C. 6307; Pub. L. 103–355; Pub. L. 109–282; Pub. L. 110–252; Pub. L. 111–84; Pub. L. 113–101Pub. L. 115–232; Pub. L. 117–40; E.O. 12549; E.O. 12689.

SOURCE: 89 FR 30115, Apr. 22, 2024, unless otherwise noted.

### § 180.5 What does this part do?

This part provides guidance for Federal agencies on how to implement the government-wide debarment and suspension system for nonprocurement programs and activities.

### § 180.10 How is this part organized?

This part is organized into two segments.

(a) Sections 180.5 through 180.45 contain general policy direction for Federal agencies' use of the standards in subparts A through I.

(b) Subparts A through I contain uniform government-wide standards that Federal agencies are to use to specify:

(1) The types of transactions that are covered by the nonprocurement debarment and suspension system;

(2) The effects of an exclusion under that nonprocurement system, including reciprocal effects with the government-wide debarment and suspension system for procurement;

(3) The criteria and minimum due process to be used in nonprocurement debarment and suspension actions; and

(4) Related policies and procedures to ensure the effectiveness of those actions.

### § 180.15 To whom does the guidance apply?

This part provides guidance to Federal agencies. Publication of this guidance in the Code of Federal Regulations (CFR) does not change its nature—it is guidance and not regulation. Federal agencies' implementation of this guidance governs the rights and responsibilities of other persons affected by the nonprocurement debarment and suspension system.

### § 180.20 What must a Federal agency do to implement these guidelines?

As Section 3 of Executive Order 12549 requires, each Federal agency with nonprocurement programs and activities covered by subparts A through I of the guidance must issue regulations consistent with those subparts.

### § 180.25 What must a Federal agency address in its implementation of the guidance?

Each Federal agency's implementing regulation:

(a) Must establish policies and procedures for that Federal agency's nonprocurement debarment and suspension programs and activities consistent with this guidance. When adopted by a Federal agency, the provisions of the guidance have a regulatory effect on that Federal agency's programs and activities.

(b) Must address some matters for which these guidelines give each Federal agency some discretion. Specifically, the regulation must:

(1) Identify either the Federal agency head or the title of the designated official who is authorized to grant exceptions under §180.135 to let an excluded person participate in a covered transaction.

(2) State whether the Federal agency includes as covered transactions an additional tier of contracts awarded under covered nonprocurement transactions, as permitted under §180.220(c).

(3) Identify the method(s) a Federal agency official may use when entering into a covered transaction with a primary tier participant to communicate to the participant the requirements described in §180.435. Examples of methods are an award term that requires compliance as a condition of the award, an assurance of compliance obtained at the time of application, or a certification.

(4) State whether the Federal agency specifies a particular method that participants must use to communicate compliance requirements to lower tier participants, as described in §180.330(a). If there is a specified method, the regulation must require Federal agency officials to communicate that requirement when entering into covered transactions with primary tier participants.

(c) May also, at the Federal agency's option:

(1) Identify any specific types of transactions the Federal agency includes as ''nonprocurement transactions'' in addition to the examples provided in §180.970.

(2) Identify any types of nonprocurement transactions that the Federal agency exempts from coverage under these guidelines, as authorized under §180.215(g)(2).

(3) Identify specific examples of types of individuals who would be ''principals'' under the Federal agency's nonprocurement programs and transactions, in addition to the types of individuals described in §180.995.

(4) Specify the Federal agency's procedures, if any, by which a respondent may appeal a suspension or debarment decision.

(5) Identify by title the officials designated by the Federal agency head as debarring officials under §180.930 or suspending officials under §180.1010.

(6) Include a subpart covering disqualifications, as authorized in §180.45.

(7) Include any provisions authorized by OMB.

### § 180.30 Where does a Federal agency implement these guidelines?

Each Federal agency that participates in the government-wide nonprocurement debarment and suspension system must issue a regulation implementing these guidelines within its chapter in subtitle B of this title.

### § 180.40 How are these guidelines maintained?

The Interagency Committee on Debarment and Suspension, established by section 4 of Executive Order 12549,

recommends to the OMB any needed revisions to the guidelines in this part. The OMB publishes proposed changes to the guidelines in the FEDERAL REGISTER for public comment, considers comments with the help of the Interagency Committee on Debarment and Suspension, and issues the final guidelines.

### § 180.45 Do these guidelines cover persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

A Federal agency may add a subpart covering disqualifications to its regulation implementing these guidelines, but the guidelines in subparts A through I:

(a) Address disqualified persons only to:

(1) Provide for their inclusion in the System for Award Management (SAM.gov) Exclusions; and

(2) State the responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Do not specify the:

(1) Transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which a disqualification applies; or

(3) Process that a Federal agency uses to disqualify a person. Unlike exclusion under subparts A through I of this part, disqualification is frequently not a discretionary action that a Federal agency takes and may include special procedures.

## Subpart A—General

### § 180.100 How are subparts A through I organized?

(a) Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in table 1:

TABLE 1 TO PARAGRAPH (a)

| In subpart . . . | You will find provisions related to . . . |
|---|---|
| A | general information about Subparts A through I. |
| B | the types of transactions that are covered by the government-wide nonprocurement suspension and debarment system. |
| C | the responsibilities of persons who participate in covered transactions. |
| D | the responsibilities of Federal agency officials who are authorized to enter into covered transactions. |
| E | the responsibilities of Federal agencies for entering information into *SAM.gov* Exclusions. |
| F | the general principles governing suspension, debarment, voluntary exclusion and settlement. |
| G | suspension actions. |
| H | debarment actions. |
| I | definitions of terms used in this part. |

(b) Table 2 shows which subparts may be of special interest to you, depending on who you are:

TABLE 2 TO PARAGRAPH (b)

| If you are . . . | See Subpart(s) . . . |
|---|---|
| (1) a participant or principal in a nonprocurement transaction | A, B, C and I. |
| (2) a respondent in a suspension action | A, B, F, G and I. |
| (3) a respondent in a debarment action | A, B, F, H and I. |
| (4) a suspending official | A, B, E, F, G and I. |
| (5) a debarring official | A, B, D, F, H and I. |
| (6) a Federal agency official authorized to enter into a covered transaction | A, B, D, E and I. |

### § 180.105 How is this part written?

(a) This part uses a ''plain language'' format to make it easier for the general public and business community. The section headings and text must be read together, as they are often in the form of questions and answers.

(b) Pronouns used within this part, such as ''I'' and ''you,'' change from subpart to subpart depending on the audience being addressed.

(c) The ''Covered Transactions'' diagram in the appendix to this part shows the levels or ''tiers'' at which a Federal agency may enforce an exclusion.

### § 180.110 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meanings. Those terms are defined in subpart I. For example, three important terms are:

(a) *Exclusion or excluded,* which refers only to discretionary actions taken by a suspending or debarring official under Executive Order 12549 and Executive Order 12689 or under the Federal Acquisition Regulations (48 CFR part 9, subpart 9.4);

(b) *Disqualification or disqualified,* which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of a Federal agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible,* which generally refers to a person who is either excluded or disqualified.

### § 180.115 What do subparts A through I of this part do?

Subparts A through I provide for the reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulations and provide for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order or other legal authority.

### § 180.120 Do subparts A through I of this part apply to me?

Portions of subparts A through I (see table at §180.100(b)) apply to you if you are a:

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom a Federal agency has initiated a debarment for suspension action);

(c) Federal agency debarring or suspending official; or

(d) Federal agency official who is authorized to enter into covered transactions with non-Federal parties.

### § 180.125 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude persons who are not presently responsible from Federal programs.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

### § 180.130 How does an exclusion restrict a person's involvement in covered transactions?

With the exceptions stated in §§180.135, 315, and 420, a person who is excluded by any Federal agency may not:

(a) Be a participant in a Federal agency transaction that is a covered transaction; or

(b) Act as a principal of a person participating in one of those covered transactions.

### § 180.135 May a Federal agency grant an exception to let an excluded person participate in a covered transaction?

(a) A Federal agency head or designee may grant an exception permitting an

excluded person to participate in a particular covered transaction. If the Federal agency head or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the government-wide policy in Executive Order 12549.

(b) An exception granted by one Federal agency for an excluded person does not extend to the covered transactions of another Federal agency.

### § 180.140 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

When a Federal agency excludes a person under Executive Order 12549 or Executive Order 12689 on or after August 25, 1995, the excluded person is also ineligible for Federal procurement transactions under the Federal Acquisition Regulations. Therefore, an exclusion under this part has a reciprocal effect on Federal procurement transactions.

### § 180.145 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

When a Federal agency excludes a person under the Federal Acquisition Regulations (FAR) on or after August 25, 1995, the excluded person is also ineligible to participate in Federal agencies' nonprocurement covered transactions. Therefore, an exclusion under the FAR has a reciprocal effect on Federal nonprocurement transactions.

### § 180.150 Against whom may a Federal agency take an exclusion action?

Given a cause that justifies an exclusion under this part, a Federal agency may exclude any person who has been, is, or may reasonably be expected to be a participant or principal in a covered transaction.

### § 180.155 How do I know if a person is excluded?

Check the System for Award Management (*SAM.gov*) Exclusions to determine whether a person is excluded. The General Services Administration (GSA) maintains *SAM.gov* Exclusions and makes it available, as detailed in subpart E. When a Federal agency takes action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into SAM.gov Exclusions.

## Subpart B—Covered Transactions

### § 180.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction subject to this part's prohibitions. It may be a transaction at:

(a) The primary tier, between a Federal agency and a person (see Appendix to this part); or

(b) A lower tier between a participant in a covered transaction and another person.

### § 180.205 Why is it important if a particular transaction is a covered transaction?

The importance of whether a transaction is a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless:

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § 180.310 or § 180.415; or

(2) A Federal agency official obtains an exception from the agency head or designee to allow you to be involved in the transaction, as permitted under § 180.135.

### § 180.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in § 180.970, are covered transactions unless listed in the exemptions under § 180.215.

### § 180.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to:

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, when a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.*, those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that a Federal agency needs to respond to a national or agency recognized emergency or disaster.

(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless a Federal agency specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if:

(1) The application of an exclusion to the transaction is prohibited by law; or

(2) A Federal agency's regulation exempts it from coverage under this part.

(h) Notwithstanding paragraph (a) of this section, covered transactions must include non-procurement and procurement transactions involving entities engaged in activity that contributed to or is a significant factor in a country's non-compliance with its obligations under arms control, nonproliferation or disarmament agreements, or commitments with the United States. Federal agencies and primary tier non-procurement recipients must not award, renew, or extend a non-procurement transaction or procurement transaction, regardless of amount or tier, with any entity listed in SAM.gov Exclusions on the basis of involvement in activities that violate arms control, nonproliferation or disarmament agreements, or commitments with the United States (see section 1290 of the National Defense Authorization Act for Fiscal Year 2017). The head of a Federal agency may grant an exception to this requirement under 2 CFR 180.135 and with the concurrence of the OMB Director.

### § 180.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part:

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded under nonprocurement covered transactions.

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction covered under § 180.210, and the contract amount is expected to equal or exceed $25,000.

(2) The contract requires the consent of an official of a Federal agency. In that case, the contract is always a covered transaction regardless of the amount or who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the Appendix to this part.

(3) The contract is for Federally required audit services.

(c) A subcontract also is a covered transaction if:

(1) It is awarded by a participant in a procurement transaction under a nonprocurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to additional tiers of contracts (see the diagram in the Appendix to this part showing that optional lower tier coverage); and

(2) The value of the subcontract is expected to equal or exceed $25,000.

### § 180.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because of the Federal agency regulations governing the transaction. The appropriate Federal agency official or participant at the next higher tier who enters into the transaction with you will tell you that you must comply with applicable portions of this part.

## Subpart C—Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

### § 180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

(a) Checking *SAM.gov* Exclusions; or

(b) Collecting a certification from that person; or

(c) Adding a clause or condition to the covered transaction with that person.

### § 180.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) As a participant, you may not enter into a covered transaction with an excluded person unless the Federal agency responsible for the transaction grants an exception under § 180.135.

(b) You may not enter into any transaction with a person who is disqualified from that transaction unless you have obtained an exception under the disqualifying statute, Executive Order, or regulation.

### § 180.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) As a participant, you may continue covered transactions with an excluded person if the transactions were in existence when the Federal agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should decide whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person unless the Federal agency responsible for the transaction grants an exception under § 180.135.

### § 180.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) As a participant, you may continue to use the services of an excluded person as a principal under a covered transaction if you were using that person's services in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should decide whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the Federal agency responsible for the transaction grants an exception under § 180.135.

### § 180.320 Must I verify that principals of my covered transactions are eligible to participate?

(a) Yes. As a participant, you are responsible for determining whether your principals of your covered transactions are excluded or disqualified from participating in the transaction.

(b) You may decide the method and frequency by which you do so. You may, but are not required to check *SAM.gov* Exclusions.

### § 180.325 What happens if I do business with an excluded person in a covered transaction?

As a participant, if you knowingly do business with an excluded person, the Federal agency responsible for your transaction may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

### § 180.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to:

(a) Comply with this subpart as a condition of participating in the transaction. You may do so using any method(s) unless the regulation of the Federal agency responsible for the transaction requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person the participant enters into a covered transaction at the next lower tier.

## DISCLOSING INFORMATION—PRIMARY TIER PARTICIPANTS

### § 180.335 What information must I provide before entering into a covered transaction with a Federal agency?

Before you enter into a covered transaction at the primary tier, you, as the participant, must notify the Federal agency office that is entering into the transaction with you if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § 180.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with the commission of any of the offenses listed in § 180.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

### § 180.340 If I disclose unfavorable information required under § 180.335, will I be prevented from participating in the transaction?

As a primary tier participant, disclosing unfavorable information about yourself or a principal under § 180.335 will not necessarily cause a Federal agency to deny your participation in the covered transaction. The Federal agency will consider the information when determining whether to enter into the covered transaction. The Federal agency will also consider any additional information or explanation you elect to submit with the disclosed information.

### § 180.345 What happens if I fail to disclose information required under § 180.335?

If a Federal agency later determines that you failed to disclose information under § 180.335 that you knew at the time you entered into the covered transaction, the Federal agency may:

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

### § 180.350 What must I do if I learn of information required under § 180.335 after entering into a covered transaction with a Federal agency?

At any time after you enter into a covered transaction, you must give immediate written notice to the Federal agency office with which you entered into the transaction if you learn either that:

(a) You failed to disclose information earlier, as required by § 180.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.335.

DISCLOSING INFORMATION—LOWER TIER PARTICIPANTS

**§ 180.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?**

Before you enter into a covered transaction with a person at the next higher tier, you, as a lower tier participant, must notify that person if you know that you or any of the principals are presently excluded or disqualified.

**§ 180.360 What happens if I fail to disclose information required under § 180.355?**

When a Federal agency later determines that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, the agency may pursue any available remedies, including suspension and debarment.

**§ 180.365 What must I do if I learn of information required under § 180.355 after entering into a covered transaction with a higher tier participant?**

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that:

(a) You failed to disclose information earlier, as required by § 180.355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 180.355.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

**§ 180.400 May I enter into a transaction with an excluded or disqualified person?**

(a) As a Federal agency official, you may not enter into a covered transaction with an excluded person unless you obtain an exception under § 180.135.

(b) You may not enter into any transaction with a person disqualified from that transaction unless you obtain a waiver or exception under the statute, Executive Order, or regulation that is the basis for the person's disqualification.

**§ 180.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?**

As a Federal agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded unless you obtain an exception under § 180.135.

**§ 180.410 May I approve a participant's use of the services of an excluded person?**

After entering into a covered transaction with a participant, you, as a Federal agency official, may not approve a participant's use of an excluded person as a principal under that transaction unless you obtain an exception under § 180.135.

**§ 180.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?**

(a) As a Federal agency official, you may continue covered transactions with an excluded person or under which an excluded person is a principal if the transactions were in existence when the person was excluded. However, you are not required to continue the transactions, and you may consider termination. You should decide whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person or under which an excluded person is a principal unless you obtain an exception under § 180.135.

**§ 180.420 May I approve a transaction with an excluded or disqualified person at a lower tier?**

If a transaction at a lower tier is subject to your approval, you, as a Federal agency official, may not approve:

(a) A covered transaction with a person who is currently excluded unless you obtain an exception under § 180.135; or

(b) A transaction with a person who is disqualified from that transaction unless you obtain a waiver or exception under the statute, Executive Order, or regulation that is the basis for the person's disqualification.

### § 180.425 When do I check to see if a person is excluded or disqualified?

As a Federal agency official, you must check to see if a person is excluded or disqualified before you:

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if your Federal agency's approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if your Federal agency's approval of the principal is required.

### § 180.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) As a Federal agency official, you must check *SAM.gov* Exclusions when you take any action listed in § 180.425.

(b) You must review the information that a participant gives you, as required by § 180.335, about its status or the status of the principals of a transaction.

### § 180.435 What must I require of a primary tier participant?

As a Federal agency official, you must require each participant in a primary tier covered transaction to:

(a) Comply with subpart C as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with subpart C to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

### § 180.440 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you, as a Federal agency official, may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

### § 180.445 What action may I take if a primary tier participant fails to disclose the information required under § 180.335?

As a Federal agency official, if you determine that a participant failed to disclose information, as required by § 180.335, at the time it entered into a covered transaction with you, you may:

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

### § 180.450 What action may I take if a lower tier participant fails to disclose the information required under § 180.355 to the next higher tier?

As a Federal agency official, if you determine that a lower tier participant failed to disclose information, as required by § 180.355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

## Subpart E—System for Award Management (SAM.gov) Exclusions

### § 180.500 What is the purpose of the System for Award Management (SAM.gov) Exclusions?

The *SAM.gov* Exclusions is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

### § 180.505 Who uses SAM.gov Exclusions?

(a) Federal agency officials use *SAM.gov* Exclusions to determine whether to enter into a transaction with a person, as required under § 180.430.

(b) Participants also may, but are not required to, use *SAM.gov* Exclusions to determine if:

(1) Principals of their transactions are excluded or disqualified, as required under § 180.320; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The *SAM.gov* Exclusions are available to the general public.

### § 180.510 Who maintains SAM.gov Exclusions?

GSA maintains *SAM.gov* Exclusions. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into *SAM.gov* Exclusions.

### § 180.515 What specific information is in SAM.gov Exclusions?

(a) At a minimum, *SAM.gov* Exclusions indicate:

(1) The full name (where available) and address of each excluded and disqualified person, in alphabetical order, with cross-references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The Federal agency and name and telephone number of the agency point of contact for the action; and

(7) The unique entity identifier approved by the GSA of the excluded or disqualified person, if available.

(b)(1) The *SAM.gov* Exclusions includes a field for the Taxpayer Identification Number (TIN), or the social security number (SSN) for an individual, of an excluded or disqualified person.

(2) Agencies disclose an individual's SSN to verify an individual's identity only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

### § 180.520 Who places the information into SAM.gov Exclusions?

Federal agency officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into *SAM.gov* Exclusions:

(a) Information required by § 180.515(a);

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under the law;

(c) Information about an excluded or disqualified person, within three business days, after:

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

### § 180.525 Whom do I ask if I have questions about a person in SAM.gov Exclusions?

If you have questions about a listed person in *SAM.gov* Exclusions, ask the point of contact for the Federal agency that placed the person's name into *SAM.gov* Exclusions. You may find the Federal agency point of contact from *SAM.gov* Exclusions.

### § 180.530 Where can I find SAM.gov Exclusions?

You may access *SAM.gov* Exclusions through the internet, currently at *https://www.sam.gov*.

## Subpart F—General Principles Relating to Suspension and Debarment Actions

### § 180.600 How do suspension and debarment actions start?

When Federal agency officials receive information from any source concerning a cause for suspension or debarment, they will promptly report it, and the agency will investigate. The officials refer the question of whether to

suspend or debar you to their suspending or debarring official for consideration, if appropriate.

### § 180.605 How does suspension differ from debarment?

Suspension differs from debarment in that:

| A suspending official . . . | A debarring official . . . |
|---|---|
| (a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal or debarment proceeding. | Imposes debarment for a specified period as a final determination that a person is not presently responsible. |
| (b) Must: | |
| (1) Have *adequate evidence* that there may be a cause for debarment of a person; and | |
| (2) Conclude that *immediate action* is necessary to protect the Federal interest. | Must conclude, based on a *preponderance of the evidence,* that the person has engaged in conduct that warrants debarment. |
| (c) Usually imposes the suspension *first,* and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted. | Imposes debarment *after* giving the respondent notice of the action and an opportunity to contest the proposed debarment. |

### § 180.610 What procedures does a Federal agency use in suspension and debarment actions?

In deciding whether to suspend or debar you, a Federal agency handles the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, a Federal agency uses the procedures in this subpart and subpart G.

(b) For debarment actions, a Federal agency uses the procedures in this subpart and subpart H.

### § 180.615 How does a Federal agency notify a person of a suspension or debarment action?

(a) The suspending or debarring official sends a written notice to the last known street address, facsimile number, or email address of:

(1) You or your identified counsel; or

(2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

(b) The notice is effective if sent to any of these persons.

### § 180.620 Do Federal agencies coordinate suspension and debarment actions?

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one Federal agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

### § 180.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions unless the suspension or debarment decision is limited:

(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official:

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

### § 180.630 May a Federal agency impute the conduct of one person to another?

For purposes of actions taken under this part, a Federal agency may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated

with an organization to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

(b) *Conduct imputed from an organization to an individual or between individuals.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association, corporation, company, or similar arrangement or with the organization's knowledge, approval, or acquiescence, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

### § 180.635 May a Federal agency resolve an administrative action in lieu of debarment or suspension?

Yes. A Federal agency may resolve an administrative action in lieu of debarment or suspension by entering into an agreement at any time if it is in the Federal Government's best interest.

### § 180.640 May an agreement to resolve an administrative action include a voluntary exclusion?

Yes. If a Federal agency enters into an agreement to resolve an administrative action with you in which you agree to be excluded, it is called a voluntary exclusion and has a government-wide effect.

### § 180.645 Do other Federal agencies know if an agency agrees to a voluntary exclusion?

(a) Yes. The Federal agency agreeing to the voluntary exclusion enters information about it into SAM.gov Exclusions.

(b) Also, any agency or person may contact the Federal agency that agreed to the voluntary exclusion to find out the details of the voluntary exclusion.

### § 180.650 May an administrative agreement be the result of a settlement?

Yes. A Federal agency may enter into an administrative agreement with you as part of the settlement of a debarment or suspension action.

### § 180.655 How will other Federal awarding agencies know about an administrative agreement that is the result of a settlement?

The suspending or debarring official who enters into an administrative agreement with you must report information about the agreement in *SAM.gov* within three business days after entering into the agreement. The suspending and debarring official must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in *SAM.gov*. This information is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (41 U.S.C. 2313).

### § 180.660 Will administrative agreement information about me in SAM.gov be corrected or updated?

Yes. The suspending or debarring official who entered information into *SAM.gov* about an administrative agreement with you:

(a) Must correct the information within three business days if the official subsequently learn that any information is erroneous.

(b) Must correct in *SAM.gov*, within three business days, the ending date of the period during which the agreement is in effect if the agreement is amended to extend that period.

(c) Must report any other modification to the administrative agreement in *SAM.gov* within three business days.

(d) Is strongly encouraged to amend the information in *SAM.gov* in a timely way to incorporate any update that the official obtains and that could be helpful to Federal agencies who must use the system.

## Subpart G—Suspension

### § 180.700 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and subpart F of this part, the suspending official may impose suspension only when that official determines that:

(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under § 180.800(a), or

(b) There exists adequate evidence to suspect any other cause for debarment listed under § 180.800(b) through (d); and

(c) Immediate action is necessary to protect the public interest.

### § 180.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(b) In making this determination, the suspending official may examine:

(1) The basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents;

(2) An indictment, criminal information, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual or legal matters constitutes adequate evidence for purposes of suspension actions; and

(3) Other indicators of adequate evidence that may include, but are not limited to, warrants and their accompanying affidavits.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

### § 180.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

### § 180.715 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you:

(a) That you have been suspended;

(b) That your suspension is based on:

(1) An indictment;

(2) A criminal information;

(3) A conviction;

(4) A civil judgment;

(5) Other adequate evidence that you have committed irregularities that seriously reflect on the propriety of further Federal Government dealings with you; or

(6) Conduct of another person that has been imputed to you or your affiliation with a suspended or debarred person;

(c) Of any other irregularities supporting your suspension in terms sufficient to put you on notice without disclosing certain evidence in the Federal Government's pending or contemplated legal proceedings;

(d) Of the cause(s) upon which the suspending official relied under § 180.700 for imposing suspension;

(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

(f) Of the applicable provisions of this subpart, subpart F of this part, and any other Federal agency procedures governing suspension decision-making; and

(g) Of the government-wide effect of your suspension from procurement and nonprocurement programs and activities.

### § 180.720 How may I contest a suspension?

As a respondent, if you wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing. While oral statements may be a part of the official record, any information provided orally that you consider important must also be submitted in writing for the official record.

### § 180.725 How much time do I have to contest a suspension?

(a) As a respondent, you or your representative must either send or make arrangements to appear and present the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) The Federal agency taking the action considers the notice to be received by you:

(1) When delivered, if the Federal agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the Federal agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the Federal agency sends the notice by email or five days after the agency sends it if the email is undeliverable.

### § 180.730 What information must I provide to the suspending official if I contest the suspension?

(a) In addition to any information and argument in opposition, as a respondent, your submission to the suspending official must identify:

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) Your submission must also identify any of the paragraphs in § 180.730(a) that do not apply to you.

(c) If you fail to disclose this information or provide false information, the Federal agency taking the action may seek further criminal, civil, or administrative action against you, as appropriate.

### § 180.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) As a respondent, you will not have an additional opportunity to challenge the facts if the suspending official determines that:

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other findings by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to the information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that:

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts

under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

### § 180.740 Are suspension proceedings formal?

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) As a respondent, you or your representative must submit any documentary evidence you want the suspending official to consider.

### § 180.745 How is fact-finding conducted?

(a) If fact-finding is conducted:

(1) You may present witnesses and other evidence and confront any witness presented; and

(2) The factfinder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you, as a respondent, and the Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

### § 180.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

(a) The suspending official bases the decision on all information contained in the official record. The record includes:

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

### § 180.755 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information, and findings of fact, if any. The suspending official may extend that period for good cause.

### § 180.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of or during your suspension, the suspension may continue until the conclusion of those proceedings. However, a suspension may not exceed 12 months if proceedings are not initiated.

(b) The suspending official may extend the 12-month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other Federal, State, or local responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12-month period expires to allow the officials an opportunity to request an extension.

## Subpart H—Debarment

### § 180.800 What are the causes for debarment?

A Federal agency may debar a person for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, violating Federal criminal tax laws, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of a Federal agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under §180.135;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under §180.640 or of any other agreement that resolves a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause that is so serious or compelling in nature that it affects your present responsibility.

### §180.805 What notice does the debarring official give me if I am proposed for debarment?

After consideration of the causes in §180.800, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to §180.615, advising you:

(a) That the debarring official is considering debarring you;

(b) The reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) The cause(s) under §180.800 upon which the debarring official relied for proposing your debarment;

(d) The applicable provisions of this subpart, subpart F of this part, and any other Federal agency procedures governing debarment; and

(e) The government-wide effect of a debarment from procurement and nonprocurement programs and activities.

### §180.810 When does a debarment take effect?

Unlike a suspension, a debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

### §180.815 How may I contest a proposed debarment?

As a respondent, if you wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing. While oral statements may be a part of the official record, any information provided orally that you consider important must also be submitted in writing for the official record.

### § 180.820 How much time do I have to contest a proposed debarment?

(a) As a respondent, you or your representative must either send or make arrangements to appear and present the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.

(b) The Federal agency taking the action considers the Notice of Proposed Debarment to be received by you:

(1) When delivered, if the Federal agency mails the notice to the last known street address, or five days after the agency sends it if the letter is undeliverable;

(2) When sent, if the Federal agency sends the notice by facsimile or five days after the agency sends it if the facsimile is undeliverable; or

(3) When delivered, if the Federal agency sends the notice by email or five days after the agency sends it if the email is undeliverable.

### § 180.825 What information must I provide to the debarring official if I contest the proposed debarment?

(a) In addition to any information and argument in opposition, as a respondent, your submission to the debarring official must identify:

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in §180.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations implementing Executive Order 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information or provide false information, the Federal agency taking the action may seek further criminal, civil, or administrative action against you, as appropriate.

### § 180.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?

(a) As a respondent, you will not have an additional opportunity to challenge the facts if the debarring official determines that:

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to the information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that:

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

### § 180.835 Are debarment proceedings formal?

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you, as a respondent, to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision on whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

### § 180.840 How is fact-finding conducted?

(a) If fact-finding is conducted:

(1) You may present witnesses and other evidence and confront any witness presented; and

(2) The factfinder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made unless you, as a respondent, and the Federal agency agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

### § 180.845 What does the debarring official consider in deciding whether to debar me?

(a) The debarring official may debar you for any of the causes in § 180.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § 180.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes:

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

### § 180.850 What is the standard of proof in a debarment action?

(a) In any debarment action, the Federal agency must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

### § 180.855 Who has the burden of proof in a debarment action?

(a) The Federal agency has the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

### § 180.860 What factors may influence the debarring official's decision?

This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not government-wide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil, and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or implemented remedial or protective measures in the form of procedures, policies, and programs to effectively address the activity cited as a basis for the debarment.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Whether your business, technical, or professional license(s) has been suspended, terminated, or revoked.

(t) Other factors that are appropriate to the circumstances of a particular case.

### § 180.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in §180.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

### § 180.870 When do I know if the debarring official debars me?

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information, and findings of fact, if any. The debarring official may extend that period for good cause.

(b) The debarring official sends you written notice, pursuant to §180.615, that the official decided either:

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulations (48 CFR chapter 1) throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

### § 180.875 May I ask the debarring official to reconsider a decision to debar me?

Yes. As a debarred person, you may ask the debarring official to reconsider

the debarment decision or to reduce the time period or scope of the debarment. However, you must submit your request in writing and support it with documentation.

### § 180.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on:

(a) Newly discovered material evidence;

(b) A reversal of the conviction or civil judgment upon which your debarment was based;

(c) A bona fide change in ownership or management;

(d) Elimination of other causes for which the debarment was imposed; or

(e) Other reasons the debarring official finds appropriate.

### § 180.885 May the debarring official extend a debarment?

(a) Yes. The debarring official may extend a debarment for an additional period if that official determines that an extension is necessary to protect the public interest.

(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and subpart F, to extend the debarment.

## Subpart I—Definitions

### § 180.900 Adequate evidence.

*Adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

### § 180.905 Affiliate.

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways a Federal agency may determine control include, but are not limited to:

(a) Interlocking management or ownership;

(b) Identity of interests among family members;

(c) Shared facilities and equipment;

(d) Common use of employees; or

(e) A business entity organized following the exclusion of a person with the same or similar management, ownership, or principal employees as the excluded person.

### § 180.910 Agent or representative.

*Agent or representative* means any person who acts on behalf of or who is authorized to commit a participant in a covered transaction.

### § 180.915 Civil judgment.

*Civil judgment* means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, or other disposition which creates a civil liability for the complained of wrongful acts or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

### § 180.920 Conviction.

*Conviction* means:

(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

### § 180.925 Debarment.

*Debarment* means an action taken by a debarring official under subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulations (48 CFR chapter 1). A person so excluded is debarred.

### § 180.930 Debarring official.

*Debarring official* means a Federal agency official who is authorized to

impose debarment. A debarring official is either:

(a) The agency head; or

(b) An official designated by the agency head.

### § 180.935 Disqualified.

*Disqualified* means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689), or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 3142);

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368), and Executive Order 11738 (38 FR 25161).

### § 180.940 Excluded or exclusion.

*Excluded or exclusion* means:

(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

### § 180.945 System for Award Management (SAM.gov) Exclusions.

*System for Award Management (SAM.gov) Exclusions* means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about ineligible persons.

### § 180.950 Federal agency.

*Federal agency* means any United States executive department, military department, defense agency, or any other executive branch agency. For the purposes of this part, other agencies of the Federal Government are not considered ''agencies'' unless they issue regulations adopting the governmentwide Debarment and Suspension system under Executive Orders 12549 and 12689.

### § 180.955 Indictment.

*Indictment* means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense will be given the same effect as an indictment.

### § 180.960 Ineligible or ineligibility.

*Ineligible or ineligibility* means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

### § 180.965 Legal proceedings.

*Legal proceeding* means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

### § 180.970 Nonprocurement transaction.

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to, the following:

(1) Grants;

(2) Cooperative agreements;

(3) Scholarships;

(4) Fellowships;

(5) Contracts of assistance;

(6) Loans;

(7) Loan guarantees;

(8) Subsidies;

(9) Insurances;

(10) Payments for specified uses; and

(11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

### § 180.975 Notice.

*Notice* means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by email or facsimile. (See § 180.615.)

### § 180.980 Participant.

*Participant* means any person who submits a proposal for or enters into a covered transaction, including an agent or representative of a participant.

**§ 180.985 Person.**

*Person* means any individual, corporation, partnership, association, unit of government, or legal entity, regardless of how organized.

**§ 180.990 Preponderance of the evidence.**

*Preponderance of the evidence* means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

**§ 180.995 Principal.**

*Principal* means:

(a) An officer, director, owner, partner, principal investigator, or another person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who:

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or,

(3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

**§ 180.1000 Respondent.**

*Respondent* means a person against whom a Federal agency has initiated a debarment or suspension action.

**§ 180.1005 State.**

(a) *State* means:

(1) Any of the states of the United States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) Any territory or possession of the United States; or

(5) Any agency or instrumentality of a State.

(b) For purposes of this part, *State* does not include institutions of higher education, hospitals, or units of local government.

**§ 180.1010 Suspending official.**

(a) *Suspending official* means a Federal agency official authorized to impose suspension. The suspending official is either:

(1) The agency head; or

(2) An official designated by the agency head.

**§ 180.1015 Suspension.**

*Suspension* is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulations (48 CFR chapter 1) for a temporary period, pending completion of a Federal agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

**§ 180.1020 Voluntary exclusion or voluntarily excluded.**

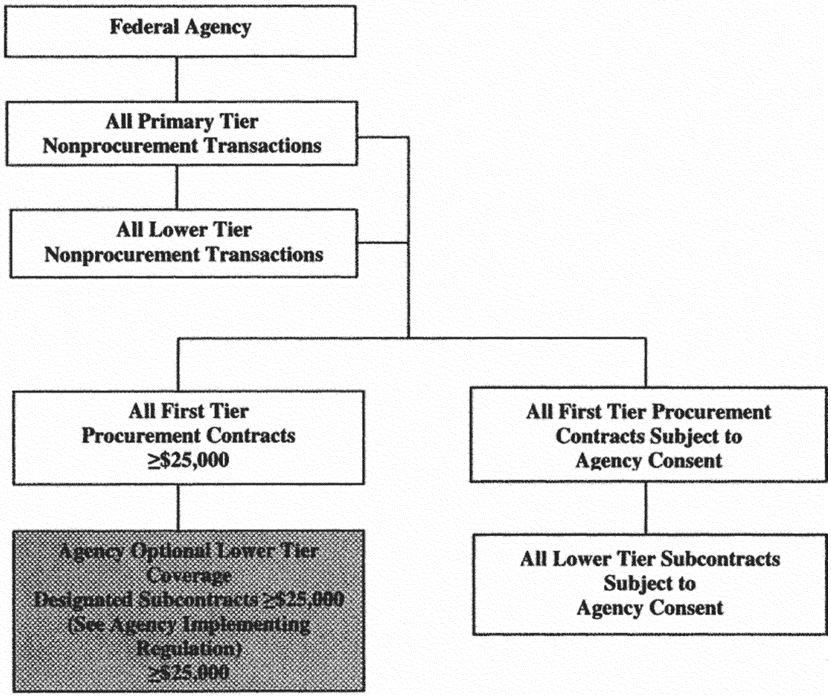
(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have a government-wide effect.

(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

## APPENDIX A TO PART 180—COVERED TRANSACTIONS

Appendix to Part 180___- Covered Transactions

COVERED TRANSACTIONS




## PART 181 [RESERVED]

## PART 182—GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

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AUTHORITY: 41 U.S.C. 8101–8106; 31 U.S.C. 503; 31 U.S.C. 6307.

SOURCE: 89 FR 30130, Apr. 22, 2024, unless otherwise noted.

### § 182.5 What does this part do?

This part provides guidance for Federal agencies on the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 8101–8106, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

### § 182.10 How is this part organized?

This part is organized into two segments.

(a) Sections 182.5 through 182.40 contain general policy direction for Federal agencies' use of the uniform policies and procedures in subparts A through F.

(b) Subparts A through F contain uniform government-wide policies and procedures for Federal agency use to specify the:

(1) Types of awards that are covered by drug-free workplace requirements;

(2) Drug-free workplace requirements with which a recipient must comply;

(3) Actions required of a Federal agency awarding official; and

(4) Consequences of a violation of drug-free workplace requirements.

### § 182.15 To whom does the guidance apply?

This part provides guidance to Federal agencies. Publication of this guidance in the Code of Federal Regulations (CFR) does not change its nature—it is guidance and not regulation. Federal agencies' implementation of this guidance governs the rights and responsibilities of other persons affected by the drug-free workplace requirements.

### § 182.20 What must a Federal agency do to implement the guidance?

To comply with the requirement in 41 U.S.C. 8106 for government-wide regulations, each Federal agency that awards grants or cooperative agreements or makes other financial assistance awards that are subject to the drug-free workplace requirements in subparts A through F of the guidance must issue a regulation consistent with those subparts.

### § 182.25 What must a Federal agency address in its implementation of the guidance?

Each Federal agency's implementing regulation:

(a) Must establish drug-free workplace policies and procedures for that Federal agency's Federal awards consistent with this guidance. When adopted by a Federal agency, the provisions of the guidance have a regulatory effect on that Federal agency's awards.

(b) Must address some matters for which the guidance in this part gives the Federal agency discretion. Specifically, the regulation must:

(1) State whether the Federal agency:

(i) Has a central point to which a recipient may send the notification of a conviction that is required under §182.225(a) or §182.300(b); or

(ii) Requires the recipient to send the notification to the Federal agency awarding official or their designee for each Federal award.

(2) Either:

(i) State that the Federal agency head is the official authorized to determine under §182.500 or §182.505 that a recipient has violated the drug-free workplace requirements; or

(ii) Provide the title of the official designated to make that determination.

(c) May also, at the Federal agency's option, identify any specific types of financial assistance awards, in addition to grants and cooperative agreements, to which the Federal agency makes this guidance applicable.

### §182.30 Where does a Federal agency implement the guidance?

Each Federal agency that awards grants or cooperative agreements or makes other financial assistance awards that are subject to the drug-free workplace guidance in this part must issue a regulation implementing the guidance within its chapter in subtitle B of this title of the Code of Federal Regulations.

### §182.40 How is the guidance maintained?

The OMB publishes proposed changes to the guidance in the FEDERAL REGISTER for public comment, considers comments with the help of appropriate interagency working groups, and then issues any changes to the guidance in final form.

## Subpart A—Purpose and Coverage

### §182.100 How is this part written?

(a) This part uses a ''plain language'' format to make it easier for the general public and business community to use and understand. The section headings and text must be read together, as they are often in the form of questions and answers.

(b) Pronouns used within this part, such as ''I'' and ''you,'' change from subpart to subpart depending on the audience being addressed.

### §182.105 Do terms in this part have special meanings?

This part uses terms that have special meanings. Those terms are defined in subpart F.

### §182.110 What do subparts A through F of this part do?

Subparts A through F specify standard policies and procedures to carry out the Drug-Free Workplace Act of 1988 for financial assistance awards.

### §182.115 Does this part apply to me?

(a) Portions of this part apply to you if you are either:

(1) A recipient of a Federal assistance award (see definitions of award and recipient in §§182.605 and 182.660, respectively); or

(2) A Federal agency awarding official.

(b) The following table shows the subparts that apply to you:

| If you are * * * | See subparts * * * |
|---|---|
| (1) a recipient who is not an individual. | A, B and E. |
| (2) a recipient who is an individual. | A, C and E. |
| (3) a Federal agency awarding official. | A, D and E. |

### §182.120 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award to which the Federal agency head, or their designee, determines that the application of this part would be inconsistent with the international obligations of the United States or the

laws or regulations of a foreign government.

### § 182.125 Does this part affect the Federal contracts that I receive?

This part will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 182.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in Chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

## Subpart B—Requirements for Recipients Other Than Individuals

### § 182.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to:

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 182.205 through 182.220); and

(2) Take actions concerning employees convicted of violating drug statutes in the workplace (see § 182.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 182.230).

### § 182.205 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, the employee:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if the employee is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

### § 182.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 182.205 be given to each employee who will be engaged in the performance of any Federal award.

### § 182.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about:

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

### § 182.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 182.205 and an ongoing awareness program as described in § 182.215, you must publish the statement and establish the program by the time given in the following table:

| If * * * | Then you * * * |
|---|---|
| (a) The performance period of the award is less than 30 days | Must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed. |

| If * * * | Then you * * * |
|---|---|
| (b) The performance period of the award is 30 days or more ... | Must have the policy statement and program in place within 30 days after award. |
| (c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program. | May ask the Federal agency awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the Federal agency awarding official. |

### § 182.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by §182.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must:

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every Federal agency awarding official or their designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either:

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State, or local health, law enforcement, or another appropriate agency.

### § 182.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each Federal agency award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces:

(1) To the Federal agency awarding official that is making the Federal award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the Federal award, in which case you must make the information available for inspection upon request by agency officials or their designated representatives.

(b) Your workplace identification for a Federal award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (for example, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the Federal agency awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the Federal award, you must inform the Federal agency awarding official.

## Subpart C—Requirements for Recipients Who Are Individuals

### § 182.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a Federal award, if you are an individual recipient, you must agree that:

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the Federal award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any Federal award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the Federal agency awarding official or their designee for each Federal award that you currently have, unless the agency designates a central point for the receipt of the notices, either in the award document or its regulation implementing the guidance in this part. When notice is made to a central point, it must include the identification number(s) of each affected Federal award.

## Subpart D—Responsibilities of Federal Agency Awarding Officials

### § 182.400 What are my responsibilities as a Federal agency awarding official?

As a Federal agency awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in:

(a) Subpart B of this part, if the recipient is not an individual; or

(b) Subpart C of this part, if the recipient is an individual.

## Subpart E—Violations of This Part and Consequences

### § 182.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Federal agency head or their designee determines, in writing, that:

(a) The recipient has violated the requirements of subpart B; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good-faith effort to provide a drug-free workplace.

### § 182.505 How are violations of this part determined for recipients who are individuals?

A recipient who is an individual is in violation of the requirements of this part if the Federal agency head or their designee determines, in writing, that:

(a) The recipient has violated the requirements of subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

### § 182.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 182.500 or § 182.505, the Federal agency may take one or more of the following actions:

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under the Federal agency's regulation implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180) for a period not to exceed five years.

### § 182.515 Are there any exceptions to those actions?

For a particular award, the Federal agency head may waive, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

## Subpart F—Definitions

### § 182.605 Award.

*Award* means an award of financial assistance by a Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the

grant is exempted from coverage under the government-wide rule that implements OMB Circular A–102 (for availability of OMB circulars, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (that is, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

### § 182.610 Controlled substance.

*Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

### § 182.615 Conviction.

*Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

### § 182.620 Cooperative agreement.

*Cooperative agreement* means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 182.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

### § 182.625 Criminal drug statute.

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

### § 182.630 Debarment.

*Debarment* means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and Federal agency regulations implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180, which implements Executive Orders 12549 and 12689).

### § 182.635 Drug-free workplace.

*Drug-free workplace* means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

### § 182.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including:

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (for example, volunteers, even if used to meet a cost sharing requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

### § 182.645 Federal agency or agency.

*Federal agency or agency* means any United States executive department, military department, government corporation, government-controlled corporation, any other establishment in

the executive branch (including the Executive Office of the President), or any independent regulatory agency.

### § 182.650 Grant.

*Grant* means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

### § 182.655 Individual.

*Individual* means a natural person.

### § 182.660 Recipient.

*Recipient* means any individual, corporation, partnership, association, unit of government (except a Federal agency), or legal entity, regardless of how it is organized, that receives an award directly from a Federal agency.

### § 182.665 State.

*State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

### § 182.670 Suspension.

*Suspension* means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and Federal agency regulations implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180, which implements Executive Orders 12549 and 12689). Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

## PART 183—NEVER CONTRACT WITH THE ENEMY

Sec.

183.5 Purpose of this part.
183.10 Applicability.
183.15 Responsibilities of Federal agencies.
183.20 Reporting responsibilities of Federal agencies.
183.25 Responsibilities of recipients.
183.30 Access to records.
183.35 Definitions.

APPENDIX A TO PART 183—AWARD TERMS FOR NEVER CONTRACT WITH THE ENEMY

AUTHORITY: Pub. L. 113–291, as amended by Pub. L. 115–232, Pub. L. 116–92, Pub. L. 116–283, Pub. L. 117–263; 31 U.S.C. 503; 31 U.S.C. 6307.

SOURCE: 89 FR 30134, Apr. 22, 2024, unless otherwise noted.

### § 183.5 Purpose of this part.

This part provides guidance to Federal agencies on the implementation of the Never Contract with the Enemy requirements applicable to certain grants and cooperative agreements, as specified in subtitle E, title VIII of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113–291), as amended by Sec. 820 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117–263), hereafter cited as ''Never Contract with the Enemy'').

### § 183.10 Applicability.

(a) This part applies only to grants and cooperative agreements that are expected to exceed $50,000 and that are performed outside the United States, including U.S. territories, and that are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. It does not apply to the authorized intelligence or law enforcement activities of the Federal Government.

(b) All elements of this part are applicable until the date of expiration as provided in law.

### § 183.15 Responsibilities of Federal agencies.

(a) Prior to making an award for a covered grant or cooperative agreement (see also §183.35), the Federal agency must check the current list of prohibited or restricted persons or entities in the System for Award Management (*SAM.gov*) Exclusions.

(b) The Federal agency may include the award term provided in appendix A in all covered grant and cooperative agreement awards in accordance with Never Contract with the Enemy.

(c) A Federal agency may become aware of a person or entity that:

(1) Provides funds, including goods and services, received under a covered grant or cooperative agreement of an executive agency directly or indirectly to covered persons or entities; or

(2) Fails to exercise due diligence to ensure that no funds, including goods and services, received under an executive agency's covered grant or cooperative agreement are provided directly or indirectly to covered persons or entities.

(d) When a Federal agency becomes aware of such a person or entity, it may do any of the following actions:

(1) Restrict the future award of all Federal contracts, grants, and cooperative agreements to the person or entity based upon concerns that Federal awards to the entity would provide grant funds directly or indirectly to a covered person or entity.

(2) Terminate any grant, cooperative agreement, or contract to a covered person or entity upon becoming aware that the recipient has failed to exercise due diligence to ensure that no award funds are provided directly or indirectly to a covered person or entity.

(3) Void in whole or in part any grant, cooperative agreement, or contracts of the executive agency concerned upon a written determination by the head of contracting activity or another appropriate official that the grant or cooperative agreement provides funds directly or indirectly to a covered person or entity.

(e) The Federal agency must notify recipients in writing regarding its decision to restrict all future awards, terminate or void a grant or cooperative agreement, or both. The agency must also notify the recipient in writing about the recipient's right to request an administrative review (using the agency's procedures) of the restriction, termination, or void of the grant or cooperative agreement within 30 days of receiving notification.

### § 183.20 Reporting responsibilities of Federal agencies.

(a) If a Federal agency restricts all future awards to a covered person or entity, it must enter information on the ineligible person or entity into SAM.gov Exclusions as a prohibited or restricted source pursuant to Never Contract with the Enemy.

(b) When a Federal agency terminates or voids a grant or cooperative agreement due to Never Contract with the Enemy, it must report the action as a termination for material failure to comply in *SAM.gov*. Federal agencies must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in *SAM.gov*.

(c) The Federal agency must document and report to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies):

(1) Any action to restrict all future awards or to terminate or void an award with a covered person or entity.

(2) Any decision not to restrict all future awards, terminate, or void an award along with the agency's reasoning for not taking one of these actions after the agency became aware that a person or entity is a prohibited or restricted source.

(d) Each report referenced in paragraph (c)(1) of this section must include the following:

(1) The executive agency taking such action.

(2) An explanation of the basis for the action taken.

(3) The value of the terminated or voided grant or cooperative agreement.

(4) The value of all grants and cooperative agreements of the executive agency with the person or entity concerned at the time the grant or cooperative agreement was terminated or voided.

(e) Each report referenced in paragraph (c)(2) of this section must include the following:

(1) The executive agency concerned.

(2) An explanation of the basis for not taking the action.

(f) For each instance in which an executive agency exercised the additional authority to examine recipient and lower tier entity (for example, subrecipient or contractor) records, the agency must report in writing to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies) the following:

(1) An explanation of the basis for the action taken; and

(2) A summary of the results of any examination of records.

### § 183.25 Responsibilities of recipients.

(a) Recipients of covered grants or cooperative agreements must fulfill the requirements outlined in the award term provided in Appendix A to this part.

(b) Recipients must also flow down the provisions in award terms covered in Appendix A to this part to all contracts and subawards under the award.

### § 183.30 Access to records.

In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards, to the extent necessary, to ensure that funds, including supplies and services, received under a covered grant or cooperative agreement (see § 183.35) are not provided directly or indirectly to a covered person or entity in accordance with Never Contract with the Enemy. The Federal agency may only exercise this authority upon a written determination by the Federal agency that relies on a finding by the commander of a covered combatant command that there is reason to believe that funds, including supplies and services, received under the grant or cooperative agreement may have been provided directly or indirectly to a covered person or entity.

### § 183.35 Definitions.

Terms used in this part are defined as follows:

*Contingency operation*, as defined in 10 U.S.C. 101(a)(13), means a military operation that:

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under 10 U.S.C. 688, 12301(a), 12302, 12304, 12304a, 12305, 12406 of 10 U.S.C. chapter 15, 14 U.S.C. 3713 or any other provision of law during a war or during a national emergency declared by the President or Congress.

*Covered combatant command* means the following:

(1) The United States Africa Command.

(2) The United States Central Command.

(3) The United States European Command.

(4) The United States Pacific Command.

(5) The United States Southern Command.

(6) The United States Transportation Command.

*Covered grant or cooperative agreement* means a grant or cooperative agreement, as defined in 2 CFR 200.1 with an estimated value in excess of $50,000 that is performed outside the United States, including its possessions and territories, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. Except for U.S. Department of Defense grants and cooperative agreements that were awarded on or before December 19, 2017, that will be performed in the United States Central Command, where the estimated value is in excess of $100,000.

*Covered person or entity* means a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

APPENDIX A TO PART 183—AWARD TERMS FOR NEVER CONTRACT WITH THE ENEMY

Federal agencies may include the following award terms in all awards for covered grants and cooperative agreements in accordance with Never Contract with the Enemy:

I. TERM 1—PROHIBITION ON PROVIDING FUNDS TO THE ENEMY

(a) You must:

(1) Exercise due diligence to ensure that no funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through 2 CFR 180.300 prior to issuing a subaward or contract and;

(2) Terminate or void in whole or in part any subaward or contract with a person or entity listed in the System for Award Management (*SAM.gov*) as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal agency provides written approval to continue the subaward or contract.

(b) You may include the substance of this clause, including paragraph (a) of this clause, in subawards under this grant or cooperative agreement that have an estimated value over $50,000 and will be performed outside the United States, including its outlying areas.

(c) The Federal agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal agency becomes aware that you have failed to exercise due diligence as required by paragraph (a) of this clause or if the Federal agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(End of term)

II. TERM 2—ADDITIONAL ACCESS TO RECIPIENT RECORDS

(a) In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any of your records and the records of your subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017, that will be performed in the United States Central Command (USCENTCOM) theater of operations.

(b) The substance of this clause, including this paragraph (b), must be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over $50,000 and will be performed outside the United States, including its outlying areas.

(End of term)

# PART 184—BUY AMERICA PREFERENCES FOR INFRASTRUCTURE PROJECTS

Sec.

184.1 Purpose and policy.
184.2 Applicability, effective date, and severability.
184.3 Definitions.
184.4 Applying the Buy America Preference to a Federal award.
184.5 Determining the cost of components for manufactured products.
184.6 Construction material standards.
184.7 Federal agency's issuance of a Buy America Preference waiver.
184.8 Exemptions to the Buy America Preference.

AUTHORITY: Pub. L. 117–58, 135 Stat. 429.

SOURCE: 88 FR 57787, Aug. 23, 2023, unless otherwise noted.

## § 184.1 Purpose and policy.

(a) *Purpose.* This part provides guidance to Federal agencies on the implementation of the Buy America Preference applicable to Federal financial assistance set forth in part I of subtitle A, Buy America Sourcing Preferences, of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act (Pub. L. 117–58) at division G, title IX, subtitle A, part I, sections 70911 through 70917.

(b) *Policy.* The head of each Federal agency must ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States. *See* section 70914(a) of the Build America Buy America Act.

### § 184.2 Applicability, effective date, and severability.

(a) *Non-applicability of this part to existing Buy America Preferences.* This part does not apply to a Buy America Preference meeting or exceeding the requirements of section 70914 of the Build America, Buy America Act applied by a Federal agency to Federal awards for infrastructure projects before November 15, 2021.

(b) *Effective date of this part.* The effective date of this part is October 23, 2023. Except as provided in paragraph (c) of this section, this part applies to Federal awards obligated on or after its effective date. Awards obligated on or after May 14, 2022, the effective date of the Build America, Buy America Act, and before the effective date of this part, are instead subject to OMB Memorandum M–22–11.

(c) *Modified effective date of this part for certain infrastructure projects.* If an infrastructure project that has previously received a Federal award obligated on or after May 14, 2022, but before the effective date of this part receives an additional Federal award obligated within one year of the effective date of this part, the additional Federal award is subject to OMB Memorandum M–22–11. However, if significant design or planning changes are made to the infrastructure project, the Federal agency may apply this part to the additional Federal award. Federal awards for an infrastructure project obligated after one year from the effective date of this part are subject to this part, regardless of whether this part applied to previous awards for the project.

(d) *Severability.* The provisions of this part are separate and severable from one another. OMB intends that if a provision of this part is held to be invalid or unenforceable as applied to a particular person or circumstance, the provision should be construed so as to continue to give the maximum effect permitted by law as applied to other persons not similarly situated or to dissimilar circumstances. If any provision is determined to be wholly invalid and unenforceable, it should be severed from the remaining provisions of this part, which should remain in effect.

### § 184.3 Definitions.

Acronyms used in this part have the same meaning as provided in 2 CFR 200.0. Terms not defined in this part have the same meaning as provided in 2 CFR 200.1, except for the terms ''equipment,'' ''expenditures,'' and ''supplies,'' which are not specifically defined for this part. As used in this part:

*Build America, Buy America Act* means division G, title IX, subtitle A, parts I–II, sections 70901 through 70927 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58).

*Buy America Preference* means the ''domestic content procurement preference'' set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

*Component* means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into: a manufactured product; or, where applicable, an iron or steel product.

*Construction materials* means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

(1) The listed items are:

(i) Non-ferrous metals;

(ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);

(iii) Glass (including optic glass);

(iv) Fiber optic cable (including drop cable);

(v) Optical fiber;

(vi) Lumber;

(vii) Engineered wood; and

(viii) Drywall.

(2) Minor additions of articles, materials, supplies, or binding agents to a

construction material do not change the categorization of the construction material.

*Infrastructure project* means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. *See also* paragraphs (c) and (d) of §184.4.

*Iron or steel products* means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

*Manufactured products* means:

(1) Articles, materials, or supplies that have been:

(i) Processed into a specific form and shape; or

(ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

(2) If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under §184.4(e) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under §184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.

*Manufacturer* means the entity that performs the final manufacturing process that produces a manufactured product.

*Predominantly of iron or steel or a combination of both* means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

*Produced in the United States* means:

(1) In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) In the case of manufactured products:

(i) The product was manufactured in the United States; and

(ii) The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. *See* §184.2(a). The costs of components of a manufactured product are determined according to §184.5.

(3) In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. *See* §184.6 for more information on the meaning of ''all manufacturing processes'' for specific construction materials.

*Section 70917(c) materials* means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. *See* section 70917(c) of the Build America, Buy America Act.

[88 FR 57787, Aug. 23, 2023, as amended at 89 FR 79732, Oct. 1, 2024]

### §184.4 Applying the Buy America Preference to a Federal award.

(a) *Applicability of Buy America Preference to infrastructure projects.* The Buy America Preference applies to Federal awards where funds are appropriated or otherwise made available for infrastructure projects in the United States, regardless of whether infrastructure is the primary purpose of the Federal award.

(b) *Including the Buy America Preference in Federal awards.* All Federal awards with infrastructure projects must include the Buy America Preference in the terms and conditions. The Buy America Preference must be included in all subawards, contracts, and purchase orders for the work performed, or products supplied under the Federal award. The terms and conditions of a Federal award flow down to subawards to subrecipients unless a particular section of the terms and conditions of the Federal award specifically indicate otherwise.

(c) *Infrastructure in general.* Infrastructure encompasses public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

(d) *Interpretation of infrastructure.* The Federal agency should interpret the term ''infrastructure'' broadly and consider the description provided in paragraph (c) of this section as illustrative and not exhaustive. When determining if a particular project of a type not listed in the description in paragraph (c) constitutes ''infrastructure,'' the Federal agency should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public.

(e) *Categorization of articles, materials, and supplies.* (1) An article, material, or supply should only be classified into one of the following categories:

(i) Iron or steel products;

(ii) Manufactured products;

(iii) Construction materials; or

(iv) Section 70917(c) materials.

(2) An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in paragraph (e)(1) of this section. The classification of an article, material, or supply as falling into one of the categories listed in paragraph (e)(1) must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

(f) *Application of the Buy America Preference by category.* An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

### § 184.5 Determining the cost of components for manufactured products.

In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

(a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a) of this section, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

### § 184.6 Construction material standards.

(a) The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered ''produced in the United States.''

(1) *Non-ferrous metals.* All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

(2) *Plastic and polymer-based products.* All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

(3) *Glass.* All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

(4) *Fiber optic cable (including drop cable).* All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

(5) *Optical fiber.* All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

(6) *Lumber.* All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

(7) *Drywall.* All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

(8) *Engineered wood.* All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

(b) Except as specifically provided, only a single standard under paragraph (a) of this section should be applied to a single construction material.

### § 184.7 Federal agency's issuance of a Buy America Preference waiver.

(a) *Justification of waivers.* A Federal agency may waive the application of the Buy America Preference in any case in which it finds that:

(1) Applying the Buy America Preference would be inconsistent with the public interest (a ''public interest waiver'');

(2) Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a ''nonavailability waiver''); or

(3) The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall infrastructure project by more than 25 percent (an ''unreasonable cost waiver'').

(b) *Requesting a waiver.* Recipients may request waivers from a Federal agency if the recipient reasonably believes a waiver is justified under paragraph (a) of this section. A request from a recipient to waive the application of the Buy America Preference must be provided to the Federal agency in writing. Federal agencies must provide waiver request submission instructions and guidance on the format, contents, and supporting materials required for waiver requests from recipients.

(c) *Before issuing a proposed waiver.* Before issuing a proposed waiver, the Federal agency must prepare a detailed written explanation for the proposed determination to issue the waiver based on a justification listed under paragraph (a) of this section, including for waivers requested by a recipient.

(d) *Before issuing a final waiver.* Before issuing a final waiver, the Federal agency must:

(1) Make the proposed waiver and the detailed written explanation publicly available in an easily accessible location on a website designated by the Federal agency and the Office of Management and Budget;

(2) Except as provided in paragraph (e) of this section, provide a period of not less than 15 calendar days for public comment on the proposed waiver; and

(3) Unless the Director of OMB provides otherwise, submit the waiver determination to the Made in America Office in OMB for final review pursuant to Executive Order 14005 and section 70923(b) of the Build America, Buy America Act.

(e) *Waivers of general applicability.* Waivers of general applicability mean waivers that apply generally across multiple Federal awards. A Federal agency must provide a period of not less than 30 days for public comment on a proposal to modify or renew a waiver of general applicability.

**§ 184.8 Exemptions to the Buy America Preference.**

(a) The Buy America Preference does not apply to expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 16 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.

(b) ''Pre and post disaster or emergency response expenditures'' consist of expenditures for financial assistance that are:

(1) Authorized by statutes other than the Stafford Act, 42 U.S.C. 5121 *et seq.;* and

(2) Made in anticipation of or response to an event or events that qualify as an ''emergency'' or ''major disaster'' within the meaning of the Stafford Act, 42 U.S.C. 5122(1), (2).

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ACRONYMS

## Subpart A—Acronyms and Definitions

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## Subpart A—Acronyms and Definitions

ACRONYMS

### § 200.0 Acronyms.

(a) CAS Cost Accounting Standards
(b) CFR Code of Federal Regulations
(c) F&A Facilities and Administration
(d) FAC Federal Audit Clearinghouse
(e) FAIN Federal Award Identification Number
(f) FAR Federal Acquisition Regulation
(g) FASB Financial Accounting Standards Board
(h) FFATA Federal Funding Accountability and Transparency Act of 2006 or Transparency Act, Public Law 109–282, as amended (See 31 U.S.C. 6101, statutory note)
(i) FOIA Freedom of Information Act
(j) FR Federal Register
(k) GAAP Generally Accepted Accounting Principles
(l) GAGAS Generally Accepted Government Auditing Standards
(m) GASB Government Accounting Standards Board
(n) GAO Government Accountability Office

(o) GSA General Services Administration
(p) IBS Institutional Base Salary
(q) IHE Institutions of Higher Education
(r) IRC Internal Revenue Code
(s) ISDEAA Indian Self-Determination and Education and Assistance Act
(t) MTC Modified Total Cost
(u) MTDC Modified Total Direct Cost
(v) NFE Non-Federal Entity
(w) NOFO Notice of Funding Opportunity
(x) OMB Office of Management and Budget
(y) PII Personally Identifiable Information
(z) PMS Payment Management System
(aa) SAM System for Award Management (*SAM.gov*)
(bb) UEI Unique Entity Identifier
(cc) U.S.C. United States Code
(dd) VAT Value Added Tax

### § 200.1 Definitions.

The following is a list of definitions of key terms frequently used in 2 CFR part 200. Definitions found in Federal statutes or regulations that apply to particular programs take precedence over the following definitions. However, where the following definitions implement specific statutory requirements that apply government-wide, such as the Single Audit Act, the following definitions take precedence over Federal regulations. For purposes of this part, the following definitions apply:

*Acquisition cost* means the (total) cost of the asset including the cost to ready the asset for its intended use. For example, acquisition cost for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software include those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the recipient's or subrecipient's regular accounting practices.

*Advance payment* means a payment that a Federal agency or pass-through entity makes by any appropriate payment mechanism and payment method before the recipient or subrecipient disburses the funds for program purposes.

*Allocation* means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

*Assistance Listings* refer to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration (GSA) at *SAM.gov*.

*Assistance Listing number* means a unique number assigned to identify an Assistance Listing.

*Assistance Listing program title* means the title that corresponds to the Assistance Listing number.

*Audit finding* means deficiencies which the auditor is required to report in the schedule of findings and questioned costs. (See § 200.516(a))

*Auditee* means any non-Federal entity that must be audited under this part. (See § 200.501)

*Auditor* means an auditor who is a public accountant or a Federal, State, local government, or Indian Tribe audit organization that meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

*Budget* means the financial plan for the Federal award that the Federal agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal agency or pass-through entity.

*Budget period* means the time interval from the start date of a funded portion of an award to the end date of that funded portion, during which recipients and subrecipients are authorized to incur financial obligations of the funds

awarded, including any funds carried forward or other revisions pursuant to § 200.308.

*Capital assets* means:

(1) Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

(i) Land, buildings (facilities), equipment, and intellectual property (including software), whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and

(ii) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

(2) For purpose of this part, capital assets do not include intangible right-to-use assets (per GASB) and right-to-use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property or equipment for a period of time under a lease contract. See § 200.465.

*Capital expenditures* means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

*Central service cost allocation plan* means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a State, local government, or Indian Tribe to its departments and agencies on a centralized basis. The costs of these services may be allocated or billed to users.

*Claim* means, depending on the context, either:

(1) A written demand or assertion by one of the parties to a Federal award seeking as a matter of right:

(i) The payment of money;

(ii) The adjustment or interpretation of the terms and conditions of the Federal award; or

(iii) Other relief arising under or relating to a Federal award.

(2) A request for payment not in dispute when submitted.

*Class of Federal awards* means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of recipient or group of recipients to which specific provisions or exceptions may apply.

*Closeout* means the process by which the Federal agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in § 200.344.

*Cluster of programs* means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. ''Other clusters'' are defined by OMB in the compliance supplement or designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating ''other clusters,'' a State must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 200.332. A cluster of programs must be considered one program when determining major programs as described in § 200.518, and with the exception of R&D as described in § 200.501(d), whether a program-specific audit may be elected.

*Cognizant agency for audit* means the Federal agency designated to carry out the responsibilities described in § 200.513(a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of Federal agency Single Audit contacts can be found on the Federal Audit Clearinghouse (FAC) website.

*Cognizant agency for indirect costs* means the Federal agency responsible for reviewing, negotiating and approving cost allocation plans or indirect cost proposals on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same

as the cognizant agency for audit. For assignments of cognizant agencies, see the following:

(1) For Institutions of Higher Education (IHEs): Appendix III, paragraph C.11.

(2) For nonprofit organizations: Appendix IV, paragraph C.2.a.

(3) For State and local governments: Appendix V, paragraph F.1.

(4) For Indian Tribes: Appendix VII, paragraph D.1.

*Compliance supplement* means an annually updated authoritative source of information for auditors that identifies existing important compliance requirements that the Federal Government expects to be considered as part of an audit. Auditors use it to understand the Federal program's objectives, procedures, and compliance requirements, as well as audit objectives and suggested audit procedures for determining compliance with the relevant Federal program.

*Computing devices* means machines that acquire, store, analyze, process, and publish data and other information electronically, including accessories (or ''peripherals'') for printing, transmitting and receiving, or storing electronic information. See also the definitions of *supplies* and *information technology systems* in this section.

*Contract* means, for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient conducts procurement transactions under a Federal award. For additional information on subrecipient and contractor determinations, see §200.331. See also the definition of *subaward* in this section.

*Contractor* means an entity that receives a contract.

*Continuation funding* means the second or subsequent budget period within an identified period of performance.

*Cooperative agreement* means a legal instrument of financial assistance between a Federal agency and a recipient or between a pass-through entity and subrecipient, consistent with 31 U.S.C. 6302–6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement of the Federal agency or pass-through entity in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(ii) An agreement that provides only:

(A) Direct United States Government cash assistance to an individual;

(B) A subsidy;

(C) A loan;

(D) A loan guarantee; or

(E) Insurance.

*Corrective action* means action taken by the auditee that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

*Cost allocation plan* means a central service or public assistance cost allocation plan.

*Cost objective* means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, and capital projects. A cost objective may be a major function of the recipient or subrecipient, a particular service or project, a Federal award, or an indirect cost activity, as described in subpart E. See also the definitions of *final cost objective* and *intermediate cost objective* in this section.

*Cost sharing* means the portion of project costs not paid by Federal funds or contributions (unless authorized by Federal statute). This term includes *matching*, which refers to required levels of cost share that must be provided. See §200.306.

*Disallowed cost* means charges to a Federal award that the Federal agency or pass-through entity determines to be unallowable in accordance with applicable Federal statutes, regulations, the provisions of this part, or the

terms and conditions of the Federal award.

*Discretionary award* means an award in which the Federal agency, in keeping with specific statutory authority that enables the agency to exercise judgment (''discretion''), selects the recipient or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected on a non-competitive basis, as appropriate.

*Equipment* means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes, or $10,000. See the definitions of *capital assets*, *computing devices*, *general purpose equipment*, *information technology systems*, *special purpose equipment*, and *supplies* in this section.

*Expenditures* means charges made by a recipient or subrecipient to a project or program for which a Federal award is received.

(1) The charges may be reported on a cash or accrual basis as long as the methodology is disclosed and consistently applied.

(2) For reports prepared on a cash basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense charged;

(iii) The value of third-party in-kind contributions applied; and

(iv) The amount of cash advance payments and payments made to subrecipients.

(3) For reports prepared on an accrual basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense incurred;

(iii) The value of third-party in-kind contributions applied; and

(iv) The net increase or decrease in the amounts owed by the recipient or subrecipient for:

(A) Goods and other property received;

(B) Services performed by employees, contractors, subrecipients, and other payees; and

(C) Programs for which no current services or performance are required, such as annuities, insurance claims, or other benefit payments.

*Federal agency* means an ''agency'' as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f). The term generally refers to the agency that provides a Federal award directly to a recipient unless the context indicates otherwise. See also definitions of Federal award and recipient.

*Federal Audit Clearinghouse (FAC)* means the repository of record designated by OMB where non-Federal entities must transmit the information required by subpart F.

*Federal award* has the meaning, depending on the context, in either paragraph (1) or (2) of this definition:

(1)(i) The Federal financial assistance that a recipient receives directly from a Federal agency or indirectly from a pass-through entity, as described in § 200.101; or

(ii) The cost-reimbursement contract under the Federal Acquisition Regulation that a non-Federal entity receives directly from a Federal agency or indirectly from a pass-through entity, as described in § 200.101.

(2) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (2) of the definition of *Federal financial assistance* in this section, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(3) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate government-owned, contractor- operated (GOCO) facilities.

(4) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

*Federal award date* means the date when the authorized official of the Federal agency signed (physically or digitally) the Federal award or when an alternative, consistent with the requirements of 31 U.S.C. 1501, is reached with the recipient.

*Federal financial assistance* means:

(1) Assistance that recipients or subrecipients receive or administer in the form of:

(i) Grants;

(ii) Cooperative agreements;

(iii) Non-cash contributions or donations of property (including donated surplus property);

(iv) Direct appropriations;

(v) Food commodities; and

(vi) Other financial assistance (except assistance listed in paragraph (2) of this definition).

(2) For §200.203 and subpart F of this part, *Federal financial assistance* also includes assistance that recipients or subrecipients receive or administer in the form of:

(i) Loans;

(ii) Loan Guarantees;

(iii) Interest subsidies; and

(iv) Insurance.

(3) For §200.216, Federal financial assistance includes assistance that recipients or subrecipients receive or administer in the form of:

(i) Grants;

(ii) Cooperative agreements;

(iii) Loans; and

(iv) Loan Guarantees.

(4) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in §200.502(h) and (i).

(5) For part 184 of this title, in addition to the forms of assistance listed in paragraph (1) of this definition, *Federal financial assistance* also includes assistance that recipients or subrecipients receive or administer in the form of:

(i) Loans; and

(ii) Loan Guarantees.

*Federal interest* means, for purposes of §200.330 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:

(1) The percentage of Federal participation in the total cost of the real property, equipment, or supplies; and

(2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

*Federal program* means:

(1) All Federal awards which are assigned a single Assistance Listings Number.

(2) When no Assistance Listings Number is assigned, all Federal awards from the same agency made for the same purpose must be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

(i) Research and development (R&D);

(ii) Student financial aid (SFA); and

(iii) ''Other clusters,'' as described in the definition of *cluster of programs* in this section. *Federal share* means the portion of the Federal award costs paid using Federal funds.

*Final cost objective* means a cost objective that has allocated to it both direct and indirect costs and, in the recipient's or subrecipient's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a recipient or subrecipient. See also the definitions of *cost objective* and *intermediate cost objective* in this section.

*Financial obligations* means orders placed for property and services, contracts and subawards made, and similar transactions that require payment by a recipient or subrecipient under a Federal award that will result in expenditures by a recipient or subrecipient under a Federal award.

*Fixed amount award* means a type of grant or cooperative agreement pursuant to which the Federal agency or pass-through entity provides a specific amount of funding without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the recipient or subrecipient and the Federal agency or pass-through entity. Accountability is based primarily on performance and results. See §§200.102(c), 200.101(b), 200.201(b), and 200.333.

*For-profit organization* generally means an organization or entity organized for the purpose of earning a profit. The term includes but is not limited to:

(1) An ''S corporation'' incorporated under subchapter S of the Internal Revenue Code;

(2) A corporation incorporated under another authority;

(3) A partnership;

(4) A limited liability company or partnership; and

(5) A sole proprietorship.

*Foreign organization* means an entity that is:

(1) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

(2) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;

(3) A charitable organization located in a country other than the United States that is nonprofit and tax-exempt under the laws of the country where it is registered and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, an organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or

(4) An organization located in a country other than the United States not recognized as a foreign public entity.

*Foreign public entity* means:

(1) A foreign government or foreign governmental entity;

(2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f);

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

*General purpose equipment* means equipment that is not limited to research, medical, scientific, or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also the definitions of *equipment* and *special purpose equipment* in this section.

*Generally accepted accounting principles (GAAP)* has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

*Generally accepted government auditing standards (GAGAS)*, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which apply to financial audits.

*Grant agreement or grant* means a legal instrument of financial assistance between a Federal agency and a recipient or between a pass-through entity and a subrecipient, consistent with 31 U.S.C. 6302, 6304:

(1) Is used to enter into a relationship, the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal agency or pass-through entity's direct benefit or use;

(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement of the Federal agency in carrying out the activity contemplated by the Federal award.

(3) Does not include an agreement that provides only:

(i) Direct United States Government cash assistance to an individual;

(ii) A subsidy;

(iii) A loan;

(vi) A loan guarantee; or

(v) Insurance.

*Highest-level owner* means the entity that owns or controls an immediate owner of an applicant or that owns or controls one or more entities that control an immediate owner of an applicant. No entity owns or exercises control of the highest-level owner as defined in the Federal Acquisition Regulations (FAR) (48 CFR 52.204–17).

*Hospital* means a facility licensed as a hospital under the law of any State or a facility operated as a hospital by the United States, a State, or a subdivision of a State.

*Improper payment* means a payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. The term improper payment includes: any payment to an ineligible recipient; any payment for an ineligible good or service; any duplicate payment; any payment for a good or service not received, except for those payments where authorized by law; any payment that is not authorized by law; and any payment that does not account for credit for applicable discounts. See OMB Circular A–123 Appendix C, *Requirements for Payment Integrity Improvement* for additional definitions and guidance on the requirements for payment integrity.

*Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. See 25 U.S.C. 5304(e). This includes any Indian Tribe identified in the annually published Bureau of Indian Affairs list of ''*Indian Entities Recognized and Eligible to Receive Services*'' and other entities that qualify as an Alaska Native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act.

*Indirect cost* means those costs incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. It may be necessary to establish multiple pools of indirect costs to facilitate equitable distribution of indirect expenses to the cost objectives served. Indirect cost pools must be distributed to benefitted cost objectives on basis that will produce an equitable result in consideration of relative benefits derived. For Institutions of Higher Education (IHE), the term facilities and administrative (F&A) cost is often used to refer to indirect costs.

*Indirect cost rate proposal* means the documentation prepared by a recipient to substantiate its request to establish an indirect cost rate as described in appendices III through VII and appendix IX to this part.

*Information technology systems* means computing devices, ancillary equipment, software, firmware, and related procedures, services (including support services), and resources. See also the definitions of *computing devices* and *equipment* in this section.

*Institution of Higher Education (IHE)* is defined at 20 U.S.C. 1001.

*Intangible property* means property having no physical existence, such as trademarks, copyrights, data (including data licenses), websites, IP licenses, trade secrets, patents, patent applications, and property such as loans, notes and other debt instruments, lease agreements, stocks and other instruments of property ownership of either tangible or intangible property, such as intellectual property, software, or software subscriptions or licenses. *Intermediate cost objective* means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See this section's definitions of *cost objective* and *final cost objective*.

*Internal control* for recipients and subrecipients means processes designed and implemented by recipients and subrecipients to provide reasonable assurance regarding the achievement of objectives in the following categories:

(1) Effectiveness and efficiency of operations;

(2) Reliability of reporting for internal and external use; and

(3) Compliance with applicable laws and regulations.

*Loan* means a Federal loan or loan guarantee received or administered by a recipient or subrecipient, except as used in this section's definition of *program income*.

(1) The term ''direct loan'' means a disbursement of funds by the Federal

Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(2) The term ''direct loan obligation'' means a binding agreement by a Federal agency to make a direct loan when specified conditions are fulfilled by the borrower.

(3) The term ''loan guarantee'' means any Federal Government guarantee, insurance, or other pledges for the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(4) The term ''loan guarantee commitment'' means a binding agreement by a Federal agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

*Local government* means any unit of government within a State, including a:

(1) County;

(2) Borough;

(3) Municipality;

(4) City;

(5) Town;

(6) Township;

(7) Parish;

(8) Local public authority, including any public housing agency under the United States Housing Act of 1937;

(9) Special district;

(10) School district;

(11) Intrastate district;

(12) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and

(13) Any other agency or instrumentality of a multi-, regional, or intra-State or local government.

*Major program* means a Federal program determined by the auditor to be a major program in accordance with § 200.518 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § 200.503(e).

*Management decision* means the Federal agency's or pass-through entity's written determination, provided to the auditee, of the adequacy of the auditee's proposed corrective actions to address the findings based on its evaluation of the audit findings and proposed corrective actions.

*Micro-purchase* means an individual procurement transaction for supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases comprise a subset of a recipient's or subrecipient's small purchases using informal procurement methods as set forth in § 200.320.

*Micro-purchase threshold* means the dollar amount at or below which a recipient or subrecipient may purchase property, or services using micro-purchase procedures (see § 200.320). Generally, except as provided in § 200.320, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the recipient or subrecipient and approved by the cognizant agency for indirect costs.

*Modified Total Direct Cost (MTDC)* means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $50,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs, and the portion of each subaward in excess of $50,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs and with the approval of the cognizant agency for indirect costs.

*Non-discretionary award* means an award made by the Federal agency to specific recipients in accordance with

statutory, eligibility, and compliance requirements, such that in keeping with specific statutory authority, the Federal agency cannot exercise judgment (''discretion''). A non-discretionary award amount could be specifically determined or by formula.

*Non-Federal entity (NFE)* means a State, local government, Indian Tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

*Nonprofit organization* means any organization that:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit;

(3) Uses net proceeds to maintain, improve, or expand the organization's operations; and

(4) Is not an IHE.

*Notice of funding opportunity* means a formal announcement of the availability of Federal funding through a financial assistance program from a Federal agency. The notice of funding opportunity provides information on the award, such as who is eligible to apply, the evaluation criteria for selecting a recipient or subrecipient, the required components of an application, and how to submit the application. The notice of funding opportunity is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a ''program announcement,'' ''notice of funding availability,'' ''broad agency announcement,'' ''research announcement,'' ''solicitation,'' or some other term.

*Office of Management and Budget (OMB)* means the Executive Office of the President, Office of Management and Budget.

*Oversight agency for audit* means the Federal agency that provides the predominant amount of funding directly (direct funding) (as listed on the schedule of expenditures of Federal awards, see §200.510(b)) to a recipient or subrecipient unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total Federal expenditures (as direct and sub-awards) by the recipient or subrecipient, then the Federal agency with the predominant amount of total funding is the designated oversight agency for audit. When there is no direct funding, the Federal agency that is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in §200.513(b).

*Participant* generally means an individual participating in or attending program activities under a Federal award, such as trainings or conferences, but who is not responsible for implementation of the Federal award. Individuals committing effort to the development or delivery of program activities under a Federal award (such as consultants, project personnel, or staff members of a recipient or subrecipient) are not participants. Examples of participants may include community members participating in a community outreach program, members of the public whose perspectives or input are sought as part of a program, students, or conference attendees.

*Participant support costs* means direct costs that support participants (see definition for *Participant* in §200.1) and their involvement in a Federal award, such as stipends, subsistence allowances, travel allowances, registration fees, temporary dependent care, and per diem paid directly to or on behalf of participants.

*Pass-through entity* means a recipient or subrecipient that provides a subaward to a subrecipient (including lower tier subrecipients) to carry out part of a Federal program. The authority of the pass-through entity under this part flows through the subaward agreement between the pass-through entity and subrecipient.

*Performance goal* means a measurable target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (for example, discretionary research

awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

*Period of performance* means the time interval between the start and end date of a Federal award, which may include one or more budget periods. Identification of the period of performance in the Federal award consistent with § 200.211(b)(5) does not commit the Federal agency to fund the award beyond the currently approved budget period.

*Personal property* means property other than real property. It may be tangible or intangible.

*Personally Identifiable Information (PII)* means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some PII is available in public sources such as telephone books, websites, and university listings. The definition of PII is not attached to any single category of information or technology. Instead, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that could be used to identify an individual when combined with other available information.

*Prior approval* means the written approval obtained in advance by an authorized official of a Federal agency or pass-through entity of certain costs or programmatic decisions.

*Program income* means gross income earned by the recipient or subrecipient that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(c). Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees, and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See § 200.407. See also 35 U.S.C. 200–212 ''Disposition of Rights in Educational Awards,'' which applies to inventions made under Federal awards.

*Project cost* means total allowable costs incurred under a Federal award and all cost sharing, including third-party contributions.

*Property* means real property or personal property. See this section's definitions of *real property* and *personal property*.

*Protected Personally Identifiable Information (Protected PII)* means PII (see definition in this section), except for PII that must be disclosed by law. Examples of PII include, but are not limited to, social security number; passport number; credit card numbers; clearances, bank numbers; biometrics; date and place of birth; mother's maiden name; criminal, medical and financial records; and educational transcripts.

*Questioned cost* has the meaning given in paragraphs (1) through (3).

(1) *Questioned cost* means an amount, expended or received from a Federal award, that in the auditor's judgment:

(i) Is noncompliant or suspected noncompliant with Federal statutes, regulations, or the terms and conditions of the Federal award;

(ii) At the time of the audit, lacked adequate documentation to support compliance; or

(iii) Appeared unreasonable and did not reflect the actions a prudent person would take in the circumstances.

(2) The questioned cost amount under (1)(ii) is calculated as if the portion of a transaction that lacked adequate documentation were confirmed noncompliant.

(3) There is no questioned cost solely because of:

(i) Deficiencies in internal control; or

(ii) Noncompliance with the reporting type of compliance requirement (described in the compliance supplement) if this noncompliance does not affect the amount expended or received from the Federal award.

(4) *Known questioned cost* means a questioned cost specifically identified by the auditor. Known questioned costs are a subset of likely questioned costs.

(5) *Likely questioned cost* means the auditor's best estimate of total questioned costs, not just the known questioned costs. Likely questioned costs are developed by extrapolating from audit evidence obtained, for example, by projecting known questioned costs identified in an audit sample to the entire population from which the sample was drawn. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the likely questioned costs, not just the known questioned costs.

(6) Questioned costs are not improper payments until reviewed and confirmed to be improper payments as defined in OMB Circular A–123 Appendix C.

*Real property* means land, including land improvements, structures, and appurtenances thereto, and legal interests in land, including fee interest, licenses, rights of way, and easements. Real property excludes moveable machinery and equipment.

*Recipient* means an entity that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program. The term recipient does not include subrecipients or individuals that are participants or beneficiaries of the award.

*Renewal award* means a Federal award for which the start date is contiguous with, or closely follows, the end of the expiring Federal award. The start date of a renewal award begins a new and distinct period of performance.

*Research and Development (R&D)* means all basic and applied research activities and all development activities performed by a recipient or subrecipient. The term research also includes activities involving the training of individuals in research techniques where such activities use the same facilities as other research and development activities and where such activities are not included in the instruction function. ''Research'' is the systematic study directed toward fuller scientific knowledge or understanding of the subject studied. ''Development'' is the systematic use of knowledge and understanding gained from research to produce useful materials, devices, systems, or methods, including designing and developing prototypes and processes.

*Simplified acquisition threshold* means the dollar amount below which a recipient or subrecipient may purchase property or services using small purchase methods (see §200.320). Recipients and subrecipients adopt small purchase procedures to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold set in the FAR at 48 CFR part 2, subpart 2.1 is used in this part as the simplified acquisition threshold for secondary procurement activities administered under Federal awards. The recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold, which is less than or equal to the dollar value established in the FAR, based on internal controls, an evaluation of risk, and its documented procurement procedures. Recipients and subrecipients should also determine if local government purchasing laws apply. This threshold must never exceed the dollar value established in the FAR.

*Special purpose equipment* means equipment that is used only for research, medical, scientific, or other similar technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, spectrometers, and associated software. See also the definitions of *equipment* and *general purpose equipment* in this section.

*State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

*Student Financial Aid (SFA)* means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070–1099d), which the U.S. Department of Education administers, and similar programs provided by other Federal agencies. It does

not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis or for specified studies or research.

*Subaward* means an award provided by a pass-through entity to a subrecipient for the subrecipient to contribute to the goals and objectives of the project by carrying out part of a Federal award received by the pass-through entity. It does not include payments to a contractor, beneficiary, or participant. A subaward may be provided through any form of legal agreement consistent with criteria in with § 200.331, including an agreement the pass-through entity considers a contract.

*Subrecipient* means an entity that receives a subaward from a pass-through entity to carry out part of a Federal award. The term subrecipient does not include a beneficiary or participant. A subrecipient may also be a recipient of other Federal awards directly from a Federal agency.

*Subsidiary* means an entity in which more than 50 percent of the entity is owned or controlled directly by a parent corporation or through another subsidiary of a parent corporation.

*Supply* means all tangible personal property other than those described in the *equipment* definition. A computing device is a supply if the acquisition cost is below the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes or $10,000, regardless of the length of its useful life. See this section's definitions of *computing devices* and *equipment*.

*Telecommunications cost* means the cost of using communication technologies such as mobile phones, landlines, and the internet.

*Termination* means the action a Federal agency or pass-through entity takes to discontinue a Federal award, in whole or in part, at any time before the planned end date of the period of performance. Termination does not include discontinuing a Federal award due to a lack of available funds.

*Third-party in-kind contributions* means the value of non-cash contributions (*meaning*, property or services) that:

(1) Benefit a project or program funded by a Federal award; and

(2) Are contributed by non-Federal third parties, without charge, to a recipient or subrecipient under a Federal award.

*Unliquidated financial obligation* means financial obligations incurred by the recipient or subrecipient but not paid (liquidated) for financial reports prepared on a cash basis. For reports prepared on an accrual basis, these are financial obligations incurred by the recipient or subrecipient but for which expenditures have not been recorded.

*Unobligated balance* means the amount of funds under a Federal award that the recipient or subrecipient has not obligated. The amount is computed by subtracting the cumulative amount of the recipient's or subrecipient's unliquidated financial obligations and expenditures under the Federal award from the cumulative amount of funds the Federal agency or pass-through entity authorized the recipient or subrecipient to obligate.

*Voluntary committed cost sharing* means cost sharing specifically pledged voluntarily in the proposal's budget on the part of the recipient or subrecipient, which becomes a binding requirement of the Federal award. See § 200.306.

[89 FR 30136, Apr. 22, 2024, as amended at 89 FR 79732, Oct. 1, 2024]

## Subpart B—General Provisions

### § 200.100 Purpose.

(a) *Purpose*. (1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards. Federal agencies must not impose additional requirements except as allowed in §§ 200.102, 200.211, or unless specifically required by Federal statute, regulation, or Executive order.

(2) This part provides Federal agencies with the policy for collecting and submitting information on all Federal financial assistance programs to the Office of Management and Budget (OMB) and communicating this information to the public. It also establishes Federal policies related to the

delivery of this information to the public, including through the use of electronic media. It also sets forth how the General Services Administration (GSA), OMB, and Federal agencies implement the Federal Program Information Act (31 U.S.C. 6101–6106).

(b) *Administrative requirements.* Subparts B through D set forth the uniform administrative requirements for Federal financial assistance. This includes establishing requirements for Federal agencies management of Federal financial assistance programs before a Federal award is made, and requirements that Federal agencies may impose on recipients and subrecipients throughout the lifecycle of a Federal award.

(c) *Cost principles.* Subpart E establishes principles for determining allowable costs incurred by recipients and subrecipients under Federal awards. These principles are for the purpose of cost determination. They do not address the circumstances nor dictate the extent of Federal Government funding of a particular program or project.

(d) *Single Audit Requirements and Audit Follow-up.* Subpart F is issued pursuant to the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507). Subpart F sets forth the standards for achieving consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards. Subpart F also provides the policies and procedures for Federal agencies or pass-through entities when using the results of these audits.

### § 200.101 Applicability.

(a) *General applicability to Federal agencies.* (1) Subparts A through F apply to Federal agencies that make Federal awards to non-Federal entities. As provided in paragraph (a)(2), subparts A through E may also apply to Federal agencies that make Federal awards to other entities.

(2) Federal agencies must apply subparts A though F of this part to non-Federal entities unless a particular section of this part or Federal statute provides otherwise. Federal agencies may apply subparts A through E of this part to Federal agencies, for-profit organizations, foreign public entities, or foreign organizations as permitted in agency regulations or program statutes, except when a Federal agency determines that the application of these subparts would be inconsistent with the international responsibilities of the United States or the laws of a foreign government. Subpart F only applies to non-Federal entities as defined in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507). Federal agencies should apply the requirements to all recipients in a consistent and equitable manner to the extent permitted within applicable statutes, regulations, and policies.

(3) Throughout subparts A through F, the word ''must'' indicates a requirement. The words ''should'' or ''may'' indicate a recommended approach and permit discretion.

(4) Throughout subparts A through E, when the word ''or'' is used between the terms ''recipient'' and ''subrecipient,'' any requirements or recommendations in the relevant provisions of this part apply to the recipient, the subrecipient, or both, as applicable. The use of ''or'' between recipient and subrecipient does not mean that applicable requirements or recommendations only apply to one of these entities unless the context clearly indicates otherwise.

(b) *Applicability to Federal financial assistance.* (1) Paragraphs (b)(2) through (b)(5) of this section describe what portions of this part apply to specific types of Federal financial assistance. Paragraphs (d) and (e) of this section explain additional exceptions related to governing provisions and Federal program applicability. The terms and conditions of Federal awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise. Pass-through entities must comply with the requirements described in subpart D, §§ 200.331 through 200.333, and any other sections of this part addressing pass-through entities.

(2) Subpart A (Acronyms and Definitions) and subpart B (General Provisions) apply to all Federal financial assistance, except that §§ 200.111 (English language), 200.112 (Conflict of interest),

and 200.113 (Mandatory disclosures) do not apply to agreements for loans, loan guarantees, interest subsidies, and insurance.

(3) Subpart C (Pre-Federal Award Requirements and Contents of Federal Awards) and subpart D (Post Federal Award Requirements) only apply to grants and cooperative agreements with the following exceptions:

(i) Section 200.203 (Requirement to provide public notice of Federal financial assistance programs) also applies to agreements for loans, loan guarantees, interest subsidies, and insurance;

(ii) Section 200.216 (Prohibition on certain telecommunications and video surveillance equipment or services) applies to loans and grants (see Pub. L. 115–232, Div. A, Title VIII, §889, as amended); and

(iii) Sections 200.303 (Internal controls) and 200.331 through 200.333 (Subrecipient monitoring and management) also apply to all types of Federal financial assistance.

(4) Subpart E (Cost Principles) applies to grants and cooperative agreements, but does not apply to the following:

(i) Food commodities provided through grants and cooperative agreements;

(ii) Fixed amount awards, except for §§200.400(g), 200.402 through 200.405, and 200.407(d), which do apply;

(iii) Agreements for loans, loan guarantees, interest subsidies, and insurance; and

(iv) Federal awards to hospitals (see Appendix IX—Hospital Cost Principles).

(5) Subpart F (Audit Requirements) only applies to the following items when awarded to a non-Federal entity:

(i) Grants and cooperative agreements (including fixed amount awards);

(ii) Contracts and subcontracts awarded under the FAR (except for fixed price contracts and subcontracts);

(iii) Agreements for loans, loan guarantees, interest subsidies, and insurance; and

(iv) Any other form of Federal financial assistance as defined by the Single Audit Act Amendment of 1996 (codified at 31 U.S.C. 7501–7507).

(c) *Applicability to different types of contracts and subcontracts awarded by a Federal agency to a non-Federal entity under the Federal Acquisition Regulations (FAR).* (1) Paragraphs (c)(2) and (c)(3) of this section describe what portions of this part apply to specific types of contracts and subcontracts awarded by a Federal agency to a non-Federal entity. See also paragraph (b)(5)(ii) on audit requirements. For both paragraphs (c)(2) and (c)(3):

(i) In cases of conflict between the requirements of applicable portions of this part and the terms and conditions of the contract, the terms and conditions of the contract and the FAR prevail.

(ii) When the Cost Accounting Standards (CAS) are applicable to the contract or subcontract, they also take precedence over this part.

(iii) In addition, costs that are identified as unallowable under 41 U.S.C. 4304(a) and as stated in the FAR (48 CFR part 31, subpart 31.2, and 48 CFR 31.603) are always unallowable.

(2) *Cost-reimbursement contract under the FAR awarded to a non-Federal entity.* When a non-Federal entity is awarded a cost-reimbursement contract under the FAR, only subpart D, §§200.331 through 200.333, and subparts E and F are applicable.

(3) *Fixed-price contract or subcontract under the FAR awarded to a non-Federal entity.* When a non-Federal entity is awarded a fixed-price contract or subcontract under the FAR, only subpart A, subpart B (except for §§200.111, 200.112, and 200.113), subpart D (only at §200.303 and §§200.331 through 200.333), and subpart E are applicable to the contract, except that subpart E is not applicable to fixed-price contracts and subcontracts that are not negotiated.

(d) *Governing provisions.* With the exception of subpart F, which is required by the Single Audit Act, Federal statutes or regulations govern in any circumstances where they conflict with the provisions of this part. For agreements with Indian Tribes, this includes the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended (see 25 U.S.C. 5301–5423).

(e) *Program applicability.* Except for §§200.203, 200.216, and 200.331 through 200.333, the requirements in subparts C,

D, and E do not apply to the following programs:

(1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services), except to the extent that subpart E apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B);

(2) Federal awards to local education agencies under 20 U.S.C. 7702–7703b, (portions of the Impact Aid program);

(3) Payments under the Department of Veterans Affairs' State Home Per Diem Program (38 U.S.C. 1741); and

(4) Federal awards authorized under the Child Care and Development Block Grant Act of 1990, as amended:

(i) Child Care and Development Block Grant (42 U.S.C. 9858).

(ii) Child Care Mandatory and Matching Funds of the Child Care and Development Fund (42 U.S.C. 9858).

(f) *Additional program applicability.* Except for §§ 200.203 and 200.216, the guidance in subpart C does not apply to the following programs:

(1) Entitlement Federal awards to carry out the following programs of the Social Security Act:

(i) Temporary Assistance for Needy Families (Title IV–A of the Social Security Act, 42 U.S.C. 601–619);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Social Security Act, 42 U.S.C. 651–669b);

(iii) Federal Payments for Foster Care, Prevention, and Permanency (Title IV–E of the Act, 42 U.S.C. 670–679c);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI–AABD of the Act, as amended);

(v) Medical Assistance (Medicaid) (Title XIX of the Act, 42 U.S.C. 1396–1396w–5) not including the State Medicaid Fraud Control program authorized by Section 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)); and

(vi) Children's Health Insurance Program (Title XXI of the Act, 42 U.S.C. 1397aa–1397mm).

(2) A Federal award for an experimental, pilot, or demonstration project that is also supported by a Federal award listed in paragraph (f)(1) of this section.

(3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits (8 U.S.C. 1522(e)).

(4) Entitlement awards under the following programs of The National School Lunch Act:

(i) National School Lunch Program (Section 4 of the Act, 42 U.S.C. 1753);

(ii) Commodity Assistance (Section 6 of the Act, 42 U.S.C. 1755);

(iii) Special Meal Assistance (Section 11 of the Act, 42 U.S.C. 1759a);

(iv) Summer Food Service Program for Children (Section 13 of the Act, 42 U.S.C. 1761); and

(v) Child and Adult Care Food Program (Section 17 of the Act, 42 U.S.C. 1766).

(5) Entitlement awards under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk Program (Section 3 of the Act, 42 U.S.C. 1772);

(ii) School Breakfast Program (Section 4 of the Act, 42 U.S.C. 1773); and

(iii) State Administrative Expenses (Section 7 of the Act, 42 U.S.C. 1776).

(6) Entitlement awards for State Administrative Expenses under The Food and Nutrition Act of 2008 (Section 16 of the Act, 7 U.S.C. 2025).

(7) Non-discretionary Federal awards under the following non-entitlement programs:

(i) Special Supplemental Nutrition Program for Women, Infants and Children (Section 17 of the Child Nutrition Act of 1966) 42 U.S.C. 1786;

(ii) The Emergency Food Assistance Programs (Emergency Food Assistance Act of 1983) 7 U.S.C. 7501 note; and

(iii) Commodity Supplemental Food Program (Section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

### § 200.102 Exceptions.

(a) *OMB class exceptions.* Except for subpart F, OMB may allow exceptions

from requirements of this part for classes of Federal awards, recipients, or subrecipients when the exceptions are not prohibited by statute. For example, Federal agencies may request exceptions in support of innovative program designs that apply a risk-based, data-driven framework to alleviate select compliance requirements and hold recipients accountable for good performance. See also § 200.206. Federal agencies may also request exceptions in emergency situations. When OMB allows an exception to requirements of this part, the Federal agency remains responsible for ensuring the exception is applied to Federal awards in a manner consistent with Federal statutes and regulations.

(b) *Statutory and regulatory exceptions.* A Federal agency may adjust requirements to a class of Federal awards, recipients, or subrecipients when required by Federal statutes or regulations, except for the requirements in subpart F. Except for provisions in subpart F, when a Federal statute requires exceptions to requirements of this part for a class of Federal awards, recipients, or subrecipients, a Federal agency does not need OMB approval to allow those exceptions. See also § 200.106.

(c) *Federal agency exceptions.* Federal agencies may allow exceptions to requirements of this part on a case-by-case basis for individual Federal awards, recipients, or subrecipients, except when the exceptions are prohibited by law or other approval is expressly required by this part. Only the cognizant agency for indirect costs may authorize exceptions related to cost allocation plans or indirect cost rate proposals. A Federal agency may also apply less restrictive requirements when issuing fixed amount awards (see § 200.1), except for those requirements imposed by statute or in subpart F.

### § 200.103 Authorities.

This part is issued under the following authorities.

(a) Subparts B through D are authorized under 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management); the Federal Program Information Act (Pub, L. 95–220 and Pub. L. 98–169, as amended, codified at 31 U.S.C. 6101–6106); the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224, as amended, codified at 31 U.S.C. 6301–6309); 41 U.S.C. 1101–1131 (the Office of Federal Procurement Policy Act); Reorganization Plan No. 2 of 1970 and Executive Order 11541 (''Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President''); and the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507).

(b) Subpart E is authorized under the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 1101–1126); the Chief Financial Officers Act of 1990 (31 U.S.C. 503–504); Reorganization Plan No. 2 of 1970; and Executive Order 11541, ''Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President.'' OMB also relies on authority under 31 U.S.C. 503 and 31 U.S.C. 6307.

(c) Subpart F is authorized under the Single Audit Act Amendments of 1996 (codified at 31 U.S.C. 7501–7507). OMB also relies on authority under 31 U.S.C. 503 and 31 U.S.C. 6307.

### § 200.104 Supersession.

This part superseded previous OMB guidance issued under Title 2, subtitle A, chapter II of the Code of Federal Regulations and certain OMB circulars related to uniform administrative requirements, cost principles, and audit requirements for Federal awards.

### § 200.105 Effect on other issuances.

(a) *Superseding inconsistent requirements.* For Federal awards made subject to this part by a Federal agency, this part takes precedence over any administrative requirements, program manuals, handbooks, and other non-regulatory materials that are inconsistent with the requirements of this part upon implementation by the Federal agency, except to the extent that they are required by statute or authorized in accordance with § 200.102.

(b) *Imposition of requirements on recipients.* Agencies may only impose legally

binding requirements on recipients and subrecipients through:

(1) Notice and public comment procedures through an approved agency process, including as authorized by this part, other statutes, or regulations; or

(2) Incorporating requirements into the terms and conditions of a Federal award as permitted by Federal statute, regulation, or this part.

### § 200.106 Agency implementation.

The specific requirements and responsibilities of Federal agencies, non-Federal entities, recipients, and subrecipients are set forth in this part. Federal agencies making Federal awards to non-Federal entities must implement the language in subparts C through F of this part in codified regulations unless different provisions are required by Federal statute or are approved by OMB.

### § 200.107 OMB responsibilities.

OMB will review Federal agency regulations and implementation of this part. OMB will provide interpretations of policy requirements and assistance to ensure effective, efficient, and consistent implementation. Any exceptions will be subject to approval by OMB and only with adequate justification from the Federal agency.

### § 200.108 Inquiries.

Inquiries from Federal agencies concerning this part may be directed to OMB. Inquiries from recipients or subrecipients should be addressed to the Federal agency, the cognizant agency for indirect costs, the cognizant agency for audit, or the pass-through entity as appropriate.

### § 200.109 Review date.

OMB will review this part periodically.

### § 200.110 Effective date.

(a) The standards set forth in this part affecting the administration of Federal awards by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this part becomes final.

(b) Existing negotiated indirect cost rates will remain in place until they expire. The effective date of changes to indirect cost rates must be based upon the date a newly re-negotiated rate goes into effect for the recipient's or subrecipient's fiscal year. Therefore, for indirect cost rates and cost allocation plans, the revisions to this part (as of the publication date for revisions to this guidance) become effective in generating proposals and negotiating a new rate (when the rate is re-negotiated).

### § 200.111 English language.

(a) All Federal financial assistance announcements, applications, and Federal award information should be in the English language and must be in terms of U.S. dollars. However, Federal agencies, recipients, and subrecipients may issue or translate a Federal award or other documents into another language. A Federal agency may translate formal or informal announcements of the availability of Federal funding through a financial assistance program, such as a notice of funding opportunity, when translations may serve to increase the pool of applicants or the participation of a specific community (for example, programs administered in foreign countries where the primary language is not English). Federal agencies must maintain an official controlling English version of the Federal financial assistance announcement and the Federal award, including the terms and conditions.(b) Applications, reports, and official correspondence may be submitted in languages other than English if specified in the notice of funding opportunity or the terms and conditions of the Federal award.

(c) In the event of inconsistency between English and another language, the English language meaning will control. When a significant portion of the recipient's or subrecipient's employees administering a Federal award are not fluent in English, the Federal award should be provided in English and the language(s) with which employees are more familiar.

### § 200.112 Conflict of interest.

Federal agencies must establish conflict of interest policies for Federal awards. A recipient or subrecipient must disclose in writing any potential conflict of interest to the Federal

agency or pass-through entity in accordance with the established Federal agency policies.

### § 200.113 Mandatory disclosures.

An applicant, recipient, or subrecipient of a Federal award must promptly disclose whenever, in connection with the Federal award (including any activities or subawards thereunder), it has credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729–3733). The disclosure must be made in writing to the Federal agency, the agency's Office of Inspector General, and pass-through entity (if applicable). Recipients and subrecipients are also required to report matters related to recipient integrity and performance in accordance with Appendix XII of this part. Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

## Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

### § 200.200 Purpose.

Sections 200.201 through 200.217 prescribe instructions and other pre-award matters to be used by Federal agencies in the program planning, announcement, application, and award processes.

### § 200.201 Use of grants, cooperative agreements, fixed amount awards, and contracts.

(a) *Federal awards.* The Federal agency or pass-through entity must decide on the appropriate type of agreement for a Federal award (for example, a grant, cooperative agreement, subaward, or contract) in accordance with this guidance. See the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–6309).

(b) *Fixed amount awards.* The Federal agency or pass-through entity (see § 200.333) may use fixed amount awards (see the definition of *fixed amount awards* in § 200.1) for which the following conditions apply:

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. See § 200.101(b)(4)(ii) for further information on which provisions in subpart E (cost principles) apply to fixed amount awards. The Federal agency or pass-through entity may use fixed amount awards if the project scope has measurable goals and objectives and if accurate cost, historical, or unit pricing data is available to establish a fixed budget based on a reasonable estimate of actual costs. Budgets for fixed amount awards are negotiated with the recipient or subrecipient and the total amount of Federal funding is determined in accordance with the recipient's or subrecipient's proposal, available pricing data, and subpart E. Accountability must be based on performance and results, which can be communicated in performance reports or through routine monitoring. There is no expected routine monitoring of the actual costs incurred by the recipient or subrecipient under the Federal award. Therefore, no financial reporting is required. This does not absolve the recipient or subrecipient from the record retention requirements contained in §§ 200.334 through 200.338; nor does it absolve the recipient or subrecipient of the responsibilities of making records available for review during an audit. See § 200.101(b)(5)(i). Payments must be based on meeting specific requirements of the Federal award. Some of the ways in which the Federal award may be paid include, but are not limited to:

(i) In several partial payments. The amount of each payment as well as the ''milestone'' or event triggering the payment, should be agreed to in advance and included in the Federal award;

(ii) On a unit price basis. The defined unit(s) or price(s) should be agreed to in advance and included in the Federal award; or

(iii) In one payment at the completion of the Federal award.

(2) A fixed amount award must not be used in programs that require cost sharing.

(3) A fixed amount award may generate and use program income in accordance with the terms and conditions of the Federal award; however, the requirements of § 200.307 do not apply.

(4) At the end of a fixed amount award, the recipient or subrecipient must certify in writing to the Federal agency or pass-through entity that the project was completed as agreed to in the Federal award, or identify those activities that were not completed, and that all expenditures were incurred in accordance with § 200.403. When the required activities were not carried out, including fixed amount awards paid on a unit price basis under 200.201(b)(1)(ii), the amount of the Federal award must be reduced by the amount that reflects the activities that were not completed in accordance with the Federal award. When the required activities were completed in accordance with the terms and conditions of the Federal award, the recipient or subrecipient is entitled to any unexpended funds.

(5) Periodic reports may be established for fixed amount awards.

(6) Prior approval requirements that apply to fixed amount awards are § 200.308(f) (paragraphs 1 through 3, 6 through 8, and 10) and § 200.333.

### § 200.202 Program planning and design.

(a) The Federal agency must design a program and create an Assistance Listing before announcing the Notice of Funding Opportunity. A program must be designed:

(1) With clear goals and objectives that provide meaningful results and be consistent with the Federal authorizing legislation of the program;

(2) To measure performance based on the goals and objectives developed during program planning and design. Performance measures may differ depending on the type of program. See § 200.301 for more information on performance measurement;

(3) To align with the strategic goals and objectives within the Federal agency's performance plan and support the Federal agency's performance measurement, management, customer service initiatives, and reporting as required by Part 6 of OMB Circular A–11 (Preparation, Submission, and Execution of the Budget);

(4) To align with the Program Management Improvement Accountability Act (Pub. L. 114–264) as well as the Foundations for Evidence-Based Policymaking Act (Pub. L. 115–435), as applicable; and

(5) To encourage applicants to engage, when practicable, during the design phase, members of the community that will benefit from or be impacted by a program.

(b) Federal agencies should develop programs in consultation with communities benefiting from or impacted by the program. In addition, Federal agencies should consider available data, evidence, and evaluation results from past programs and make every effort to extend eligibility requirements to all potential applicants. Federal agencies are encouraged to coordinate with other agencies during program planning and design, particularly when the goals and objectives of a program or project align with those of other agencies.

### § 200.203 Requirement to provide public notice of Federal financial assistance programs.

(a) The Federal agency must maintain an accurate list of Federal programs in the Assistance Listings maintained by the General Services Administration (GSA) at *SAM.gov*.

(1) The Assistance Listings is the comprehensive government-wide source of Federal financial assistance program information produced by the executive branch of the Federal Government.

(2) The information that the Federal agency must submit to GSA for approval by OMB is listed in paragraph (b). GSA must prescribe the format for the submission in coordination with OMB.

(3) The Federal agency must assign the appropriate Assistance Listing before making the Federal award unless exigent circumstances require otherwise (for example, timing requirements imposed by a Federal statute).

(b) To the extent practicable, the Federal agency must create, update, and manage Assistance Listing entries based on the authorizing statute for

the program and comply with additional guidance provided by GSA (in consultation with OMB) to ensure consistent and accurate information is available to prospective applicants. Assistance Listings should be communicated to the public in plain language. Accordingly, Federal agencies must submit the following information to GSA when creating an Assistance Listing:

(1) *Program Description, Purpose, Goals, and Measurement.* A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate, the program description, purpose, goals, and performance measurement should align with the strategic goals and objectives within the Federal agency's performance plan and should support the Federal agency's performance measurement, management, customer experience initiatives, and reporting as required by Part 6 of OMB Circular A–11;

(2) *Identification.* Identification of whether the program will issue Federal awards on a discretionary or non-discretionary basis;

(3) *Projected total amount of funds available for the program.* Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission;

(4) *Anticipated source of available funds.* The statutory authority for funding the program and the agency, sub-agency, or specific program unit that will issue the Federal awards (to the extent possible) and associated funding identifier (for example, Treasury Account Symbol(s));

(5) *General eligibility requirements.* The statutory, regulatory, or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (for example, type of recipient); and

(6) *Applicability of Single Audit Requirements.* Applicability of Single Audit Requirements as required by subpart F.

### § 200.204 Notices of funding opportunities.

The Federal agency must announce specific funding opportunities for Federal financial assistance that will be openly competed. The term openly competed means opportunities that are not directed to one or more specifically identified applicants. To the extent possible, the Federal agency should communicate opportunities to the public in plain language to ensure the announcement is accessible to diverse communities of eligible applicants, including underserved communities. The Federal agency should also make efforts to limit the length and complexity of the announcement and only include the information that is necessary for the effective communication of the program objectives. Federal agencies may offer pre-application technical assistance or provide clarifying information for funding opportunities. However, Federal agencies must ensure these resources are made accessible and widely available to all potential applicants (for example, by posting answers to questions and requests on *Grants.gov*). The Federal agency should make every effort to identify in the NOFO all eligible applicants (for example, different types of nonprofit organizations such as labor unions and tribal organizations). The following information must be provided in a public notice:

(a) *Summary information in notices of funding opportunities.* The Federal agency must display the following information on *Grants.gov*, in a location preceding the full text of the announcement:

(1) Federal Agency Name;

(2) Funding Opportunity Title;

(3) Announcement Type (whether the funding opportunity is the initial announcement or a modification of a previously announced opportunity);

(4) Funding Opportunity Number (required, if the Federal agency has assigned a number to the funding opportunity announcement);

(5) Assistance Listing Number(s);

(6) Funding Details. To the extent appropriate, the total amount of funding that the Federal agency expects to award, the anticipated number of awards, and the expected dollar values of individual awards, which may be a range or average;

(7) Key Dates. Key dates include due dates for submitting applications or

Executive Order 12372 submissions, as well as for any letters of intent or preapplications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the Federal agency. If possible, the Federal agency should provide an anticipated award date. If the NOFO states that applications will be evaluated on a ''rolling'' basis (that is, at different points during a specified period of time), the Federal agency should provide an estimate of the time needed to process an application and notify the applicant of the Federal agency's decision;

(8) Executive Summary. A brief description that is written in plain language and summarizes the goals and objectives of the program, the target audience, and eligible applicants. The text of the executive summary should not exceed 500 words; and

(9) Agency contact information.

(b) *Availability period.* The Federal agency should make all funding opportunities available for application for at least 60 calendar days. However, the Federal agency may modify the availability period of an opportunity as needed. For example, extending the period may be necessary to provide technical assistance to an applicant pool that was not anticipated when the announcement was made or has less experience with applying for Federal financial assistance. The Federal agency may also determine that an availability period of less than 60 days is sufficient for a particular funding opportunity. However, no funding opportunity should be available for less than 30 calendar days unless the Federal agency determines that exigent circumstances justify this.

(c) *Full text of funding opportunities.* (1) The Federal agency must include the information in Appendix I for every funding opportunity.

(2) Federal agencies should ensure that funding opportunities are written using plain language. To the extent possible Federal agencies must streamline opportunities to make them accessible, particularly for funding opportunities that are new, targeted to underserved communities, or intended to reach inexperienced applicants.

(3) To reduce application burden, Federal agencies should consider whether programmatic or administrative requirements specific to the agency, program, or funding opportunity must be met at the time of application or as a requirement of receiving a Federal award.

### § 200.205 Federal agency review of merit of proposals.

Unless prohibited by Federal statute, the Federal agency must design and execute a merit review process of applications for discretionary Federal awards. The objective of a merit review process is to select recipients most likely to be successful in delivering results based on the program objectives as outlined in section § 200.202. A merit review is an objective process of evaluating Federal award applications in accordance with the written standards of the Federal agency. These standards should identify the number of people the agency requires to participate in the merit review process and provide opportunities for a diverse group of participants, including those representing underserved communities. The merit review process explained in this section must be described or incorporated by reference in the applicable funding opportunity. See appendix I to this part. See also § 200.204. The Federal agency must also periodically review its merit review process.

### § 200.206 Federal agency review of risk posed by applicants.

(a) *Review of OMB-designated repositories of government-wide data.* (1) Prior to making a Federal award, the Federal agency is required to review eligibility information for applicants and financial integrity information for applicants available in OMB-designated databases per the Payment Integrity Information Act of 2019 (Pub. L. 116–117), the ''Do Not Pay Initiative'' (31 U.S.C. 3354), and 41 U.S.C. 2313.

(2) The Federal agency is required to review the responsibility and qualification records available in the non-public segment of the System for Award Management (*SAM.gov*) prior to making a Federal award where the Federal share

is expected to exceed the simplified acquisition threshold, defined at 41 U.S.C. 134, over the period of performance. See 41 U.S.C. 2313. The Federal agency must consider all of the information available in *SAM.gov* with regard to the applicant and any immediate highest-level owner, predecessor (meaning, an organization that is replaced by a successor), or subsidiary, identified for that applicant in *SAM.gov*. See Public Law 112–239, National Defense Authorization Act for Fiscal Year 2013; 41 U.S.C. 2313(d). The information in the system for a prior recipient of a Federal award must demonstrate a satisfactory record of administering programs or activities under Federal financial assistance or procurement awards, and integrity and business ethics. The Federal agency may make a Federal award to a recipient that does not fully meet these standards if it is determined that the information is not relevant to the Federal award under consideration or there are specific conditions that can appropriately mitigate the risk associated with the recipient in accordance with § 200.208.

(b) *Risk Assessment.* (1) The Federal agency must establish and maintain policies and procedures for conducting a risk assessment to evaluate the risks posed by applicants before issuing Federal awards. This assessment helps identify risks that may affect the advancement toward or the achievement of a project's goals and objectives. Risk assessments assist Federal managers in determining appropriate resources and time to devote to project oversight and monitor recipient progress. This assessment may incorporate elements such as the quality of the application, award amount, risk associated with the program, cybersecurity risks, fraud risks, and impacts on local jobs and the community. If the Federal agency determines that the Federal award will be made, specific conditions that address the assessed risk may be implemented in the Federal award. The risk criteria to be evaluated must be described in the announcement of the funding opportunity described in § 200.204.

(2) In evaluating risks posed by applicants, the Federal agency should consider the following items:

(i) *Financial stability.* The applicant's record of effectively managing financial risks, assets, and resources;

(ii) *Management systems and standards.* Quality of management systems and ability to meet the management standards prescribed in this part;

(iii) *History of performance.* The applicant's record of managing previous and current Federal awards, including compliance with reporting requirements and conformance to the terms and conditions of Federal awards, if applicable;

(iv) *Audit reports and findings.* Reports and findings from audits performed under subpart F or the reports and findings of any other available audits, if applicable; and

(v) *Ability to effectively implement requirements.* The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on recipients of Federal awards.

(c) *Adjustments to the Risk Assessment.* The Federal agency may modify the risk assessment at any time during the period of performance, which may justify changes to the terms and conditions of the Federal award. See § 200.208.

(d) *Suspension and debarment compliance.* The Federal agency must comply with the government-wide suspension and debarment guidance in 2 CFR part 180 and individual Federal agency suspension and debarment requirements in title 2 of the Code of Federal Regulations. Federal agencies must also require recipients to comply with these requirements. These requirements restrict making Federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from receiving Federal awards or participating in Federal awards.

### § 200.207 Standard application requirements.

(a) *Paperwork clearances.* The Federal agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320 and in alignment with OMB-approved, government-wide data elements available from the

OMB-designated standards lead. Examples of application information collections approved by OMB include the Standard Forms 424 (SF–424), which is available on *Grants.gov*, and the Biographical Sketch Common Form (OMB Control Number 3145–0279), which Federal agencies should use to collect biographical sketches and other disclosure information from award applicants. OMB will authorize additional information collections only on a limited basis and consistent with these requirements.

(b) *Information collection.* The Federal agency may inform applicants that they do not need to provide certain information already being collected through other means.

### § 200.208 Specific conditions.

(a) Federal agencies are responsible for ensuring that specific Federal award conditions and performance expectations are consistent with the program design (See § 200.202 and § 200.301).

(b) The Federal agency or pass-through entity may adjust specific conditions in the Federal award based on an analysis of the following factors:

(1) Review of OMB-designated repositories of government-wide data (for example, *SAM.gov*) or review of its risk assessment (See § 200.206);

(2) The recipient's or subrecipient's history of compliance with the terms and conditions of Federal awards;

(3) The recipient's or subrecipient's ability to meet expected performance goals as described in § 200.211; or

(4) A determination of whether a recipient or subrecipient has inadequate financial capability to perform the Federal award.

(c) Specific conditions may include the following:

(1) Requiring payments as reimbursements rather than advance payments;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance;

(3) Requiring additional or more detailed financial reports;

(4) Requiring additional project monitoring;

(5) Requiring the recipient or subrecipient to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(d) Prior to imposing specific conditions, the Federal agency or pass-through entity must notify the recipient or subrecipient as to:

(1) The nature of the specific condition(s);

(2) The reason why the specific condition(s) is being imposed;

(3) The nature of the action needed to remove the specific condition(s);

(4) The time allowed for completing the actions; and

(5) The method for requesting the Federal agency or pass-through entity to reconsider imposing a specific condition.

(e) Any specific conditions must be promptly removed once the conditions that prompted them have been satisfied.

### § 200.209 Certifications and representations.

Unless prohibited by the U.S. Constitution, Federal statutes, or regulations, a Federal agency or pass-through entity is authorized to require a recipient to submit annual certifications and representations. Submission may be required more frequently if a recipient or subrecipient fails to meet a requirement of a Federal award. When a recipient is provided an exception to the requirements of 2 CFR 25.110, the recipient must submit the appropriate assurance form (for example, SF–424B).

### § 200.210 Pre-award costs.

For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see § 200.458.

### § 200.211 Information contained in a Federal award.

The Federal award must include the following information:

(a) *Federal award performance goals.* Where applicable, performance goals, indicators, targets, and baseline data must be included in the Federal award. The Federal agency must also specify in the terms and conditions of the Federal award how performance will be assessed, including the timing and scope of expected performance. See §§ 200.202

and 200.301 for more information on Federal award performance goals.

(b) *General Federal award information.* The Federal agency must include the following information in each Federal award:

(1) Recipient Name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.400);

(2) Recipient's Unique Entity Identifier;

(3) Unique Federal Award Identification Number (FAIN);

(4) Federal Award Date (see Federal award date in § 200.1);

(5) Period of Performance Start and End Date;

(6) Budget Period Start and End Date;

(7) Amount of Federal Funds Obligated by this Action;

(8) Total Amount of Federal Funds Obligated;

(9) Total Approved Cost Sharing, where applicable;

(10) Total Amount of the Federal Award including approved Cost Sharing;

(11) Budget Approved by the Federal Agency;

(12) Federal Award Description (to comply with statutory requirements (for example, FFATA));

(13) Name of the Federal agency (including contact information for the awarding official);

(14) Assistance Listings Number and Title;

(15) Identification of whether the Award is R&D; and

(16) Indirect Cost Rate for the Federal award (including if the de minimis rate is charged per § 200.414).

(c) *General terms and conditions.* (1) Federal agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:

(i) *Administrative requirements.* Administrative requirements implemented by the Federal agency as specified in this part.

(ii) *National policy requirements.* These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See § 200.300 Statutory and national policy requirements.

(iii) *Recipient integrity and performance matters.* When the total Federal share of the Federal award may include more than $500,000 over the period of performance, the Federal agency must include the terms and conditions available in Appendix XII. See also § 200.113.

(iv) *Future budget periods.* When it is anticipated that the period of performance will include multiple budget periods, the Federal agency must indicate that subsequent budget periods are subject to the availability of funds, program authority, satisfactory performance, and compliance with the terms and conditions of the Federal award.

(v) *Termination provisions.* Federal agencies must inform recipients of the termination provisions in § 200.340, including the applicable termination provisions in the Federal agency's regulations or terms and conditions of the Federal award.

(2) The Federal award must incorporate, by reference, all general terms and conditions of the Federal award, which must be maintained on the Federal agency's website.

(3) The Federal agency must provide a copy of the full text of the general terms and conditions if a recipient requests it.

(4) The Federal agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by a recipient, auditors, or others. The archive should be located on the Federal agency's website in the same place where current terms and conditions are available.

(d) *Federal award specific terms and conditions.* The Federal agency must include in each Federal award any specific terms and conditions that are in addition to the general terms and conditions. See also § 200.208. For loan and loan guarantee programs, the Federal agency must specify whether or not the Federal award has continuing compliance requirements. Whenever practicable, these specific terms and conditions should also be available on the Federal agency's website and in notices of funding opportunities (as outlined in § 200.204).

(e) *Federal agency requirements.* Any other information required by the Federal agency.

### § 200.212 Public access to Federal award information.

(a) Except as noted in paragraph (c) of this section, the Federal agency must publish the required Federal award information on *USAspending.gov* in accordance with the guidance provided by OMB and the U.S. Department of the Treasury's Government-wide Spending Data Model (GSDM).

(b) All responsibility and qualification records posted in *SAM.gov* will be publicly available after a waiting period of 14 calendar days, except for:

(1) Past performance reviews required by Federal Government contractors (See Federal Acquisition Regulation (FAR) 48 CFR part 42, subpart 42.15);

(2) Information that was entered prior to April 15, 2011; or

(3) Information that is withdrawn during the 14-calendar day waiting period by a Federal agency.

(c) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C. 552), or controlled unclassified information pursuant to Executive Order 13556.

### § 200.213 Reporting a determination that an applicant is not qualified for a Federal award.

(a) The Federal agency must report in *SAM.gov* if it does not make a Federal award to an applicant because it determines that the applicant does not meet the minimum qualification standards as described in § 200.206(a)(2). The Federal agency must report that determination only if all of the following apply:

(1) The only basis for the determination is the applicant's prior record of performance on administering Federal awards or its record of integrity and business ethics, as described in § 200.206(a)(2) (meaning, the applicant was determined to be qualified based on all factors other than those two standards); and

(2) The total Federal share of the Federal award was expected to exceed the simplified acquisition threshold over the period of performance.

(b) The Federal agency is not required to report a determination that an applicant is not qualified for a Federal award if they issue the Federal award in accordance with the requirements of § 200.208.

(c) If the Federal agency reports a determination that an applicant is not qualified for a Federal award, the Federal agency also must notify the applicant that:

(1) The determination was made and reported in *SAM.gov*. The notification from the Federal agency to the applicant should also provide a brief explanation for the determination;

(2) The information will be kept in the system for a period of five years from the date of the determination and then archived (See section 872 of Public Law 110–417, as amended, codified at 41 U.S.C. 2313);

(3) Each Federal agency that considers making a Federal award to the applicant during that five-year period will consider that information in determining the applicant's qualification to receive a Federal award when the total Federal share of a Federal award is expected to exceed the simplified acquisition threshold over the period of performance;

(4) The applicant may review the responsibility and qualification records accessible in *SAM.gov* and comment on any information the system contains about the applicant; and

(5) Federal agencies must consider the applicant's comments in determining whether the applicant is qualified for a future Federal award.

(d) If the Federal agency enters information into *SAM.gov* about a determination that an applicant is not qualified for a Federal award and subsequently:

(1) Learns that any of that information is erroneous, the Federal agency must correct the information in the system within three business days; and

(2) Obtains an update to that information that could be helpful to other Federal agencies, the Federal agency should amend the information in the system within 30 days.

(e) Federal agencies must not post any information that will be made publicly available in the non-public segment of the responsibility and qualification records that is covered by a disclosure exemption under the Freedom of Information Act. If a recipient asserts within seven calendar days to a Federal agency that some or all of the publicly available information is covered by a disclosure exemption under the Freedom of Information Act, the Federal agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

### § 200.214 Suspension and debarment.

Recipients and subrecipients are subject to the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, as well as 2 CFR part 180. The regulations in 2 CFR part 180 restrict making Federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from receiving or participating in Federal awards.

### § 200.215 Never contract with the enemy.

Federal agencies, recipients, and subrecipients are subject to the guidance implementing Never Contract with the Enemy in 2 CFR part 183. The guidance in 2 CFR part 183 affects covered contracts, grants, and cooperative agreements that are expected to exceed $50,000 during the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

### § 200.216 Prohibition on certain telecommunications and video surveillance equipment or services.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain covered telecommunications equipment or services;

(2) Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

(b) As described in section 889 of Public Law 115–232, ''covered telecommunications equipment or services'' means any of the following:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment;

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country;

(c) For the purposes of this section, ''covered telecommunications equipment or services'' also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(d) In implementing the prohibition under section 889 of Public Law 115–232, heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications

equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.

(e) When the recipient or subrecipient accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The recipient or subrecipient is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.

(f) For additional information, see section 889 of Public Law 115–232 and § 200.471.

### § 200.217 Whistleblower protections.

An employee of a recipient or subrecipient must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. The recipient and subrecipient must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.

## Subpart D—Post Federal Award Requirements

### § 200.300 Statutory and national policy requirements.

(a) The Federal agency or pass-through entity must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, applicable Federal statutes and regulations—including provisions protecting free speech, religious liberty, public welfare, and the environment, and those prohibiting discrimination—and the requirements of this part. The Federal agency or pass-through entity must communicate to a recipient or subrecipient all relevant requirements, including those contained in general appropriations provisions, and incorporate them directly or by reference in the terms and conditions of the Federal award.

(b) In administering Federal awards that are subject to a Federal statute prohibiting discrimination based on sex, the Federal agency or pass-through entity must ensure that the award is administered in a way that does not unlawfully discriminate based on sexual orientation or gender identity if the statute's prohibition on sex discrimination encompasses discrimination based on sexual orientation and gender identity consistent with the Supreme Court's reasoning in *Bostock* v. *Clayton County*, 140 S. Ct. 1731 (2020).

(c) In administering awards in accordance with the U.S. Constitution, the Federal agency must take account of the heightened constitutional scrutiny that may apply under the Constitution's Equal Protection guarantee for government action that provides differential treatment based on protected characteristics.

### § 200.301 Performance measurement.

(a) The Federal agency must measure the recipient's performance to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster the adoption of promising practices. The Federal agency should establish program goals and objectives during program planning and design (see § 200.202). The Federal agency should clearly communicate the specific program goals and objectives in the Federal award, including how the Federal agency will measure the achievement of the goals and objectives, the expected timeline, and information on how the recipient must report the achievement of program goals and objectives. The Federal agency should also clearly communicate in the Federal award any

expected outcomes (such as outputs, service performance, or public impacts of any of these), indicators, targets, baseline data, or data collections that the recipient is responsible for measuring and reporting. The Federal agency must ensure all requirements for measuring performance align with the Federal agency's strategic goals, strategic objectives, or performance goals relevant to a program (see OMB Circular A–11, Preparation, Submission, and Execution of the Budget Part 6).

(b) When establishing performance reporting frequency and content, the Federal agency should consider what information will be necessary to measure the recipient's progress, to identify promising practices of recipients, and build the evidence upon which the Federal agency makes program and performance decisions. The Federal agency should not require additional information that is not necessary for measuring program performance and evaluation. See § 200.329 for more information on reporting program performance.

(c) The Federal agency should also specify in the Federal award any requirements of the recipients' participation in federally funded evaluations.

**§ 200.302 Financial management.**

(a) Each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's funds. All recipient and subrecipient financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by the terms and conditions; and tracking expenditures to establish that funds have been used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award. See § 200.450.

(b) The recipient's and subrecipient's financial management system must provide for the following (see §§ 200.334, 200.335, 200.336, and 200.337):

(1) Identification of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the Assistance Listings title and number, Federal award identification number, year the Federal award was issued, and name of the Federal agency or pass-through entity.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements in §§ 200.328 and 200.329. When a Federal agency or pass-through entity requires reporting on an accrual basis from a recipient or subrecipient that maintains its records other than on an accrual basis, the recipient or subrecipient must not be required to establish an accrual accounting system. This recipient or subrecipient may develop accrual data for its reports based on an analysis of the documentation on hand.

(3) Maintaining records that sufficiently identify the amount, source, and expenditure of Federal funds for Federal awards. These records must contain information necessary to identify Federal awards, authorizations, financial obligations, unobligated balances, as well as assets, expenditures, income, and interest. All records must be supported by source documentation.

(4) Effective control over and accountability for all funds, property, and assets. The recipient or subrecipient must safeguard all assets and ensure they are used solely for authorized purposes. See § 200.303.

(5) Comparison of expenditures with budget amounts for each Federal award.

(6) Written procedures to implement the requirements of § 200.305.

(7) Written procedures for determining the allowability of costs in accordance with subpart E and the terms and conditions of the Federal award.

**§ 200.303 Internal controls.**

The recipient and subrecipient must:

(a) Establish, document, and maintain effective internal control over the Federal award that provides reasonable assurance that the recipient or subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should align with the

guidance in ''Standards for Internal Control in the Federal Government'' issued by the Comptroller General of the United States or the ''Internal Control-Integrated Framework'' issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal award.

(c) Evaluate and monitor the recipient's or subrecipient's compliance with statutes, regulations, and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified.

(e) Take reasonable cybersecurity and other measures to safeguard information including protected personally identifiable information (PII) and other types of information. This also includes information the Federal agency or pass-through entity designates as sensitive or other information the recipient or subrecipient considers sensitive and is consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

### § 200.304 Bonds.

(a) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal agency may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(b) The Federal agency may require adequate fidelity bond coverage where the recipient lacks coverage to protect the interest of the Federal Government.

(c) Where bonds, insurance, or both are required in the situations described above, the bonds and insurance must be obtained from companies holding certificates of authority issued by the U.S. Department of Treasury (see 31 CFR part 223).

### § 200.305 Federal payment.

(a) *Payments for States.* Payments for States are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A–2000, ''Overall Disbursing Rules for All Federal Agencies.''

(b) *Payments for recipients and subrecipients other than States.* For recipients and subrecipients other than States, payment methods must minimize the time elapsing between the transfer of funds from the Federal agency or the pass-through entity and the disbursement of funds by the recipient or subrecipient regardless of whether the payment is made by electronic funds transfer or by other means. See § 200.302(b)(6). Except as noted in this part, the Federal agency must require recipients to use only OMB-approved, government-wide information collections to request payment.

(1) The recipient or subrecipient must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient or subrecipient, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a recipient or subrecipient must be limited to the minimum amounts needed and be timed with actual, immediate cash requirements of the recipient or subrecipient in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the recipient or subrecipient for direct program or project costs and the proportionate share of any allowable indirect costs. The recipient or subrecipient must make timely payments to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payment requests by the recipient or subrecipient must be consolidated to cover anticipated cash needs for all Federal awards received by the recipient from the awarding Federal agency or pass-through entity.

(i) Advance payment mechanisms must comply with 31 CFR part 208 and

include, but are not limited to, Treasury checks and electronic funds transfers.

(ii) Recipients and subrecipients must be authorized to submit payment requests as often as necessary when electronic fund transfers are used or at least monthly when electronic transfers are not used. See Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(3) Reimbursement is preferred when the requirements in paragraph (b) cannot be met, when the Federal agency or pass-through entity sets a specific condition per § 200.208, when requested by the recipient or subrecipient, when a Federal award is for construction, or when a significant portion of the construction project is accomplished through private market financing or Federal loans and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal agency or pass-through entity must make payment within 30 calendar days after receipt of the payment request unless the Federal agency or pass-through entity reasonably believes the request to be improper.

(4) If the recipient or subrecipient cannot meet the criteria for advance payments and the Federal agency or pass-through entity has determined that reimbursement is not feasible because the recipient or subrecipient lacks sufficient working capital, the Federal agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal agency or pass-through entity must advance cash payments to the recipient or subrecipient to cover its estimated disbursement needs for an initial period generally aligned to the recipient's or subrecipient's disbursing cycle. After that, the Federal agency or pass-through entity must reimburse the recipient or subrecipient for its actual cash disbursements. Use of the working capital advance payment method requires that the pass-through entity provide timely advance payments to any subrecipients to meet the subrecipient's actual cash disbursements. The pass-through entity must not use the working capital advance method of payment if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) If available, the recipient or subrecipient must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on Federal funds before requesting additional cash payments.

(6) Payments for allowable costs must not be withheld at any time during the period of performance unless required by Federal statute, regulations, or in one of the following instances:

(i) The recipient or subrecipient has failed to comply with the terms and conditions of the Federal award; or

(ii) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Policies for Federal Credit Programs and Non-Tax Receivables.'' Under such conditions, the Federal agency or pass-through entity may, after providing reasonable notice, withhold payments to the recipient or subrecipient for financial obligations incurred after a specified date until the conditions are corrected or the debt is repaid to the Federal Government.

(7) A payment withheld for failure to comply with the terms and conditions of the Federal award must be released to the recipient or subrecipient upon subsequent compliance. When a Federal award is suspended, payment adjustments must be made in accordance with § 200.343.

(8) A payment must not be made to a recipient or subrecipient for amounts that the recipient or subrecipient withholds from contractors to assure satisfactory completion of work. Payment must be made when the recipient or subrecipient disburses the withheld funds to the contractors or to escrow accounts established to ensure satisfactory completion of work.

(9) The Federal agency or pass-through entity must not require separate depository accounts for funds provided to the recipient or subrecipient or establish any eligibility requirements for depositories. However, the recipient or subrecipient must be able

to account for all Federal funds received, obligated, and expended.

(10) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(11) The recipient or subrecipient must maintain advance payments of Federal funds in interest-bearing accounts unless one of the following applies:

(i) The recipient or subrecipient receives less than $250,000 in Federal funding per year;

(ii) The best available interest-bearing account would not reasonably be expected to earn interest in excess of $500 per year on Federal cash balances;

(iii) The depository would require an average or minimum balance so high that it would not be feasible with the expected Federal and non-Federal cash resources;

(iv) A foreign government or banking system prohibits or precludes interest-bearing accounts; or

(v) An interest-bearing account is not readily accessible (for example, due to public or political unrest in a foreign country).

(12) The recipient or subrecipient may retain up to $500 per year of interest earned on Federal funds to use for administrative expenses of the recipient or subrecipient. Any additional interest earned on Federal funds must be returned annually to the Department of Health and Human Services Payment Management System (PMS) through either the Automated Clearing House (ACH) network or a Fedwire Funds Service payment. All interest in excess of $500 per year must be returned to PMS regardless of whether the recipient or subrecipient was paid through PMS. Instructions for returning interest can be found at *https://pms.psc.gov/grant-recipients/returning-funds-interest.html*.

(13) All other Federal funds must be returned to the payment system of the Federal agency. Returns should follow the instructions provided by the Federal agency. All returns to PMS should follow the instructions provided at *https://pms.psc.gov/grant-recipients/returning-funds-interest.html*.

**§ 200.306 Cost sharing.**

(a) Voluntary committed cost sharing is not expected under Federal research grants. The Federal agency may not use voluntary committed cost sharing as a factor during the merit review of applications or proposals for Federal research grants unless authorized by Federal statutes or agency regulations and specified in the notice of funding opportunity. Federal agencies are also discouraged from using voluntary committed cost sharing as a factor during the merit review of applications for other Federal financial assistance programs. If voluntary committed cost sharing is used for this purpose for other programs, the notice of funding opportunity must specify how an applicant's proposed cost sharing will be considered. See §§ 200.414, 200.204, and Appendix I.

(b) For all Federal awards, the Federal agency or pass-through entity must accept any cost sharing funds (including cash and third-party in-kind contributions, and also including funds committed by the recipient, subrecipient, or third parties) as part of the recipient's or subrecipient's contributions to a program when the funds:

(1) Are verifiable in the recipient's or subrecipient's records;

(2) Are not included as contributions for any other Federal award;

(3) Are necessary and reasonable for achieving the objectives of the Federal award;

(4) Are allowable under subpart E;

(5) Are not paid by the Federal Government under another Federal award, except where the program's Federal authorizing statute specifically provides that Federal funds made available for the program can be applied to cost sharing requirements of other Federal programs;

(6) Are provided for in the approved budget when required by the Federal agency; and

(7) Conform to other applicable provisions of this part.

(c) Unrecovered indirect costs, including indirect costs on cost sharing, may be included as part of cost sharing with the prior approval of the Federal

agency or pass-through entity. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the recipient's or subrecipient's approved indirect cost rate.

(d) Values for recipient or subrecipient contributions of services and property must be established in accordance with the cost principles in subpart E. When a Federal agency or pass-through entity authorizes the recipient or subrecipient to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing must be the lesser of paragraph (d)(1) or (2) below.

(1) The value of the remaining life of the property recorded in the recipient's or subrecipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal agency or pass-through may approve using the current fair market value of the donated property, even if it exceeds the value described in paragraph (d)(1) at the time of donation.

(e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other labor may be counted as cost sharing if the service is necessary for the program. Rates for third-party volunteer services must be consistent with those paid for similar work by the recipient or subrecipient. When the required skills are not found in the recipient's or subrecipient's workforce, rates must be consistent with those paid for similar work in the labor market where the recipient or subrecipient competes for the services involved. In either case, fringe benefits that are allowable, allocable, and reasonable may be included in the valuation.

(f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally-negotiated indirect cost rate or, a rate in accordance with § 200.414(d) provided these services employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

(g) Donated property from third parties may include items such as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. The assessed value of donated property included as cost sharing must not exceed the property's fair market value at the time of the donation.

(h) The method used for determining the value of donated equipment, buildings, and land for which title passes to the recipient or subrecipient may differ according to the following:

(1) If the purpose of the Federal award is to assist the recipient or subrecipient in acquiring equipment, buildings, or land, the aggregate value of the donated property may be claimed as cost sharing.

(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings, or land, only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed if provided in the terms and conditions of the Federal award. See § 200.420.

(i) The value of donated property must be determined in accordance with the accounting policies of the recipient or subrecipient with the following qualifications:

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the recipient or subrecipient as established by an independent appraiser (for example, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient or subrecipient as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601–4655) except as provided in the implementing

regulations at 49 CFR part 24, ''Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs.''

(2) The value of donated equipment must not exceed the fair market value at the time of donation.

(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment must not exceed its fair rental value.

(j) The fair market value of third-party in-kind contributions must be documented and, to the extent feasible, supported by the same methods used internally by the recipient or subrecipient.

(k) For institutions of higher education (IHE), voluntary uncommitted cost sharing should be treated differently from mandatory or voluntary committed cost sharing. Voluntary uncommitted cost sharing should not be included in the organized research base for computing the indirect cost rate or reflected in any allocation of indirect costs. Voluntary uncommitted cost sharing includes faculty-donated additional time above that agreed to as part of the award. See OMB memorandum M–01–06, dated January 5, 2001, Clarification of OMB A–21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

### § 200.307 Program income.

(a) *General.* The recipient or subrecipient is encouraged to earn income to defray program costs when appropriate. Program income must be used for the original purpose of the Federal award. Program income earned during the period of performance may only be used for costs incurred during the period of performance or allowable closeout costs. See § 200.472(b). Program income must be expended prior to requesting additional Federal funds. Program income exceeding amounts specified in the Federal award may be added to or deducted from the total allowable costs in accordance with the terms and conditions of the Federal award.

(b) *Use of program income.* There are three methods of applying program income: deduction; addition; and cost-sharing. The Federal agency should specify what program income method(s) will be used in the terms and conditions of the Federal award. The deduction method will be used if the Federal agency does not specify a method for applying program income. When no program income method is specified in the Federal award, prior approval is required to use the addition or cost sharing methods. However, the addition method will be used when no method is specified for awards made to institutions of higher education (IHE) and nonprofit research institutions. In specifying alternatives to the deduction and addition methods, the Federal agency may distinguish between income earned by the recipient and income earned by subrecipients as well as between the sources, kinds, or amounts of income.

(1) *Deduction.* Program income is deducted from the total allowable costs, reducing the overall total amount of the Federal award.

(2) *Addition.* Program income is added to the total allowable costs, increasing the overall total amount of the Federal award.

(3) *Cost sharing.* Program income is used to meet the Federal award's cost sharing requirement.

(c) *Income after the period of performance.* There are no requirements governing the disposition of program income earned after the end of the period of performance of the Federal award unless stipulated in the Federal agency regulations or the terms and conditions of the Federal award. The Federal agency may negotiate agreements with recipients regarding appropriate uses of income earned after the end of the period of performance as part of the closeout process. See § 200.344.

(d) *Cost of generating program income.* If authorized by Federal regulations or the Federal award, costs incidental to generating program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.

(e) *Not considered program income.* The following are not considered program

income unless specified in Federal statutes, regulations, or the terms and conditions of the Federal award:

(1) *Governmental revenues.* Taxes, special assessments, levies, fines, and similar revenues the recipient or subrecipient raised.

(2) *Property.* Proceeds from the sale of real property, equipment, or supplies. The proceeds must be handled in accordance with the requirements of the Property Standards of §§ 200.311, 200.313, 200.314, or as explicitly identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

(3) *License fees and royalties.* License fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under the Federal award subject to 37 CFR part 401.

### § 200.308 Revision of budget and program plans.

(a) *Approved budget in general.* The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include the Federal share and non-Federal share or only the Federal share, as determined by the Federal agency or pass-through entity.

(b) *Deviations from approved budget.* The recipient or subrecipient must report deviations from the approved budget, project or program scope, or objective(s) in accordance with § 200.329. The recipient or subrecipient must request prior approvals from the Federal agency or pass-through entity for budget and program plan revisions in accordance with this section.

(c) *Requesting approval for budget revisions.* When requesting approval for budget revisions, the recipient or subrecipient must use the same format for budget information that was used in their application, except if the Federal agency has approved an alternative format. Alternative formats may include the use of electronic systems, email, or other agency-approved mechanisms that document the request.

(d) *Federal agency or pass-through entity review.* The Federal agency or pass-through entity must review the request for budget or program plan revision and should notify the recipient or subrecipient whether the revisions have been approved within 30 days of receipt of the request. The Federal agency or pass-through entity must inform the recipient or subrecipient in writing when a decision can be expected if more than 30 days is required for a review.

(e) *Limitation on other prior approval requirements.* Unless specified in this guidance, the Federal agency must not impose additional prior approval requirements without OMB approval. See also §§ 200.102 and 200.407.

(f) *Revisions Requiring Prior Approval.* A recipient or subrecipient must request prior written approval from the Federal agency or pass-through entity for the following program and budget-related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in key personnel (including employees and contractors) that are identified by name or position in the Federal award.

(3) The disengagement from a project for more than three months, or a 25 percent reduction in time and effort devoted to the Federal award over the course of the period of performance, by the approved project director or principal investigator.

(4) The inclusion, unless waived by the Federal agency, of costs that require prior approval in accordance with subpart E as applicable.

(5) The transfer of funds budgeted for participant support costs to other budget categories.

(6) Subaward activities not proposed in the application and approved in the Federal award. A change of subrecipient only requires prior approval if the Federal agency or pass-through entity includes the requirement in the terms and conditions of the Federal award. In general, a Federal agency or pass-through entity should not require prior approval of a change of subrecipient unless the inclusion was a determining factor in the merit review or eligibility process. This requirement does not apply to procurement transactions for goods and services.

(7) Changes in the total approved cost-sharing amount.

(8) The need arises for additional Federal funds to complete the project. Before providing approval, the Federal agency must ensure that adequate funds are available to avoid a violation of the Antideficiency Act.

(9) Transferring funds between the construction and non-construction work under a Federal award.

(10) A no-cost extension (meaning, an extension of time that does not require the obligation of additional Federal funds) of the period of performance, other than any one-time extension authorized by the Federal agency in accordance with paragraph (g)(2). All requests for no-cost extensions should be submitted at least 10 calendar days before the conclusion of the period of performance. The Federal agency may approve multiple no-cost extensions under a Federal award if not prohibited by Federal statute or regulation.

(g) *Waiver of certain prior approvals.* Except for the requirements listed in paragraphs (f)(1) through (10), the Federal agency is authorized to waive other cost-related and administrative prior written approval requirements contained in subparts D and E. Such waivers may include authorizing recipients to do one or more of the following:

(1) *Pre-award costs.* Incur project costs 90 calendar days before the Federal award date. Expenses incurred more than 90 calendar days before the Federal award date require prior approval of the Federal agency. All costs incurred before the Federal award date are at the recipient's own risk (*for example*, the Federal agency is not required to reimburse such costs if the recipient does not receive the Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). Pre-award costs must be charged to the initial budget period of the Federal award unless otherwise specified by the Federal agency. See also § 200.458.

(2) *One-time extensions.* Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (g)(2)(i) through (iii) of this section apply. Prior approval is not required if a recipient is authorized in the terms and conditions of the Federal award to initiate a one-time extension. However, the recipient must notify the Federal agency in writing with the supporting justification and a revised period of performance at least 10 calendar days before the conclusion of the period of performance. A one-time extension may not be exercised for the sole purpose of using unobligated balances. This paragraph does not preclude the Federal agency from approving further no-cost extensions to the Federal award. One-time extensions require prior approval from the Federal agency when:

(i) The terms and conditions of the Federal award prohibit the extension;

(ii) The extension requires additional Federal funds; or

(iii) The extension involves any change in the approved scope of the project.

(3) *Unobligated Balances.* Carry forward unobligated balances to subsequent budget periods.

(h) *Prior approvals for research awards.* The prior approval requirements for the actions described in paragraph (g) of this section are automatically waived for Federal awards that support research unless stipulated in the Federal agency's regulations or terms and conditions of the Federal award. However, one-time extensions require the Federal agency's prior approval when one of the conditions in paragraph (g)(2) of this section applies.

(i) *Transfer of funds.* The Federal agency must not permit a transfer of funds that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation. The Federal agency may also, at its option, restrict the transfer of funds among direct cost categories (for example, personnel, travel, and supplies) or programs, functions, and activities when:

(1) The Federal share of the Federal award exceeds the simplified acquisition threshold; and

(2) The cumulative amount of a transfer exceeds or is expected to exceed 10 percent of the total budget, including cost share, as last approved by the Federal agency.

### § 200.309 Modifications to Period of Performance.

When the Federal agency or pass-through entity approves an extension to a Federal award, or if a recipient extends under § 200.308(g)(2), the period of performance will be amended to end at the completion of the extension. If termination occurs, the period of performance will be amended to end upon the effective date of termination. The start date of a renewal award begins a new and distinct period of performance.

PROPERTY STANDARDS

### § 200.310 Insurance coverage.

The recipient or subrecipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property and equipment owned by the recipient or subrecipient. Insurance is not required for Federally owned property unless required by the terms and conditions of the Federal award.

### § 200.311 Real property.

(a) *Title*. Subject to the requirements and conditions set forth in this section, title to real property acquired or improved under the Federal award will vest upon acquisition in the recipient or subrecipient.

(b) *Use*. Except as otherwise provided by Federal statutes or the Federal agency, real property must be used for the originally authorized purpose as long as it is needed for that purpose. While the property is being used for the originally authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests except as provided by the Federal agency. Easements for utility, cable, and similar services that benefit the real property and are consistent with the authorized use are not considered an encumbrance.

(c) *Appraisals*. When an appraisal of real property is required and obtained by the recipient or subrecipient, it must be conducted by an independent appraiser (for example, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient or subrecipient as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601–4655) except as provided in the implementing regulations at 49 CFR part 24, ''Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs.''

(d) *Disposition*. When real property is no longer needed for the originally authorized purpose, the recipient or subrecipient must obtain disposition instructions from the Federal agency or pass-through entity. The instructions must specify one of the following disposition methods:

(1) *Retain title after compensating the Federal agency*. When the recipient or subrecipient retains title to the property, it must pay the Federal agency an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase (and costs of any improvements) by the current fair market value of the property. However, in situations where the recipient or subrecipient is disposing of real property acquired or improved with the Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sell the property and compensate the Federal agency*. When a recipient or subrecipient sells the property, it must pay the Federal agency an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase (and cost of any improvements) by the proceeds of the sale after deducting any actual and reasonable expenses paid to sell or fix up the property for sale. When the Federal award has not been closed out, the net proceeds from the sale may be offset against the original cost of the property. When directed to sell the property, the recipient or subrecipient must sell the property utilizing procedures that provide for competition to the extent practicable and that result in the highest possible return.

(3) *Transfer title to the Federal agency or a third party designated/approved by the Federal agency*. When a recipient or subrecipient transfers title to the property to a Federal agency or third party

designated or approved by the Federal agency, the recipient or subrecipient is entitled to be paid an amount calculated by multiplying the percentage of the recipient's or subrecipient's contribution towards the original purchase of the real property (and cost of any improvements) by the current fair market value of the property.

### § 200.312 Federally owned and exempt property.

(a) Title to Federally owned property remains vested in the Federal Government. The recipient or subrecipient must submit an inventory listing of Federally owned property in its custody to the Federal agency or pass-through entity on an annual basis. The recipient or subrecipient must request disposition instructions from the Federal agency or pass-through entity upon completion of the Federal award or when the property is no longer needed.

(b) If the Federal agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority unless the Federal agency has statutory authority to dispose of the property by alternative methods (*for example*, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(i)). The Federal agency or pass-through entity must issue appropriate instructions to the recipient or subrecipient.

(c) Exempt property means property acquired under the Federal award where the Federal agency has chosen to vest title to the property to the recipient or subrecipient without further responsibility to the Federal Government. The Federal agency may only exercise this option when permitted by Federal statute and set forth in the terms and conditions of the Federal award. Absent statutory authority and specific terms and conditions of the Federal award, the title to exempt property acquired under the Federal award remains with the Federal Government.

### § 200.313 Equipment.

See also § 200.439.

(a) *Title*. Title to equipment acquired under the Federal award will vest upon acquisition in the recipient or subrecipient subject to the conditions of this section. This title must be a conditional title unless a Federal statute specifically authorizes the Federal agency to vest title in the recipient or subrecipient without further responsibility to the Federal Government (and the Federal agency elects to do so). A conditional title means a clear title is withheld by the Federal agency until conditions and requirements specified in the terms and conditions of a Federal award have been fulfilled. Title for equipment vested in a recipient or subrecipient is subject to the following conditions:

(1) Use the equipment for the authorized purposes of the project during the period of performance or until the property is no longer needed for the purposes of the project.

(2) While the equipment is being used for the originally-authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests without the approval of the Federal agency or pass-through entity.

(3) Use and dispose of the property in accordance with paragraphs (b), (c), and (e) of this section.

(b) *General*. A State must use, manage and dispose of equipment acquired under a Federal award in accordance with State laws and procedures. Indian Tribes must use, manage, and dispose of equipment acquired under a Federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in this section. Other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow paragraphs (c) through (e) of this section.

(c) *Use*. (1) The recipient or subrecipient must use equipment for the project or program for which it was acquired and for as long as needed, whether or not the project or program continues to be supported by the Federal award. The recipient or subrecipient must not encumber the equipment without prior approval of the Federal agency or pass-through entity. The Federal agency may require the submission of the applicable common forms for reporting on equipment.

When no longer needed for the original project or program, the equipment may be used in other activities in the following order of priority:

(i) Activities under other Federal awards from the Federal agency that funded the original program or project; then

(ii) Activities under Federal awards from other Federal agencies. These activities include consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the recipient or subrecipient must also make the equipment available for use on other programs or projects supported by the Federal Government, provided that such use will not interfere with the purpose for which it was originally acquired. First preference for other use of the equipment must be given to other programs or projects supported by the Federal agency that financed the equipment. Second preference must be given to programs or projects under Federal awards from other Federal agencies. Use for non-federally-funded projects is also permissible, provided such use will not interfere with the purpose for which it was originally acquired. The recipient or subrecipient should consider charging user fees as appropriate.

(3) Notwithstanding the encouragement in § 200.307 to earn program income, the recipient or subrecipient must not use equipment acquired with the Federal award to provide services for a fee that is less than a private company would charge for similar services unless specifically authorized by Federal statute. This restriction is effective as long as the Federal Government retains an interest in the equipment.

(4) When acquiring replacement equipment, the recipient or subrecipient may either trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment.

(d) *Management requirements.* Regardless of whether equipment is acquired in part or its entirety under the Federal award, the recipient or subrecipient must manage equipment (including replacement equipment) utilizing procedures that meet the following requirements:

(1) Property records must include a description of the property, a serial number or another identification number, the source of funding for the property (including the FAIN), the title holder, the acquisition date, the cost of the property, the percentage of the Federal agency contribution towards the original purchase, the location, use and condition of the property, and any disposition data including the date of disposal and sale price of the property. The recipient and subrecipient are responsible for maintaining and updating property records when there is a change in the status of the property.

(2) A physical inventory of the property must be conducted, and the results must be reconciled with the property records at least once every two years.

(3) A control system must be in place to ensure safeguards for preventing property loss, damage, or theft. Any loss, damage, or theft of equipment must be investigated. The recipient or subrecipient must notify the Federal agency or pass-through entity of any loss, damage, or theft of equipment that will have an impact on the program.

(4) Regular maintenance procedures must be in place to ensure the property is in proper working condition.

(5) If the recipient or subrecipient is authorized or required to sell the property, proper sales procedures must be in place to ensure the highest possible return.

(e) *Disposition.* When equipment acquired under a Federal award is no longer needed for the original project, program, or for other activities currently or previously supported by a Federal agency, the recipient or subrecipient must request disposition instructions from the Federal agency or pass-through entity if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal agency or pass-through entity disposition instructions:

(1) Equipment with a current fair market value of $10,000 or less (per

unit) may be retained, sold, or otherwise disposed of with no further responsibility to the Federal agency or pass-through entity.

(2) Except as provided in §200.312(b), or if the Federal agency or pass-through entity fails to provide requested disposition instructions within 120 days, items of equipment with a current fair market value in excess of $10,000 (per-unit) may be retained or sold by the recipient or subrecipient. However, the Federal agency is entitled to an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase by the current market value or proceeds from the sale. If the equipment is sold, the Federal agency or pass-through entity may permit the recipient or subrecipient to retain, from the Federal share, $1,000 of the proceeds to cover expenses associated with the selling and handling of the equipment.

(3) The recipient or subrecipient may transfer title to the property to the Federal Government or to an eligible third party provided that the recipient or subrecipient must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a recipient or subrecipient fails to take appropriate disposition actions, the Federal agency or pass-through entity may direct the recipient or subrecipient to take disposition actions.

(f) *Equipment retention.* When included in the terms and conditions of the Federal award, the Federal agency may permit the recipient to retain equipment, or authorize a pass-through entity to permit the subrecipient to retain equipment, with no further obligation to the Federal Government unless prohibited by Federal statute or regulation.

### §200.314 Supplies.

See also §200.453.

(a) Title to supplies acquired under the Federal award will vest upon acquisition in the recipient or subrecipient. When there is a residual inventory of unused supplies exceeding $10,000 in aggregate value at the end of the period of performance, and the supplies are not needed for any other Federal award, the recipient or subrecipient may retain or sell the unused supplies. Unused supplies means supplies that are in new condition, not having been used or opened before. The aggregate value of unused supplies consists of all supply types, not just like-item supplies. The Federal agency or pass-through entity is entitled to compensation in an amount calculated by multiplying the percentage of the Federal agency's or pass-through entity's contribution towards the cost of the original purchase(s) by the current market value or proceeds from the sale. If the supplies are sold, the Federal agency or pass-through entity may permit the recipient or subrecipient to retain, from the Federal share, $1,000 of the proceeds to cover expenses associated with the selling and handling of the supplies.

(b) Unless expressly authorized by Federal statute, the recipient or subrecipient must not use supplies acquired with the Federal award to provide services for a fee that is less than a private company would charge for similar services. This restriction is effective as long as the Federal Government retains an interest in the supplies or as authorized by Federal statute.

### §200.315 Intangible property.

(a) Title to intangible property acquired under a Federal award vests upon acquisition in the recipient or subrecipient. The recipient or subrecipient must use that intangible property for the originally authorized purpose and must not encumber the property without the approval of the Federal agency or pass-through entity. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in §200.313(e).

(b) To the extent permitted by law, the recipient or subrecipient may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes and to authorize others to do

so. This includes the right to require recipients and subrecipients to make such works available through agency-designated public access repositories.

(c) The recipient or subrecipient is subject to applicable regulations governing patents and inventions, including government-wide regulations in 37 CFR part 401.

(d) The Federal Government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use the data for Federal purposes.

(e)(1) The recipient or subrecipient must provide research data relating to published research findings produced under the Federal award and that were used by the Federal Government in developing an agency action that has the force and effect of law if requested by the Federal agency in response to a Freedom of Information Act (FOIA) request. When the Federal agency obtains the research data solely in response to a FOIA request, the Federal agency may charge the requester a fee for the cost of obtaining the research data. This fee should reflect the costs incurred by the Federal agency and the recipient or subrecipient. This fee is in addition to any fees the Federal agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings mean:

(i) Research findings published in a peer-reviewed scientific or technical journal; or

(ii) Research findings publicly cited by a Federal agency in developing an agency action that has the force and effect of law.

(3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings. Research data does not include any of the following:

(i) Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This ''recorded'' material excludes physical objects (for example, laboratory samples).

(ii) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(iii) Personnel, medical, and other personally identifiable information that, if disclosed, would constitute an invasion of personal privacy. Information that could identify a particular person in a research study is not considered research data.

(f) Federal agencies should work with recipients to maximize public access to Federally funded research results and data in a manner that protects data providers' confidentiality, privacy, and security. Agencies should provide guidance to recipients to make restricted-access data available through a variety of mechanisms. FOIA may not be the most appropriate mechanism for providing access to intangible property, including Federally funded research results and data.

### § 200.316 Property trust relationship.

Real property, equipment, and intangible property acquired or improved with the Federal award must be held in trust by the recipient or subrecipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal agency or pass-through entity may require the recipient or subrecipient to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

## PROCUREMENT STANDARDS

### § 200.317 Procurements by States and Indian Tribes.

When conducting procurement transactions under a Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements with non-Federal funds. If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in §§ 200.318 through 200.327. In addition to its own policies and procedures, a State or Indian Tribe must also comply with the following procurement standards: §§ 200.321, 200.322, 200.323, and 200.327. All

other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in §§ 200.318 through 200.327.

### § 200.318 General procurement standards.

(a) *Documented procurement procedures.* The recipient or subrecipient must maintain and use documented procedures for procurement transactions under a Federal award or subaward, including for acquisition of property or services. These documented procurement procedures must be consistent with State, local, and tribal laws and regulations and the standards identified in §§ 200.317 through 200.327.

(b) *Oversight of contractors.* Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. See also § 200.501(h).

(c) *Conflicts of interest.* (1) The recipient or subrecipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No employee, officer, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the Federal award. A conflict of interest includes when the employee, officer, agent, or board member, any member of their immediate family, their partner, or an organization that 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 an entity considered for a contract. An employee, officer, agent, and board member of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors. However, the recipient or subrecipient may set standards for situations where the financial interest is not substantial or a gift is an unsolicited item of nominal value. The recipient's or subrecipient's standards of conduct must also provide for disciplinary actions to be applied for violations by its employees, officers, agents, or board members.

(2) If the recipient or subrecipient has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian Tribe, the recipient or subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient or subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) *Avoidance of unnecessary or duplicative items.* The recipient's or subrecipient's procedures must avoid the acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. When appropriate, an analysis should be made between leasing and purchasing property or equipment to determine the most economical approach.

(e) *Procurement arrangements using strategic sourcing.* When appropriate for the procurement or use of common or shared goods and services, recipients and subrecipients are encouraged to enter into State and local intergovernmental agreements or inter-entity agreements for procurement transactions. These or similar procurement arrangements using strategic sourcing may foster greater economy and efficiency. Documented procurement actions of this type (using strategic sourcing, shared services, and other similar procurement arrangements) will meet the competition requirements of this part.

(f) *Use of excess and surplus Federal property.* The recipient or subrecipient is encouraged to use excess and surplus Federal property instead of purchasing new equipment and property when it is feasible and reduces project costs.

(g) *Use of value engineering clauses.* When practical, the recipient or subrecipient is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering means

analyzing each contract item or task to ensure its essential function is provided at the overall lowest cost.

(h) *Responsible contractors.* The recipient or subrecipient must award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract. The recipient or subrecipient must consider contractor integrity, public policy compliance, proper classification of employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), past performance record, and financial and technical resources when conducting a procurement transaction. See also § 200.214.

(i) *Procurement records.* The recipient or subrecipient must maintain records sufficient to detail the history of each procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.

(j) *Time-and-materials type contracts.* (1) The recipient or subrecipient may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a recipient or subrecipient is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Because this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the recipient or subrecipient awarding such a contract must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) *Settlement of contractual and administrative issues.* The recipient or subrecipient is responsible for the settlement of all contractual and administrative issues arising out of its procurement transactions. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the recipient or subrecipient of any contractual responsibilities under its contracts. The Federal agency will not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a Federal concern. The recipient or subrecipient must report violations of law to the Federal, State, or local authority with proper jurisdiction.

(l) *Examples of labor and employment practices.* (1) The procurement standards in this subpart do not prohibit recipients or subrecipients from:

(i) Using Project Labor Agreements (PLAs) or similar forms of pre-hire collective bargaining agreements;

(ii) Requiring construction contractors to use hiring preferences or goals for people residing in high-poverty areas, disadvantaged communities as defined by the Justice40 Initiative (see OMB Memorandum M–21–28), or high-unemployment census tracts within a region no smaller than the county where a federally funded construction project is located. The hiring preferences or goals should be consistent with the policies and procedures of the recipient or subrecipient, and must not prohibit interstate hiring;

(iii) Requiring a contractor to use hiring preferences or goals for individuals with barriers to employment (as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102(24)), including women and people from underserved communities as defined by Executive Order 14091;

(iv) Using agreements intended to ensure uninterrupted delivery of services; using agreements intended to ensure community benefits; or

(v) Offering employees of a predecessor contractor rights of first refusal under a new contract.

(2) Recipients and subrecipients may use the practices listed in paragraph (1) if consistent with the U.S. Constitution, applicable Federal statutes and regulations, the objectives and purposes of the applicable Federal financial assistance program, and other requirements of this part.

**§ 200.319 Competition.**

(a) All procurement transactions under the Federal award must be conducted in a manner that provides full and open competition and is consistent with the standards of this section and § 200.320.

(b) To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements.

(c) Examples of situations that may restrict competition include, but are not limited to:

(1) Placing unreasonable requirements on firms for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(d) The recipient or subrecipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Are made in accordance with § 200.319(b);

(2) Incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured. The description may include a statement of the qualitative nature of the property, equipment, or service to be procured. When necessary, the description must provide minimum essential characteristics and standards to which the property, equipment, or service must conform. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to clearly and accurately describe the technical requirements, a ''brand name or equivalent'' description of features may be used to provide procurement requirements. The specific features of the named brand must be clearly stated; and

(3) Identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals.

(e) The recipient or subrecipient must ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and include enough qualified sources to ensure maximum open competition. When establishing or amending prequalified lists, the recipient or subrecipient must consider objective factors that evaluate price and cost to maximize competition. The recipient or subrecipient must not preclude potential bidders from qualifying during the solicitation period.

(f) To the extent consistent with established practices and legal requirements applicable to the recipient or subrecipient, this subpart does not prohibit recipients or subrecipients from developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work products or providing services on a contract, and other worker protections. This subpart also does not prohibit recipients and subrecipients from making inquiries of bidders about these subjects and assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award.

(g) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

**§ 200.320 Procurement methods.**

There are three types of procurement methods described in this section: informal procurement methods (for micro-purchases and simplified acquisitions); formal procurement methods (through sealed bids or proposals); and noncompetitive procurement methods. For any of these methods, the recipient

or subrecipient must maintain and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319.

(a) *Informal procurement methods for small purchases.* These procurement methods expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods may be used when the value of the procurement transaction under the Federal award does not exceed the simplified acquisition threshold as defined in § 200.1. Recipients and subrecipients may also establish a lower threshold. Informal procurement methods include:

(1) *Micro-purchases*—(i) *Distribution.* The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold defined in § 200.1. To the extent practicable, the recipient or subrecipient should distribute micro-purchases equitably among qualified suppliers.

(ii) *Micro-purchase awards.* Micro-purchases may be awarded without soliciting competitive price or rate quotations if the recipient or subrecipient considers the price reasonable based on research, experience, purchase history, or other information; and maintains documents to support its conclusion. Purchase cards may be used as a method of payment for micro-purchases.

(iii) *Micro-purchase thresholds.* The recipient or subrecipient is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the recipient or subrecipient must be authorized or not prohibited under State, local, or tribal laws or regulations. The recipient or subrecipient may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) *Recipient or subrecipient increase to the micro-purchase threshold up to $50,000.* The recipient or subrecipient may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The recipient or subrecipient may self-certify a threshold up to $50,000 on an annual basis and must maintain documentation to be made available to the Federal agency or pass-through entity and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold is consistent with State law.

(v) *Recipient or subrecipient increase to the micro-purchase threshold over $50,000.* Micro-purchase thresholds higher than $50,000 must be approved by the cognizant agency for indirect costs. The recipient or subrecipient must submit a request that includes the requirements in paragraph (a)(1)(iv) of this section. The increased threshold is valid until any factor that was relied on in the establishment and rationale of the threshold changes.

(2) *Simplified acquisitions*—(i) *Simplified acquisition procedures.* The aggregate dollar amount of the procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Unless specified by the Federal agency, the recipient or subrecipient may exercise judgment in determining what number is adequate.

(ii) *Simplified acquisition thresholds.* The recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures, which may be lower than, but must not exceed, the threshold established in the FAR.

(b) *Formal procurement methods.* Formal procurement methods are required when the value of the procurement

transaction under a Federal award exceeds the simplified acquisition threshold of the recipient or subrecipient. Formal procurement methods are competitive and require public notice. The following formal methods of procurement are used for procurement transactions above the simplified acquisition threshold determined by the recipient or subrecipient in accordance with paragraph (a)(2)(ii) of this section:

(1) *Sealed bids.* This is a procurement method in which bids are publicly solicited through an invitation and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price. The sealed bids procurement method is preferred for procuring construction services.

(i) For sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available; (B) Two or more responsible bidders have been identified as willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm-fixed-price contract, and the selection of the successful bidder can be made principally based on price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them with sufficient response time prior to the date set for opening the bids. Unless specified by the Federal agency, the recipient or subrecipient may exercise judgment in determining what number is adequate. For local governments, the invitation for bids must be publicly advertised.

(B) The invitation for bids must define the items or services with specific information, including any required specifications, for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids. For local governments, the bids must be opened publicly.

(D) A firm-fixed-price contract is awarded in writing to the lowest responsive bid and responsible bidder. When specified in the invitation for bids, factors such as discounts, transportation cost, and life-cycle costs must be considered in determining which bid is the lowest. Payment discounts must only be used to determine the low bid when the recipient or subrecipient determines they are a valid factor based on prior experience.

(E) The recipient or subrecipient must document and provide a justification for all bids it rejects.

(2) *Proposals.* This is a procurement method used when conditions are not appropriate for using sealed bids. This procurement method may result in either a fixed-price or cost-reimbursement contract. They are awarded in accordance with the following requirements:

(i) Requests for proposals require public notice, and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified entities. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered.

(ii) The recipient or subrecipient must have written procedures for conducting technical evaluations and making selections.

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors; and

(iv) The recipient or subrecipient may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used to procure architectural/engineering (A/E) professional services. The method may not be used to purchase other services provided by A/E firms that are a potential source to perform the proposed effort.

(c) *Noncompetitive procurement.* There are specific circumstances in which the recipient or subrecipient may use a noncompetitive procurement method.

The noncompetitive procurement method may only be used if one of the following circumstances applies:

(1) The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The procurement transaction can only be fulfilled by a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;

(4) The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or

(5) After soliciting several sources, competition is determined inadequate.

### § 200.321 Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms.

(a) When possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.

(b) Such consideration means:

(1) These business types are included on solicitation lists;

(2) These business types are solicited whenever they are deemed eligible as potential sources;

(3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;

(4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;

(5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring a contractor under a Federal award to apply this section to subcontracts.

### § 200.322 Domestic preferences for procurements.

(a) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.

(b) For purposes of this section:

(1) ''Produced in the United States'' means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) ''Manufactured products'' means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

### § 200.323 Procurement of recovered materials.

(a) A recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a

manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

### § 200.324 Contract cost and price.

(a) The recipient or subrecipient must perform a cost or price analysis for every procurement transaction, including contract modifications, in excess of the simplified acquisition threshold. The method and degree of analysis conducted depend on the facts surrounding the particular procurement transaction. For example, the recipient or subrecipient should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However, as a starting point, the recipient or subrecipient must make independent estimates before receiving bids or proposals.

(b) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred or cost estimates included in negotiated prices would be allowable for the recipient or subrecipient under subpart E of this part. The recipient or subrecipient may reference its own cost principles as long as they comply with subpart E of this part.

(c) The recipient or subrecipient must not use the ''cost plus a percentage of cost'' and ''percentage of construction costs'' methods of contracting.

### § 200.325 Federal agency or pass-through entity review.

(a) The Federal agency or pass-through entity may review the technical specifications of proposed procurements under the Federal award if the Federal agency or pass-through entity believes the review is needed to ensure that the item or service specified is the one being proposed for acquisition. The recipient or subrecipient must submit the technical specifications of proposed procurements when requested by the Federal agency or pass-through entity. This review should take place prior to the time the specifications are incorporated into a solicitation document. When the recipient or subrecipient desires to accomplish the review after a solicitation has been developed, the Federal agency or pass-through entity may still review the specifications. In those cases, the review should be limited to the technical aspects of the proposed purchase.

(b) When requested, the recipient or subrecipient must provide procurement documents (such as requests for proposals, invitations for bids, or independent cost estimates) to the Federal agency or pass-through entity for pre-procurement review. The Federal agency or pass-through entity may conduct a pre-procurement review when:

(1) The recipient's or subrecipient's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition, or only one bid is expected to be received in response to a solicitation;

(3) The procurement is expected to exceed the simplified acquisition threshold and specifies a ''brand name'' product;

(4) The procurement is expected to exceed the simplified acquisition threshold, and a sealed bid procurement is to be awarded to an entity other than the apparent low bidder; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(c) The recipient or subrecipient is exempt from the pre-procurement review in paragraph (b) of this section if the Federal agency or pass-through entity determines that its procurement

systems comply with the standards of this part.

(1) The recipient or subrecipient may request that the Federal agency or pass-through entity review its procurement system to determine whether it meets these standards for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding and third-party contracts are awarded regularly.

(2) The recipient or subrecipient may self-certify its procurement system. However, self-certification does not limit the Federal agency's or pass-through entity's right to review the system. Under a self-certification procedure, the Federal agency or pass-through entity may rely on written assurances from the recipient or subrecipient that it is complying with the standards of this part. The recipient or subrecipient must cite specific policies, procedures, regulations, or standards as complying with these requirements and have its system available for review.

### § 200.326 Bonding requirements.

The Federal agency or pass-through entity may accept the recipient's or subrecipient's bonding policy and requirements for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold. Before doing so, the Federal agency or pass-through entity must determine that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute any required contractual documents within the specified timeframe.

(b) A performance bond on the contractor's part for 100 percent of the contract price. A performance bond is a bond executed in connection with a contract to secure the fulfillment of all the contractor's requirements under a contract.

(c) A payment bond on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.

### § 200.327 Contract provisions.

The recipient's or subrecipient's contracts must contain the applicable provisions described in Appendix II of this part.

## Performance and Financial Monitoring and Reporting

### § 200.328 Financial reporting.

(a) The Federal agency must require only OMB-approved government-wide data elements on recipient financial reports. At the time of publication, this consists of the Federal Financial Report (SF–425); however, this also applies to any future OMB-approved government-wide data elements available from the OMB-designated standards lead.

(b) The Federal agency or pass-through entity must collect financial reports no less than annually. The Federal agency or pass-through entity may not collect financial reports more frequently than quarterly unless a specific condition has been implemented in accordance with § 200.208. To the extent practicable, the Federal agency or pass-through entity should collect financial reports in coordination with performance reports.

(c) The recipient or subrecipient must submit financial reports as required by the Federal award. Reports submitted annually by the recipient or subrecipient must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period.

(d) The final financial report submitted by the recipient must be due no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must submit a final financial report to a pass-through entity no later than 90 calendar days after the conclusion of the period of

performance. See also § 200.344. The Federal agency or pass-through entity may extend the due date for any financial report with justification from the recipient or subrecipient.

### § 200.329 Monitoring and reporting program performance.

(a) *Monitoring by the recipient and subrecipient.* The recipient and subrecipient are responsible for the oversight of the Federal award. The recipient and subrecipient must monitor their activities under Federal awards to ensure they are compliant with all requirements and meeting performance expectations. Monitoring by the recipient and subrecipient must cover each program, function, or activity. See also § 200.332.

(b) *Reporting program performance.* The Federal agency must use OMB-approved common information collections (for example, Research Performance Progress Reports) when requesting performance reporting information. The Federal agency or pass-through entity may not collect performance reports more frequently than quarterly unless a specific condition has been implemented in accordance with § 200.208. To the extent practicable, the Federal agency or pass-through entity should align the due dates of performance reports and financial reports. When reporting program performance, the recipient or subrecipient must relate financial data and project or program accomplishments to the performance goals and objectives of the Federal award. Also, the recipient or subrecipient must provide cost information to demonstrate cost-effective practices (for example, through unit cost data) when required by the terms and conditions of the Federal award. In some instances (for example, discretionary research awards), this may be limited to the requirement to submit technical performance reports. Reporting requirements must clearly indicate a standard against which the recipient's or subrecipient's performance can be measured. Reporting requirements should not solicit information from the recipient or subrecipient that is not necessary for the effective monitoring or evaluation of the Federal award. Federal agencies should consult monitoring framework documents such as the agency's Evaluation Plan to make that determination. As noted in OMB Circular A–11, Part 6, Section 280, measures of customer experience are of co-equal importance as traditional measures of financial and operational performance.

(c) *Submitting performance reports.* (1) The recipient or subrecipient must submit performance reports as required by the Federal award. Intervals must be no less frequent than annually nor more frequent than quarterly except if specific conditions are applied (See § 200.208). Reports submitted annually by the recipient or subrecipient must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period. Alternatively, the Federal agency or pass-through entity may require annual reports before the anniversary dates of multiple-year Federal awards. The final performance report submitted by the recipient must be due no later than 120 calendar days after the period of performance. A subrecipient must submit a final performance report to a pass-through entity no later than 90 calendar days after the conclusion of the period of performance. See also § 200.344. The Federal agency or pass-through entity may extend the due date for any performance report with justification from the recipient or subrecipient.

(2) As applicable, performance reports should contain information on the following:

(i) A comparison of accomplishments to the objectives of the Federal award established for the reporting period (for example, comparing costs to units of accomplishment). Where performance trend data and analysis would be informative to the Federal agency program, the Federal agency should include this as a performance reporting requirement.

(ii) Explanations on why established goals or objectives were not met; and

(iii) Additional information, analysis, and explanation of cost overruns or higher-than-expected unit costs.

(d) *Construction performance reports.* Federal agencies or pass-through entities rely on on-site technical inspections and certified percentage of completion data to monitor progress under Federal awards for construction. Therefore, the Federal agency or pass-through entity may require additional performance reports when necessary to ensure the goals and objectives of Federal awards are met.

(e) *Significant developments.* When a significant development that could impact the Federal award occurs between performance reporting due dates, the recipient or subrecipient must notify the Federal agency or pass-through entity. Significant developments include events that enable meeting milestones and objectives sooner or at less cost than anticipated or that produce different beneficial results than originally planned. Significant developments also include problems, delays, or adverse conditions which will impact the recipient's or subrecipient's ability to meet milestones or the objectives of the Federal award. When significant developments occur that negatively impact the Federal Award, the recipient or subrecipient must include information on their plan for corrective action and any assistance needed to resolve the situation.

(f) *Site visits.* The Federal agency or pass-through entity may conduct in-person or virtual site visits as warranted.

(g) *Performance report requirement waiver.* The Federal agency may waive any performance report that is not necessary to ensure the goals and objectives of the Federal award are being achieved.

### § 200.330 Reporting on real property.

The Federal agency or pass-through entity must require the recipient or subrecipient to submit reports on the status of real property in which the Federal Government retains an interest. Such reports must be submitted at least annually. In instances where the Federal Government's interest in the real property extends for 15 years or more, the Federal agency or pass-through entity may require the recipient or subrecipient to report at various multi-year frequencies. Reports submitted at multi-year frequencies may not exceed a five-year reporting period. The Federal agency must only require OMB-approved government-wide data elements on recipient real property reports.

## Subrecipient Monitoring and Management

### § 200.331 Subrecipient and contractor determinations.

An entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor. The pass-through entity is responsible for making case-by-case determinations to determine whether the entity receiving Federal funds is a subrecipient or a contractor. The Federal agency may require the pass-through entity to comply with additional guidance to make these determinations, provided such guidance does not conflict with this section. The Federal agency does not have a direct legal relationship with subrecipients or contractors of any tier; however, the Federal agency is responsible for monitoring the pass-through entity's oversight of first-tier subrecipients. All of the characteristics listed below may not be present in all cases, and some characteristics from both categories may be present at the same time. No single factor or any combination of factors is necessarily determinative. The pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract. In making this determination, the substance of the relationship is more important than the form of the agreement.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of the Federal award and creates a Federal financial assistance relationship with a subrecipient. See the definition of *Subaward* in § 200.1. Characteristics that support the classification of the entity as a subrecipient include, but are not limited to, when the entity:

(1) Determines who is eligible to receive what Federal assistance;

(2) Has its performance measured in relation to whether the objectives of a Federal program were met;

(3) Has responsibility for programmatic decision-making;

(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

(5) Implements a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the recipient's or subrecipient's use and creates a procurement relationship with a contractor. See the definition of *contract* in §200.1. Characteristics that support a procurement relationship between the recipient or subrecipient and a contractor include, but are not limited to, when the contractor:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the implementation of a Federal program; and

(5) Is not subject to compliance requirements of a Federal program as a result of the agreement. However, similar requirements may apply for other reasons.

### §200.332 Requirements for pass-through entities.

A pass-through entity must:

(a) Verify that the subrecipient is not excluded or disqualified in accordance with §180.300. Verification methods are provided in §180.300, which include confirming in *SAM.gov* that a potential subrecipient is not suspended, debarred, or otherwise excluded from receiving Federal funds.

(b) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the information provided below. A pass-through entity must provide the best available information when some of the information below is unavailable. A pass-through entity must provide the unavailable information when it is obtained. Required information includes:

(1) Federal award identification.

(i) Subrecipient's name (must match the name associated with its unique entity identifier);

(ii) Subrecipient's unique entity identifier;

(iii) Federal Award Identification Number (FAIN);

(iv) Federal Award Date;

(v) Subaward Period of Performance Start and End Date;

(vi) Subaward Budget Period Start and End Date;

(vii) Amount of Federal Funds Obligated in the subaward;

(viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity, including the current financial obligation;

(ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;

(x) Federal award project description, as required by the Federal Funding Accountability and Transparency Act (FFATA);

(xi) Name of the Federal agency, pass-through entity, and contact information for awarding official of the pass-through entity;

(xii) Assistance Listings title and number; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at the time of disbursement;

(xiii) Identification of whether the Federal award is for research and development; and

(xiv) Indirect cost rate for the Federal award (including if the de minimis rate is used in accordance with §200.414).

(2) All requirements of the subaward, including requirements imposed by Federal statutes, regulations, and the terms and conditions of the Federal award;

(3) Any additional requirements that the pass-through entity imposes on the subrecipient for the pass-through entity to meet its responsibilities under the Federal award. This includes information and certifications (see §200.415) required for submitting financial and performance reports that the pass-through entity must provide to the Federal agency;

(4) Indirect cost rate:

(i) An approved indirect cost rate negotiated between the subrecipient and

the Federal Government. If no approved rate exists, a pass-through entity must determine the appropriate rate in collaboration with the subrecipient. The indirect cost rate may be either:

(A) An indirect cost rate negotiated between the pass-through entity and the subrecipient. These rates may be based on a prior negotiated rate between a different pass-through entity and the subrecipient, in which case the pass-through entity is not required to collect information justifying the rate but may elect to do so; or

(B) The de minimis indirect cost rate.

(ii) The pass-through entity must not require the use of the de minimis indirect cost rate if the subrecipient has an approved indirect cost rate negotiated with the Federal Government. Subrecipients may elect to use the cost allocation method to account for indirect costs in accordance with § 200.405(d).

(5) A requirement that the subrecipient permit the pass-through entity and auditors to access the subrecipient's records and financial statements for the pass-through entity to fulfill its monitoring requirements; and

(6) Appropriate terms and conditions concerning the closeout of the subaward.

(c) Evaluate each subrecipient's fraud risk and risk of noncompliance with a subaward to determine the appropriate subrecipient monitoring described in paragraph (f) of this section. When evaluating a subrecipient's risk, a pass-through entity should consider the following:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits. This includes considering whether or not the subrecipient receives a Single Audit in accordance with subpart F and the extent to which the same or similar subawards have been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of any Federal agency monitoring (for example, if the subrecipient also receives Federal awards directly from the Federal agency).

(d) If appropriate, consider implementing specific conditions in a subaward as described in § 200.208 and notify the Federal agency of the specific conditions.

(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Review financial and performance reports.

(2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

(3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) Resolve audit findings specifically related to the subaward. However, the pass-through entity is not responsible for resolving cross-cutting audit findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report and has not been excluded from receiving Federal funding (meaning, has not been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant agency for audit or oversight agency for audit to perform audit follow-up and make management decisions related to cross-cutting audit findings in accordance with section § 200.513(a)(4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to

issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

(f) Depending upon the pass-through entity's assessment of the risk posed by the subrecipient (as described in paragraph (c) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters;

(2) Performing site visits to review the subrecipient's program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in § 200.425.

(g) Verify that a subrecipient is audited as required by subpart F of this part.

(h) Consider whether the results of a subrecipient's audit, site visits, or other monitoring necessitate adjustments to the pass-through entity's records.

(i) Consider taking enforcement action against noncompliant subrecipients as described in § 200.339 and in program regulations.

### § 200.333 Fixed amount subawards.

With prior written approval from the Federal agency, the recipient may provide subawards based on fixed amounts up to $500,000. Fixed amount subawards must meet the requirements of § 200.201.

## Record Retention and Access

### § 200.334 Record retention requirements.

The recipient and subrecipient must retain all Federal award records for three years from the date of submission of their final financial report. For awards that are renewed quarterly or annually, the recipient and subrecipient must retain records for three years from the date of submission of their quarterly or annual financial report, respectively. Records to be retained include but are not limited to, financial records, supporting documentation, and statistical records. Federal agencies or pass-through entities may not impose any other record retention requirements except for the following:

(a) The records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken if any litigation, claim, or audit is started before the expiration of the three-year period.

(b) When the recipient or subrecipient is notified in writing by the Federal agency or pass-through entity, cognizant agency for audit, oversight agency for audit, or cognizant agency for indirect costs to extend the retention period.

(c) The records for property and equipment acquired with the support of Federal funds must be retained for three years after final disposition.

(d) The three-year retention requirement does not apply to the recipient or subrecipient when records are transferred to or maintained by the Federal agency.

(e) The records for program income earned after the period of performance must be retained for three years from the end of the recipient's or subrecipient's fiscal year in which the program income is earned. This only applies if the Federal agency or pass-through entity requires the recipient or subrecipient to report on program income earned after the period of performance in the terms and conditions of the Federal award.

(f) The records for indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates) must be retained according to the applicable option below:

(1) *If submitted for negotiation.* When a proposal, plan, or other computation must be submitted to the Federal Government to form the basis for negotiation of an indirect cost rate (or other standard rates), then the three-year retention period for its supporting

records starts from the date of submission.

(2) *If not submitted for negotiation.* When a proposal, plan, or other computation is not required to be submitted to the Federal Government to form the basis for negotiation of an indirect cost rate (or other standard rates), then the three-year retention period for its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

### § 200.335 Requests for transfer of records.

The Federal agency must request the transfer of records to its custody from the recipient or subrecipient when it determines that the records possess long-term retention value. However, the Federal agency may arrange for the recipient or subrecipient to retain the records that have long-term retention value so long as they are continuously available to the Federal Government.

### § 200.336 Methods for collection, transmission, and storage of information.

When practicable, the Federal agency or pass-through entity and the recipient or subrecipient must collect, transmit, and store Federal award information in open and machine-readable formats. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a computer system. Upon request, the Federal agency or pass-through entity must always provide or accept paper versions of Federal award information to and from the recipient or subrecipient. The Federal agency or pass-through entity must not require additional copies of Federal award information submitted in paper versions. The recipient or subrecipient does not need to create and retain paper copies when original records are electronic and cannot be altered. In addition, the recipient or subrecipient may substitute electronic versions of original paper records through duplication or other forms of electronic conversion, provided that the procedures are subject to periodic quality control reviews. Quality control reviews must ensure that electronic conversion procedures provide safeguards against the alteration of records and assurance that records remain in a format that is readable by a computer system.

### § 200.337 Access to records.

(a) *Records of recipients and subrecipients.* The Federal agency or pass-through entity, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives must have the right of access to any records of the recipient or subrecipient pertinent to the Federal award to perform audits, execute site visits, or for any other official use. This right also includes timely and reasonable access to the recipient's or subrecipient's personnel for the purpose of interview and discussion related to such documents or the Federal award in general.

(b) *Extraordinary and rare circumstances.* The recipient or subrecipient and Federal agency or pass-through entity must take measures to protect the name of victims of a crime when access to the victim's name is necessary. Only under extraordinary and rare circumstances would such access include a review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head or delegate of the Federal agency.

(c) *Expiration of right of access.* The Federal agency's or pass-through entity's rights of access are not limited to the required retention period of this part but last as long as the records are retained. Federal agencies or pass-through entities must not impose any other access requirements upon recipients and subrecipients.

### § 200.338 Restrictions on public access to records.

Federal agencies may not place restrictions on the recipient or subrecipient that limit public access to the records of the recipient or subrecipient pertinent to a Federal award,

except for protected personally identifiable information (PII) or other sensitive information when the Federal agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to records that remain under the recipient's or subrecipient's control except as required by § 200.315. Unless required by Federal, State, local, or tribal law, recipients and subrecipients are not required to permit public access to their records. The recipient's or subrecipient's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

REMEDIES FOR NONCOMPLIANCE

### § 200.339 Remedies for noncompliance.

The Federal agency or pass-through entity may implement specific conditions if the recipient or subrecipient fails to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award. See § 200.208 for additional information on specific conditions. When the Federal agency or pass-through entity determines that noncompliance cannot be remedied by imposing specific conditions, the Federal agency or pass-through entity may take one or more of the following actions:

(a) Temporarily withhold payments until the recipient or subrecipient takes corrective action.

(b) Disallow costs for all or part of the activity associated with the noncompliance of the recipient or subrecipient.

(c) Suspend or terminate the Federal award in part or in its entirety.

(d) Initiate suspension or debarment proceedings as authorized in 2 CFR part 180 and the Federal agency's regulations, or for pass-through entities, recommend suspension or debarment proceedings be initiated by the Federal agency.

(e) Withhold further Federal funds (new awards or continuation funding) for the project or program.

(f) Pursue other legally available remedies.

### § 200.340 Termination.

(a) The Federal award may be terminated in part or its entirety as follows:

(1) By the Federal agency or pass-through entity if the recipient or subrecipient fails to comply with the terms and conditions of the Federal award;

(2) By the Federal agency or pass-through entity with the consent of the recipient or subrecipient, in which case the two parties must agree upon the termination conditions. These conditions include the effective date and, in the case of partial termination, the portion to be terminated;

(3) By the recipient or subrecipient upon sending the Federal agency or pass-through entity a written notification of the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal agency or pass-through entity determines that the remaining portion of the Federal award will not accomplish the purposes for which the Federal award was made, the Federal agency or pass-through entity may terminate the Federal award in its entirety; or

(4) By the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities.

(b) The Federal agency or pass-through entity must clearly and unambiguously specify all termination provisions in the terms and conditions of the Federal award.

(c) When the Federal agency terminates the Federal award prior to the end of the period of performance due to the recipient's material failure to comply with the terms and conditions of the Federal award, the Federal agency must report the termination in *SAM.gov*. A Federal agency must use the Contractor Performance Assessment Reporting System (CPARS) to enter information in *SAM.gov*.

(1) The information required under paragraph (c) of this section is not to be reported in *SAM.gov* until the recipient has either:

(i) Exhausted its opportunities to object or challenge the decision (see § 200.342); or

(ii) Has not, within 30 calendar days after being notified of the termination, informed the Federal agency that it intends to appeal the decision to terminate.

(2) If a Federal agency, after entering information about a termination in *SAM.gov*, subsequently:

(i) Learns that any of that information is erroneous, the Federal agency must correct the information in the system within three business days;

(ii) Obtains an update to that information that could be helpful to other Federal agencies, the Federal agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(3) The Federal agency must not post any information that will be made publicly available in the non-public segment of *SAM.gov* that is covered by a disclosure exemption under the Freedom of Information Act (FOIA). When the recipient asserts within seven calendar days to the Federal agency which posted the information that a disclosure exemption under FOIA covers some of the information made publicly available, the Federal agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Before reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's FOIA procedures.

(d) When the Federal award is terminated in part or its entirety, the Federal agency or pass-through entity and recipient or subrecipient remain responsible for compliance with the requirements in §§ 200.344 and 200.345.

### § 200.341 Notification of termination requirement.

(a) The Federal agency or pass-through entity must provide written notice of termination to the recipient or subrecipient. The written notice of termination should include the reasons for termination, the effective date, and the portion of the Federal award to be terminated, if applicable.

(b) If the Federal award is terminated for the recipient's material failure to comply with a Federal award, the notification must state the following:

(1) The termination decision will be reported in *SAM.gov*;

(2) The information will be available in *SAM.gov* for five years from the date of the termination and then archived;

(3) Federal agencies that consider making a Federal award to the recipient during the five year period must consider this information in judging whether the recipient is qualified to receive the Federal award when the Federal share of the Federal award is expected to exceed the simplified acquisition threshold over the period of performance;

(4) The recipient may comment on any information in *SAM.gov* about the recipient for future consideration by Federal agencies. The recipient may submit comments in *SAM.gov*.

(5) Federal agencies should consider the recipient's comments when determining whether the recipient is qualified for a Federal award.

(c) Upon termination of the Federal award, the Federal agency must provide the information required by the Federal Funding Accountability and Transparency Act (FFATA) to *USAspending.gov*. In addition, the Federal agency must update or notify any other relevant government-wide systems or entities of any indications of poor performance as required by 41 U.S.C. 2313 and 31 U.S.C. 3321.

### § 200.342 Opportunities to object, hearings, and appeals.

The Federal agency must maintain written procedures for processing objections, hearings, and appeals. Upon initiating a remedy for noncompliance (for example, disallowed costs, a corrective action plan, or termination), the Federal agency must provide the recipient with an opportunity to object and provide information challenging the action. The Federal agency or pass-through entity must comply with any requirements for hearings, appeals, or other administrative proceedings to which the recipient or subrecipient is

entitled under any statute or regulation applicable to the action involved.

### § 200.343 Effects of suspension and termination.

Costs to the recipient or subrecipient resulting from financial obligations incurred by the recipient or subrecipient during a suspension or after the termination of a Federal award are not allowable unless the Federal agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

(a) The costs result from financial obligations which were properly incurred by the recipient or subrecipient before the effective date of suspension or termination, and not in anticipation of it; and

(b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

CLOSEOUT

### § 200.344 Closeout.

(a) The Federal agency or pass-through entity must close out the Federal award when it determines that all administrative actions and required work of the Federal award have been completed. When the recipient or subrecipient fails to complete the necessary administrative actions or the required work for an award, the Federal agency or pass-through entity must proceed with closeout based on the information available. This section specifies the administrative actions required at the end of the period of performance.

(b) A recipient must submit all reports (financial, performance, and other reports required by the Federal award) no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must submit all reports (financial, performance, and other reports required by a subaward) to the pass-through entity no later than 90 calendar days after the conclusion of the period of performance of the subaward (or an earlier date as agreed upon by the pass-through entity and subrecipient). When justified, the Federal agency or pass-through entity may approve extensions for the recipient or subrecipient. When the recipient does not have a final indirect cost rate covering the period of performance, a final financial report must still be submitted to fulfill the requirements of this section. The recipient must submit a revised final financial report when all applicable indirect cost rates have been finalized.

(c) The recipient must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must liquidate all financial obligations incurred under a subaward no later than 90 calendar days after the conclusion of the period of performance of the subaward (or an earlier date as agreed upon by the pass-through entity and subrecipient). When justified, the Federal agency or pass-through entity may approve extensions for the recipient or subrecipient.

(d) The Federal agency or pass-through entity must not delay payments to the recipient or subrecipient for costs meeting the requirements of subpart E of this part.

(e) The recipient or subrecipient must promptly refund any unobligated funds that the Federal agency or pass-through entity paid and that are not authorized to be retained. See OMB Circular A–129 and § 200.346.

(f) The Federal agency or pass-through entity must make all necessary adjustments to the Federal share of costs after closeout reports are received (for example, to reflect the disallowance of any costs or the deobligation of an unliquidated balance).

(g) The recipient or subrecipient must account for any property acquired with Federal funds or received from the Federal Government in accordance with §§ 200.310 through 200.316 and 200.330.

(h) The Federal agency must make every effort to complete all closeout actions no later than one year after the end of the period of performance. If the indirect cost rate has not been finalized and would delay closeout, the Federal agency is authorized to mutually

agree with the recipient to close an award using the current or most recently negotiated rate. However, the recipient is not required to agree to a final rate for a Federal award for the purpose of prompt closeout.

(i) If the recipient does not comply with the requirements of this section, including submitting all final reports, the Federal agency must report the recipient's material failure to comply with the terms and conditions of the Federal award in *SAM.gov*. A Federal agency must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in *SAM.gov*. Federal agencies may also pursue other enforcement actions as appropriate. See § 200.339.

POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES

**§ 200.345 Post-closeout adjustments and continuing responsibilities.**

(a) The closeout of the Federal award does not affect any of the following:

(1) The right of the Federal agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or review. However, the Federal agency or pass-through entity must make determinations to disallow costs and notify the recipient or subrecipient within the record retention period.

(2) The recipient's or subrecipient's requirement to return funds or right to receive any remaining and available funds as a result of refunds, corrections, final indirect cost rate adjustments (unless the Federal award in closed in accordance with § 200.344(h)), or other transactions.

(3) The ability of the Federal agency or pass-through entity to make financial adjustments to a previously closed Federal award, such as resolving indirect cost payments and making final payments.

(4) Audit requirements in subpart F of this part.

(5) Property management and disposition requirements in §§ 200.310 through 200.316.

(6) Records retention as required in §§ 200.334 through 200.337.

(b) After the closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part. This may only be done with the consent of the awarding Federal agency or pass-through entity and the recipient or subrecipient, provided the responsibilities of the recipient or subrecipient referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions are made for continuing responsibilities of the recipient or subrecipient, as appropriate.

COLLECTION OF AMOUNTS DUE

**§ 200.346 Collection of amounts due.**

Any Federal funds paid to the recipient or subrecipient in excess of the amount that the recipient or subrecipient is determined to be entitled to under the Federal award constitute a debt to the Federal Government. The Federal agency must collect all debts arising out of its Federal awards in accordance with the Standards for the Administrative Collection of Claims (31 CFR part 901).

## Subpart E—Cost Principles

GENERAL PROVISIONS

**§ 200.400 Policy guide.**

The application of these cost principles is based on the fundamental premises that:

(a) The recipient and subrecipient are responsible for the efficient and effective administration of the Federal award through sound management practices.

(b) The recipient and subrecipient are responsible for administering Federal funds in a manner consistent with Federal statutes, regulations, and the terms and conditions of the Federal award.

(c) The recipient and subrecipient, in recognition of their unique combination of staff, facilities, and experience, are responsible for employing organization and management techniques necessary to ensure the proper and efficient administration of the Federal award.

(d) The accounting practices of the recipient and subrecipient must be consistent with these cost principles and

support the accumulation of costs as required by these cost principles, including maintaining adequate documentation to support costs charged to the Federal award.

(e) When reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should ensure that the recipient consistently applies these cost principles. Where wide variations exist in the treatment of a given cost item by the recipient, the reasonableness and equity of such treatments should be fully considered. See the definition of *indirect costs* in § 200.1.

(f) For recipients and subrecipients that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.

(g) The recipient or subrecipient must not earn or keep any profit resulting from Federal financial assistance unless explicitly authorized by the terms and conditions of the Federal award. See also § 200.307. When the required activities of a fixed amount award were completed in accordance with the terms and conditions of the award, the unexpended funds retained by the recipient or subrecipient are not considered profit.

### § 200.401 Application.

(a) *General.* The recipient and subrecipient must apply these principles in determining allowable costs under Federal awards. The recipient and subrecipient must also use these principles as a guide in pricing fixed-price contracts and subcontracts when costs are used in determining the appropriate price. These cost principles do not apply to:

(1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on items such as education allowance or published tuition rates and fees.

(2) Capitation awards based on case counts or the number of beneficiaries.

(3) Fixed amount awards, except as provided in § 200.101(b). See also § 200.201.

(4) Federal awards to hospitals (see Appendix IX of this part).

(5) Food commodities provided through grants and cooperative agreements.

(6) Other awards under which the recipient or subrecipient is not required to account for actual costs incurred.

(b) *Federal contract.* A Federal contract awarded to a recipient is subject to the Cost Accounting Standards (CAS). It must incorporate the applicable CAS requirements per 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). With respect to the allocation of costs, the Cost Accounting Standards at 48 CFR parts 9904 or 9905 take precedence over the cost principles in subpart E. When a contract with a recipient is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (for example, CAS 414—48 CFR 9904.414—Cost of Money as an Element of the Cost of Facilities Capital, and CAS 417—48 CFR 9904.417—Cost of Money as an Element of the Cost of Capital Assets Under Construction, apply instead of the allowability provisions of § 200.449). For example, the allowability of costs in CAS-covered contracts is determined first by the allocation provisions of the Cost Accounting Standards rather than the allowability provisions in § 200.449 (unless the CAS does not address the specific costs). In complying with those requirements, the recipient's application of cost accounting practices for estimating, accumulating, and reporting costs for Federal awards and CAS-covered contracts must be consistent with 48 CFR. The recipient only needs to maintain one set of accounting records supporting the allocation of costs if the recipient administers both Federal awards and CAS-covered contracts.

(c) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit organizations in terms of the applicability of cost principles. These nonprofit organizations must operate under Federal cost principles that apply to for-profit organizations located at 48 CFR 31.2. Appendix VIII contains a list of these nonprofit organizations. Other organizations

may be added to this list if approved by the cognizant agency for indirect costs.

BASIC CONSIDERATIONS

### § 200.402 Composition of costs.

The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs minus any applicable credits

### § 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following criteria to be allowable under Federal awards:

(a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.

(b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

(c) Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the recipient or subrecipient.

(d) Be accorded consistent treatment. For example, a cost must not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for State and local governments and Indian Tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing requirements of any other federally-financed program in either the current or a prior period. See § 200.306(b).

(g) Be adequately documented. See §§ 200.300 through 200.309.

(h) Administrative closeout costs may be incurred until the due date of the final report(s). If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency. All other costs must be incurred during the approved budget period. At its discretion, the Federal agency is authorized to waive prior written approvals to carry forward unobligated balances to subsequent budget periods. See § 200.308(g)(3).

### § 200.404 Reasonable costs.

A cost is reasonable if it does not exceed an amount that a prudent person would incur under the circumstances prevailing when the decision was made to incur the cost. In determining the reasonableness of a given cost, consideration must be given to the following:

(a) Whether the cost is generally recognized as ordinary and necessary for the recipient's or subrecipient's operation or the proper and efficient performance of the Federal award;

(b) The restraints or requirements imposed by such factors as sound business practices; arm's-length bargaining; Federal, State, local, tribal, and other laws and regulations; and terms and conditions of the Federal award;

(c) Market prices for comparable costs for the geographic area;

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the recipient or subrecipient, its employees, its students or membership (if applicable), the public at large, and the Federal Government; and

(e) Whether the cost represents a deviation from the recipient's or subrecipient's established written policies and procedures for incurring costs.

### § 200.405 Allocable costs.

(a) *Allocable costs in general.* A cost is allocable to a Federal award or other cost objective if the cost is assignable to that Federal award or other cost objective in accordance with the relative benefits received. This standard is met if the cost satisfies any of the following criteria:

(1) Is incurred specifically for the Federal award;

(2) Benefits both the Federal award and other work of the recipient or subrecipient and can be distributed in proportions that may be approximated using reasonable methods; or

(3) Is necessary to the overall operation of the recipient or subrecipient

and is assignable in part to the Federal award in accordance with these cost principles.

(b) *Allocation of indirect costs.* All activities which benefit from the recipient's or subrecipient's indirect cost, including unallowable activities and donated services by the recipient or subrecipient or third parties, will receive an appropriate allocation of indirect costs.

(c) *Limitation on charging certain allocable costs to other Federal awards.* A cost allocable to a particular Federal award may not be charged to other Federal awards (for example, to overcome fund deficiencies or to avoid restrictions imposed by Federal statutes, regulations, or the terms and conditions of the Federal awards). However, this prohibition would not preclude the recipient or subrecipient from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) *Direct cost allocation principles.* If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit However, when those proportions cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c), the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved, when no longer needed for the purpose for which it was originally required. See also §§ 200.310 through 200.316 and 200.439.

(e) *Costs of contracts subject to CAS.* If a contract is subject to CAS, costs must be allocated to that contract according to the Cost Accounting Standards, which take precedence over the allocation provisions in this part.

### § 200.406 Applicable credits.

(a) Applicable credits refer to transactions that offset or reduce direct or indirect costs allocable to a Federal award. Examples of such transactions are purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the recipient or subrecipient relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the recipient or subrecipient should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. See §§ 200.436 and 200.468 for potential application areas.

### § 200.407 Prior written approval (prior approval).

The reasonableness and allocability of certain costs under Federal awards may be difficult to determine. To avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the recipient may seek the prior written approval of the Federal agency (or, for indirect costs, the cognizant agency for indirect costs) before incurring the cost. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that cost unless prior approval is specifically required for allowability as described under certain circumstances in the following sections:

(a) Section 200.306 Cost sharing;

(b) Section 200.307 Program income;

(c) Section 200.308 Revision of budget and program plans;

(d) Section 200.333 Fixed amount subawards;

(e) Section 200.430 Compensation—personal services, paragraph (h);

(f) Section 200.431 Compensation—fringe benefits;

(g) Section 200.439 Equipment and other capital expenditures;
(h) Section 200.440 Exchange rates;
(i) Section 200.441 Fines, penalties, damages and other settlements;
(j) Section 200.442 Fund raising and investment management costs;
(k) Section 200.445 Goods or services for personal use;
(l) Section 200.447 Insurance and indemnification;
(m) Section 200.455 Organization costs;
(n) Section 200.458 Pre-award costs;
(o) Section 200.462 Rearrangement and reconversion costs;
(p) Section 200.475 Travel costs.

### § 200.408 Limitation on allowance of costs.

Statutory requirements may limit the allowability of costs. Any costs that exceed the maximum amount allowed by statute may not be charged to the Federal award. Only the amount allowable by statute may be charged to the Federal award.

### § 200.409 Special considerations.

Other sections in this part describe special considerations and requirements applicable to states, local governments, Indian Tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart are only applicable to certain types of recipients and subrecipients, as specified in the following sections:
(a) Direct and Indirect Costs (§§ 200.412–200.415);
(b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 and 200.417); and
(c) Special Considerations for Institutions of Higher Education (§§ 200.418 and 200.419).

### § 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the awarding Federal agency, cognizant agency for indirect costs, or pass-through entity must be refunded with interest to the Federal Government. Unless directed by Federal statute or regulation, repayments must be made in accordance with the instructions provided by the Federal agency or pass-through entity that made the allowability determination. See §§ 200.300 through 200.309, and § 200.346.

### § 200.411 Adjustment of previously negotiated indirect cost rates containing unallowable costs.

(a) Negotiated indirect cost rates based on a proposal later found to have included costs that:
(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or
(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made in accordance with the requirements of this section. These adjustments or refunds are intended to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds must be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).
(b) For rates covering a future fiscal year of the recipient or subrecipient, the unallowable costs must be removed from the indirect cost pools and the rates must be adjusted.
(c) For rates covering a past period, the Federal share of the unallowable costs must be computed for each year involved, and a cash refund (including interest) must be made to the Federal Government in accordance with the directions provided by the cognizant agency for indirect costs. When cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments must be made when the rates are finalized to avoid duplicate recovery of the unallowable costs.
(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.
(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as

the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

DIRECT AND INDIRECT COSTS

### § 200.412 Classification of costs.

There is no universal rule for classifying certain costs as direct or indirect costs. A cost may be direct for some specific service or function but indirect for the Federal award or other final cost objective. Therefore, each cost incurred for the same purpose in like circumstances must be treated consistently either as a direct or an indirect cost to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect costs charged to Federal awards are provided in this subpart.

### § 200.413 Direct costs.

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as direct or indirect costs. See § 200.405.

(b) *Application to Federal awards.* The association of costs with a Federal award determines whether costs are direct or indirect. Costs charged directly to a Federal award are typically incurred specifically for that Federal award (including, for example, supplies needed to achieve the award's objectives and the proportion of employee compensation and fringe benefits expended in relation to that specific award). Costs that otherwise would be treated as indirect costs may also be considered direct costs if they are directly related to a specific award (including, for example, extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities, cybersecurity, integrated data systems, asset management systems, performance management costs, program evaluation costs, or other institutional service operations).

(c) *Administrative and clerical staff salaries.* Administrative and clerical staff salaries should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if they meet all of the following conditions:

(1) The administrative or clerical services are integral to a Federal award;

(2) Individuals involved can be specifically identified with a Federal award; and

(3) The costs are not also recovered as indirect costs.

(d) *Minor items.* A direct cost of a minor amount may be treated as an indirect cost, for reasons of practicality, provided that it is treated consistently for all Federal and non-Federal purposes.

(e) *Treatment of unallowable costs in determining indirect cost rates.* The costs of certain activities are not allowable as charges to Federal awards. Even though these costs are unallowable, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their equitable share of the recipient's or subrecipient's indirect costs if they represent activities which:

(1) Include the salaries of personnel;

(2) Occupy space; and

(3) Benefit from the recipient's or subrecipient's indirect costs.

(f) *Treatment of certain costs for nonprofit organizations.* For nonprofit organizations, the costs of activities performed by the nonprofit organization primarily as a service to members, clients, or the general public when significant and necessary to the organization's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See § 200.454.

(2) Providing services and information to members, the government, or the public. See §§ 200.454 and 200.450.

(3) Promotion, lobbying, and other forms of public relations. See §§ 200.421 and 200.450.

(4) Conferences (except those held to conduct the general administration of

the recipient or subrecipient). See also § 200.432.

(5) Maintenance, protection, and investment of special funds not used in the recipient's or subrecipient's operation. See also § 200.442.

(6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 200.431.

**§ 200.414 Indirect costs.**

(a) *Facilities and administration classification.* For major Institutions of Higher Education (IHE) and major nonprofit organizations, indirect costs must be classified within two broad categories: ''Facilities'' and ''Administration.'' ''Facilities'' is defined as depreciation on buildings, equipment and capital improvements, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. ''Administration'' is defined as general administration and general expenses such as the director's office, accounting, personnel, and all other types of expenditures not listed specifically under one of the subcategories of ''Facilities'' (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the ''Administration'' category; for IHEs, they are included in the ''Facilities'' category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III. Major nonprofit organizations are those which receive more than $10 million in direct Federal funding.

(b) *Diversity of nonprofit organizations.* It is not always possible to specify the types of costs that may be classified as indirect costs for nonprofit organizations due to the diversity of their accounting practices. The association of a cost with a Federal award is the determining factor in distinguishing direct from indirect costs. However, typical examples of indirect cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See § 200.306.)

(1) Negotiated indirect cost rates must be accepted by all Federal agencies. A Federal agency may use a rate different from the negotiated rate for either a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by the awarding Federal agency in accordance with paragraph (c)(3) of this section.

(2) The Federal agency must notify OMB of any approved deviations. The recipient or subrecipient may notify OMB of any disputes with Federal agencies regarding the application of a federally negotiated indirect cost rate.

(3) The Federal agency must implement, and make publicly available, the policies, procedures and general decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) The Federal agency must include, in the notice of funding opportunity, the policies relating to indirect cost rate reimbursement or cost share as approved under paragraph (e). As appropriate, the Federal agency should incorporate discussion of these policies into its outreach activities with applicants before posting a notice of funding opportunity. See § 200.204.

(d) *Pass-through entities.* Pass-through entities are subject to the requirements in § 200.332(b)(4) and must accept all federally negotiated indirect costs rates for subrecipients.

(e) *Appendices.* Requirements for development and submission of indirect cost rate proposals and cost allocation plans are contained in the following Appendices:

(1) Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

(2) Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

(3) Appendix V to Part 200—State/Local Government-wide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 200—Hospital Cost Principles.

(f) *De minimis rate.* Recipients and subrecipients that do not have a current Federal negotiated indirect cost rate (including provisional rate) may elect to charge a de minimis rate of up to 15 percent of modified total direct costs (MTDC). The recipient or subrecipient is authorized to determine the appropriate rate up to this limit. Federal agencies and pass-through entities may not require recipients and subrecipients to use a de minimis rate lower than the negotiated indirect cost rate or the rate elected pursuant to this subsection unless required by Federal statute or regulation. The de minimis rate must not be applied to cost reimbursement contracts issued directly by the Federal Government in accordance with the FAR. Recipients and subrecipients are not required to use the de minimis rate. When applying the de minimis rate, costs must be consistently charged as either direct or indirect costs and may not be double charged or inconsistently charged as both. The de minimis rate does not require documentation to justify its use and may be used indefinitely. Once elected, the recipient or subrecipient must use the de minimis rate for all Federal awards until the recipient or subrecipient chooses to receive a negotiated rate.

(g) *One-time extension of indirect rates.* A recipient or subrecipient with a current Federal negotiated indirect cost rate may apply for a one-time extension of that agreement for up to four years. This extension will be subject to review and approval by the cognizant agency for indirect costs. If this extension is granted, the recipient or subrecipient may not request a rate review until the extension period ends. The recipient or subrecipient must re-apply to negotiate a new rate when the extension ends. After a new rate has been negotiated, the recipient or subrecipient may again apply for a one-time extension of the new rate in accordance with this paragraph.

### § 200.415 Required certifications.

(a) Financial reports must include a certification, signed by an official who is authorized to legally bind the recipient, which reads as follows: ''By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).''

(b) Subrecipients under the Federal award must certify to the pass-through entity whenever applying for funds, requesting payment, and submitting financial reports: ''I certify to the best of my knowledge and belief that the information provided herein is true, complete, and accurate. I am aware that the provision of false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative consequences including, but not limited to violations of U.S. Code Title 18, Sections 2, 1001, 1343 and Title 31, Sections 3729–3730 and 3801–3812.'' Each such certification must be maintained pursuant to the requirements of § 200.334. This paragraph applies to all tiers of subrecipients.

(c) Certification of cost allocation plan or indirect cost rate proposal. Each cost allocation plan or indirect cost rate proposal must comply with the following:

(1) A proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the recipient, must be certified by the recipient using the *Certificate of Cost Allocation Plan* or *Certificate of Indirect Costs* as set forth in appendices III through VII, and IX of this part. The certificate must be signed on behalf of the recipient by an individual at a level no lower than the vice president or chief financial officer

of the recipient that submits the proposal.

(2) The Federal Government may either disallow all indirect costs or unilaterally establish an indirect cost rate when the recipient fails to submit a certified proposal for establishing a rate. This rate should be based upon audited historical data or other data furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. The rate established must ensure that potentially unallowable costs are not reimbursed. Alternatively, the recipient may use the de minimis indirect cost rate. See § 200.414(f).

(d) Nonprofit organizations must certify that they did not meet the definition of a major nonprofit organization as defined in § 200.414(a), if applicable.

(e) The recipient must certify that the requirements and standards for lobbying (see § 200.450) have been met when submitting its indirect cost rate proposal.

SPECIAL CONSIDERATIONS FOR STATES, LOCAL GOVERNMENTS AND INDIAN TRIBES

### § 200.416 Cost allocation plans and indirect cost proposals.

(a) Awards to states, local governments, and Indian Tribes are often implemented at the level of department within the State, local government, or Indian Tribe. A central service cost allocation plan is established to allow such department to claim a portion of centralized service costs that are incurred in proportion to the award's activities. Examples of centralized service costs may include motor pools, computer centers, purchasing, and accounting. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan establishes this process.

(b) Individual departments typically charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate proposal for each operating department is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

(1) The indirect costs originating in each operating department of the State, local government, or Indian Tribe carrying out Federal awards; and

(2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for developing and submitting cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices V, VI, and VII of this part.

### § 200.417 Interagency service.

An operating department may provide services to another operating department of the same State, local government, or Indian Tribe. In these instances, the cost of services provided may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost rate equal to 15 percent of the direct salaries and wages for providing the service (excluding overtime, shift premiums, and fringe benefits) may be used instead of determining the actual indirect costs of the service. These services do not include centralized services that are included in central service cost allocation plans described in Appendix V of this part.

SPECIAL CONSIDERATIONS FOR INSTITUTIONS OF HIGHER EDUCATION

### § 200.418 Costs incurred by states and local governments.

Costs incurred or paid by a State or local government on behalf of and in direct benefit to its IHEs are allowable. These costs include but are not limited to fringe benefit programs such as pension costs and Federal Insurance Contributions Act (FICA) costs. These costs are allowable regardless of whether they are recorded in the accounting records of the institutions, subject to the following conditions:

(a) The costs meet the requirements of § 200.402–200.411;

(b) The costs are properly supported by approved cost allocation plans in accordance with the applicable cost accounting principles of this part; and

(c) The costs are not otherwise borne directly or indirectly by the Federal Government.

### § 200.419 Cost accounting standards.

An IHE that receive an aggregate total $50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts and subcontracts awarded to the IHEs are subject to the broader range of CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30).

## General Provisions for Selected Items of Cost

### § 200.420 Considerations for selected items of cost.

(a) This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to other requirements of this subpart. These principles apply whether or not a particular cost item is properly treated as a direct or indirect cost.

(b) The following sections are not intended to be a comprehensive list of potential items of cost encountered under Federal awards. Failure to mention a particular item of cost, including as an example in certain sections, is not intended to imply that it is either allowable or unallowable. When determining the allowability for an item of cost, each case should be based on the treatment provided for similar or related items of cost and based on the principles described in §§ 200.402 through 200.411. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in § 200.403 must be applied in determining allowability.

### § 200.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media includes, but is not limited to, magazines, newspapers, radio and television, direct mail, exhibits, and electronic or computer transmittals.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the recipient or subrecipient for the performance of a Federal award (See also § 200.463);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when the recipient or subrecipient is reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach (for example, recruiting project participants) and other specific purposes necessary to meet the Federal award requirements.

(c) The term ''public relations'' includes community relations and means those activities dedicated to maintaining the recipient's or subrecipient's image or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press about specific activities or accomplishments which result from the performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities or financial matters.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

(2) Costs of meetings, conventions, conferences, or other events related to other activities of the entity (see also § 200.432), including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia;

(4) Costs of advertising and public relations designed solely to promote the recipient or subrecipient.

**§ 200.422 Advisory councils.**

An advisory council or committee is a body that provides advice to the management of such entities as corporations, organizations, or foundations. Costs incurred by both internal and external advisory councils or committees are allowable if authorized by statute, the Federal agency, or as an indirect cost where allocable to Federal awards. See § 200.444, which applies to States, local governments, and Indian Tribes.

**§ 200.423 Alcoholic beverages.**

The cost of alcoholic beverages is unallowable.

**§ 200.424 Alumni activities.**

Costs incurred by IHEs for, or in support of, alumni activities are unallowable.

**§ 200.425 Audit services.**

(a) A reasonably proportionate share of the costs of audits required by and performed in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507), and the requirements of this part are allowable. However, the following audit costs are unallowable:

(1) Any costs when audits required by the Single Audit Act and subpart F of this part have not been conducted, or have been conducted but not in accordance with the requirements; and

(2) Except as provided for in paragraph (c) of this section, any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and subpart F of this part because its expenditures under Federal awards are less than $1,000,000 during its fiscal year.''

(b) The costs of a financial statement audit of a recipient or subrecipient that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge Federal awards for the cost of agreed-upon procedures engagements to monitor subrecipients (in accordance with §§ 200.331–333) exempt from having an audit conducted under the Single Audit Act and the *requirements of this part*. This cost is allowable only if the agreed-upon procedures engagements are:

(1) Conducted in accordance with GAGAS or applicable international attestation standards, as appropriate;

(2) Paid for and arranged by the pass-through entity; and

(3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

**§ 200.426 Bad debts.**

Bad debts (debts determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts are also unallowable. See § 200.428.

**§ 200.427 Bonding costs.**

(a) Bonding costs arise when the Federal agency requires assurance against financial loss to itself or others because of an act or default of the recipient or subrecipient. They also arise when the recipient or subrecipient requires similar assurance, including bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) Costs of bonding required under the Federal award's terms and conditions are allowable.

(c) Costs of bonding required by the recipient or subrecipient in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

### § 200.428 Collections of improper payments.

The costs incurred by a recipient or subrecipient to recover improper payments, including improper overpayments, are allowable as either direct or indirect costs, as appropriate. The recipient or subrecipient may use the amounts collected in accordance with cash management standards described in § 200.305.

### § 200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as activity costs provided for in Appendix III, (B)(9) Student Administration and Services.

### § 200.430 Compensation—personal services.

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits addressed in § 200.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the recipient or subrecipient consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with the recipient's or subrecipient's laws, rules, or written policies and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (g) of this section, when applicable.

(b) *Reasonableness.* Compensation for employees engaged in work on Federal awards will be reasonable to the extent that it is consistent with that paid for similar work in other activities of the recipient or subrecipient. In cases where the kinds of employees required for Federal awards are not found in the other activities of the recipient or subrecipient, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the recipient or subrecipient competes for the kind of employees involved.

(c) *Professional activities outside the recipient or subrecipient.* Unless the Federal agency expressly authorizes an arrangement, a recipient or subrecipient must follow its written policies and procedures concerning the permissible extent of professional services that can be provided outside the recipient or subrecipient for non-organizational compensation. Where the recipient or subrecipient does not have written policies or procedures, or they do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require the recipient or subrecipient to allocate the effort of professional staff working on Federal awards between:

(1) Recipient or subrecipient activities, and

(2) Non-organizational professional activities. Appropriate arrangements governing compensation must be negotiated on a case-by-case basis if the Federal agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award.

(d) *Unallowable costs.* (1) Costs unallowable under other sections of these principles must not be allowable under this section solely because they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with Federal statute. See 10 U.S.C. 3744(a)(16), 41 U.S.C. 1127, and 41 U.S.C. 4304(a)(16) for the ceiling

amount, covered compensation subject to the ceiling, covered employees, and other relevant provisions for cost-reimbursement contracts. For other types of Federal awards, other statutory ceilings may apply.

(e) *Special considerations.* Special considerations in determining the allowability of compensation will be given to any change in a recipient's or subrecipient's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

(f) *Incentive compensation.* Incentive compensation to employees based on cost reduction, efficient performance, suggestion awards, or safety awards is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued according to an agreement entered into in good faith between the recipient or subrecipient and the employees before the services were rendered, or according to an established plan followed by the recipient or subrecipient so consistently as to imply, in effect, an agreement to make such payment.

(g) *Standards for Documentation of Personnel Expenses.* (1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control that provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the recipient or subrecipient;

(iii) Reasonably reflect the total activity for which the employee is compensated by the recipient or subrecipient, not exceeding 100 percent of compensated activities (for IHEs, this is the IBS);

(iv) Encompass federally-assisted and all other activities compensated by the recipient or subrecipient on an integrated basis but may include the use of subsidiary records as defined in the recipient's or subrecipient's written policy;

(v) Comply with the established accounting policies and procedures of the recipient or subrecipient (See paragraph (i)(1)(ii) of this section for treatment of incidental work for IHEs.); and

(vi) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(vii) Budget estimates (meaning, estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity performed;

(B) Significant changes in the related work activity (as defined by the recipient's or subrecipient's written policies) are promptly identified and entered into the records. Short-term (such as one or two months) fluctuations between workload categories do not need to be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The recipient's or subrecipient's system of internal controls includes processes to perform periodic after-the-fact reviews of interim charges made to a Federal award based on budget estimates. All necessary adjustments must be made so that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

(viii) Because practices vary as to the activity constituting a full workload (for example, the Institutional Base Salary (IBS) for IHEs), records may reflect categories of activities expressed as a percentage distribution of total activities.

(ix) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. Therefore, a precise assessment of factors contributing to costs is not required when IHEs record salaries and wages charged to Federal awards.

(2) For records that meet the standards required in paragraph (g)(1) of this section, the recipient or subrecipient is not required to provide additional support or documentation for the work performed other than that referenced in paragraph (g)(3) of this section.

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) States, local governments, and Indian Tribes may use substitute processes or systems for allocating salaries and wages to Federal awards either in place of or in addition to the records described in paragraph (g)(1) of this section if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, ''rolling'' time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems that use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards, including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (g)(5)(iii);

(B) The sample must cover the entire period involved; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors and clerical and support staff, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in paragraph (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts allocated to Federal awards will be minimal or if it concludes that the system proposed by the recipient or subrecipient will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance when these are clearly documented. These plans are acceptable as an alternative to requirements in paragraph (g)(1) of this section when approved by the cognizant agency for indirect costs.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a recipient or subrecipient may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided the plans are approved in advance by all involved Federal agencies. In these instances, the recipient or subrecipient must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a recipient or subrecipient whose records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation supporting the records as required in this section.

(h) *Nonprofit organizations.* This paragraph (h) provides guidance specific to only nonprofit organizations. For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, a determination must be made that the compensation is reasonable for the actual personal services rendered rather than a distribution of

earnings above actual costs. Compensation may include director's and executive committee member's fees, incentive awards, off-site or incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(i) *Institutions of Higher Education (IHEs)*. This paragraph provides guidance specific to only IHEs.

(1) *Determining allowable personnel costs*. Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etcetera), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under the written institutional policy (at a rate not to exceed institutional base salary) do not need to be included in the records described in paragraph (g). To charge payments of incidental activities directly, such activities must either be expressly authorized in the Federal award budget or receive prior written approval by the Federal agency.

(2) *Salary basis*. Charges for work performed on Federal awards by faculty members during the academic year are allowable at the institutional base salary (IBS) rate. Except as noted in paragraph (i)(1)(ii), in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of the faculty at an institution. IBS is the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal agency, charges of a faculty member's salary to a Federal award may not exceed the proportionate share of the IBS for the period during which the faculty member worked on the Federal award.

(3) *Intra-Institution of Higher Education (IHE) consulting*. Intra-IHE consulting by faculty should be undertaken as an IHE responsibility requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty members is in addition to their regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are expressly authorized in the Federal award or approved in writing by the Federal agency.

(4) *Extra service pay*. Extra service pay typically represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay results from Intra-IHE consulting, it is subject to the same requirements of paragraph (b) of this section. It is allowable if all of the following conditions are met:

(i) The IHE establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The IHE establishes a consistent written definition of work covered by IBS, which is specific enough to determine conclusively when work beyond that level has occurred. This definition may be described in appointment letters or other documentation.

(iii) The supplementation amount paid is commensurate with the IBS pay rate and additional work performed. See paragraph (i)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the IHE.

(v) The total salaries charged to Federal awards, including extra service payments, are subject to the standards of documentation as described in paragraph (g).

(5) *Periods outside the academic year.* (i) Except as specified for teaching activity in paragraph (i)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period must be at a rate not more than the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period must be based on the written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) *Part-time faculty.* Charges for work performed on Federal awards by faculty members having only part-time appointments must be determined at a rate not more than that regularly paid for part-time assignments.

(7) *Sabbatical leave costs.* Rules for sabbatical leave are as follows:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable, provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. These costs must be allocated equitably among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) *Salary rates for non-faculty members.* Non-faculty full-time professional personnel may also earn ''extra service pay'' in accordance with the IHE's written policy and paragraph (i)(1)(i).

### § 200.431 Compensation—fringe benefits.

(a) *General.* Fringe benefits are allowances and services employers provide to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefits. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, an organization-employee agreement, or an established policy of the recipient or subrecipient.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the recipient or subrecipient or a specified grouping of employees.

(i) When a recipient or subrecipient uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment and should be allocated as a general administrative expense to all activities or included in the fringe benefit rate.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a recipient or subrecipient uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) *Fringe benefits.* The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447); pension plan costs; and other similar benefits are allowable, provided

such benefits are permitted under established written policies. The recipient or subrecipient must allocate fringe benefits to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs following the recipient's or subrecipient's accounting practices.

(d) *Cost objectives.* The recipient or subrecipient may assign fringe benefits to cost objectives by identifying specific benefits to specific individual employees or by allocating them based on entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees unless the recipient or subrecipient demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also § 200.447(d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation and the types of coverage, the extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Insurance costs on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The cost of such insurance is unallowable when the recipient or subrecipient is named as beneficiary.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (*for example*, post-retirement health benefits) are allowable in the year of payment provided that the recipient or subrecipient follows a consistent costing policy.

(f) *Automobiles.* That portion of automobile costs furnished by the recipient or subrecipient that relates to personal use by employees (including transportation to and from work) is unallowable as a fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees.

(g) *Pension plan costs.* Pension plan costs incurred in accordance with the established written policies of the recipient or subrecipient are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) The cost assigned to each fiscal year should be determined in accordance with GAAP, except for State and local governments.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. The recipient or subrecipient may follow the ''Cost Accounting Standard for Composition and Measurement of Pension Costs'' (48 CFR 9904.412).

(5) Premiums for pension plan termination insurance that are paid according to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301–1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or an actuarial cost method recognized by GAAP and following the recipient's or subrecipient's established written policies.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing

actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after six months (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the recipient's or subrecipient's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the recipient or subrecipient in excess of the actuarially determined amount for a fiscal year may be used as the recipient's or subrecipient's contribution in future periods.

(iv) When a recipient or subrecipient establishes or converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) Payments for unfunded pension costs must be charged in accordance with the allocation principles of this subpart. Specifically, the recipient or subrecipient may not charge unfunded pension costs directly to a Federal award if those unfunded pension costs are not allocable to that award.

(vi) The recipient or subrecipient must provide the Federal Government an equitable share of any previously allowed pension costs (including subsequent earnings) that revert or inure to the recipient or subrecipient through a refund, withdrawal, or other credit.

(h) *Post-retirement health.* A post-retirement health plan (PRHP) refers to the costs of health insurance or health services not included in a pension plan covered by paragraph (g) for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an actuarial cost method recognized by GAAP and following the recipient's or subrecipient's established written policies.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after six months (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the recipient's or subrecipient's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in the current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded by the recipient or subrecipient in excess of the actuarially determined amount for a fiscal year may be used as the recipient's or subrecipient's contribution in future periods.

(4) If a recipient or subrecipient establishes or converts to an actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) Payments for unfunded PRHP costs must be charged in accordance with the allocation principles of this subpart. Specifically, the recipient or subrecipient may not charge unfunded PRHP costs directly to a Federal award if those unfunded PRHP costs are not allocable to that award.

(6) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums; or

(ii) An insurer or trustee that will maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(7) The recipient or subrecipient must provide the Federal Government an equitable share of any previously allowed post-retirement benefit costs (including subsequent earnings) that revert or inure to the recipient or subrecipient through a refund, withdrawal, or other credit.

(i) *Severance pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by recipients and subrecipients to workers whose employment is being terminated. Severance pay is allowable only to the extent that, in each case, it is required by:

(i) Law;

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the recipient's or subrecipient's part; or

(iv) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual severance payments for normal turnover must be allocated to all activities; or, where the recipient or subrecipient provides for a reserve for normal severances, such method is acceptable if the charge to current operations is reasonable in light of payments made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the recipient or subrecipient.

(ii) Measuring the costs of abnormal or mass severance pay by means of an accrual method will not achieve equity for both parties. Therefore, accruals are not allowable. However, the Federal Government recognizes its responsibility to contribute its fair share toward a specific payment. Prior approval by the Federal agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in severance pay packages that are in excess of the standard severance pay provided by the recipient or subrecipient to an employee upon termination of employment and that are paid to the employee contingent upon a change in management control over, or ownership of, the recipient's or subrecipient's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the recipient or subrecipient outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the recipient or subrecipient in the United States, are unallowable unless they are required by applicable foreign law or necessary for the performance of Federal programs and approved by the Federal agency.

(5) Severance payments to foreign nationals employed by the recipient or subrecipient outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the recipient or subrecipient in that country, are unallowable unless they are either:

(i) Required by applicable foreign law; or

(ii) Necessary for the performance of Federal programs and approved by the Federal agency.

(j) *For IHEs only.* (1) Fringe benefits in the form of undergraduate and graduate tuition or tuition remission for individual employees are allowable, provided such benefits are granted in accordance with established written policies of the IHE and are distributed to all IHE activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of undergraduate and graduate tuition or tuition remission for individual employees not employed by the IHE are limited to the tax-free amount allowed by the Internal Revenue Code as amended (26 U.S.C. 127).

(3) IHEs may offer employees tuition waivers or reductions, provided that the benefit does not discriminate in

favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See § 200.466, for treatment of tuition remission provided to students.

(k) *Fringe benefit programs and other benefit costs.* (1) For IHEs whose costs are paid by a State or local government, fringe benefit programs (such as pension costs and FICA) and any other benefits costs incurred specifically on behalf of, and in direct benefit to, the IHE, are allowable, subject to the following:

(i) The costs meet the requirements of Basic Considerations in §§ 200.402 through 200.411;

(ii) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(iii) The costs are not otherwise borne directly or indirectly by the Federal Government.

(2) The allowability of these costs for the IHE does not depend on whether they are recorded in the accounting records of the IHE.

[89 FR 30136, Apr. 22, 2024, as amended at 89 FR 79732, Oct. 1, 2024]

### § 200.432 Conferences.

A conference means an event whose primary purpose is to disseminate technical information beyond the recipient or subrecipient and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs may include the rental of facilities, speakers' fees, attendance fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. The costs of identifying and providing locally available dependent-care resources for participants are allowable as needed. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary, and managed to minimize costs to the Federal award. The Federal agency may authorize exceptions for programs including Indian Tribes, children, and the elderly. See also §§ 200.438, 200.456, and 200.475.

### § 200.433 Contingency provisions.

(a) Contingency provisions are part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items approved by the Federal agency) which are associated with possible events or conditions arising from causes for which the precise outcome is indeterminable at the time of estimate and that are likely to result, in the aggregate, in additional costs for the approved activity or project. Contingency amounts for major project scope changes, unforeseen risks, or extraordinary events must not be included in the budget estimates for a Federal award.

(b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates to the extent necessary to improve their precision. Contingency amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements of this part (see §§ 200.300 and 200.403), be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the recipient's or subrecipient's records.

(c) Payments to a recipient's or subrecipient's ''contingency reserve'' or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 200.431 and 200.447.

### § 200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the recipient or subrecipient to other entities are unallowable.

(b) The value of services and property donated (that is, in-kind donations) to the recipient or subrecipient may not be charged to the Federal award either as a direct or indirect cost. The value

of donated services and property may be used to meet cost sharing requirements (see § 200.306). Depreciation on donated assets is permitted so long as the donated property is not counted towards meeting cost sharing requirements (see § 200.436).

(c) Services donated or volunteered to the recipient or subrecipient may be provided by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing requirements in accordance with the provisions of § 200.306.

(d) To the extent feasible, services donated to the recipient or subrecipient will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to a nonprofit organization and used in the performance of a direct cost activity must be considered in the determination of the recipient's or subrecipient's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the recipient or subrecipient;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient or subrecipient and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the project's total costs. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing requirements.

(f) Fair market value of donated services must be computed as described in § 200.306.

(g) Personal property and use of space.

(1) Donated personal property and use of space may be furnished to a recipient or subrecipient. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.

(2) The value of the donations of personal property and use of space may be used to meet cost sharing requirements described in § 200.300. The recipient or subrecipient must value the donations in accordance with § 200.300. Where the recipient or subrecipient treats donations as indirect costs, indirect cost rates must separate the value of the donations so that reimbursement is not made.

### § 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(a) *Definitions for this section*—(1) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) *Costs* include the services that bear a direct relationship to a judicial or administrative proceeding and provided by in-house or private counsel, accountants, consultants, or others engaged to assist the recipient or subrecipient before, during, or after the commencement of that proceeding.

(3) *Fraud* means:

(i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,

(ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(iii) Acts that violate the False Claims Act (31 U.S.C. 3729–3732) or the Anti-kickback Act (42 U.S.C. 1320a–7b(b)).

(4) *Penalty* does not include restitution, reimbursement, or compensatory damages.

(5) *Proceeding* includes an investigation.

(b) *Costs.* (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil, or administrative proceeding (including the

filing of a false certification) commenced by the Federal Government, a State, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the recipient or subrecipient, (or commenced by third parties or a current or former employee of the recipient or subrecipient who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 4701 or 41 U.S.C. 4712), are not allowable if the proceeding:

(i) Relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute, regulation, or the terms and conditions of the Federal award by the recipient or subrecipient (including its agents and employees); and

(ii) Results in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of recipient or subrecipient liability.

(C) In the case of any civil or administrative proceeding, the disallowance of costs, the imposition of a monetary penalty, or an order issued by the Federal agency head or delegate to the recipient or subrecipient to take corrective action under 10 U.S.C. 4701 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the recipient or subrecipient, to rescind or void a Federal award, or to terminate a Federal award because of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.

(E) A disposition by consent or compromise if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) *Allowability of costs for proceeding commenced by Federal Government.* If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the recipient or subrecipient and the Federal Government, then the costs incurred may be allowed to the extent expressly authorized in the agreement.

(d) *Allowability of costs for proceeding commenced by State, local, or foreign government.* If a proceeding referred to in paragraph (b) of this section is commenced by a State, local or foreign government, then the costs incurred may be allowed if the authorized Federal official determines that the costs were incurred as a result of:

(1) A specific term or condition of the Federal award, or

(2) Specific written direction of an authorized official of the Federal agency.

(e) *Allowability of costs in general.* Costs incurred in connection with proceedings described in paragraph (b), and not made unallowable by that paragraph, may be allowed to the extent that:

(1) The costs are reasonable and necessary for the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;

(3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) An authorized Federal official has determined the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and other factors that may be appropriate. This percentage must not exceed 80 percent unless an agreement under paragraph (c) has explicitly considered this limitation and permitted a higher percentage. In that case, the total amount of costs incurred may be allowable.

(f) *Major Fraud Act*. Costs incurred by the recipient or subrecipient in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make the employee whole, where the recipient or subrecipient was found liable or settled, are unallowable.

(g) *Un-allowability of costs for prosecuting claims against Federal Government*. Costs for prosecuting claims against the Federal Government, including appeals of final Federal agency decisions, are unallowable.

(h) *Patent infringement litigation*. Costs of legal, accounting, and consultant services, and related costs incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.

(i) *Potentially unallowable costs*. Costs that may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Federal Government must generally withhold payment of such costs. However, if in its best interests, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

### § 200.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The recipient or subrecipient may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP provided that they are needed and used in the recipient's or subrecipient's activities and correctly allocated to Federal awards. The compensation must be made by computing the proper depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices III through IX of this part.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the recipient or subrecipient by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as cost sharing but not both. When computing depreciation charges, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where the title was originally vested or is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the recipient or subrecipient that is already claimed as cost sharing or where law or agreement prohibits recovery; and

(4) Any asset acquired solely for the performance of a non-Federal award.

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as the type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Once used, depreciation methods may not be changed unless approved in advance by the cognizant agency for indirect costs. The depreciation methods used to calculate the depreciation amounts for indirect cost rate purposes must be the same

methods used by the recipient or subrecipient for its financial statements.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component may be depreciated over its estimated useful life in this case. The building components must be grouped into three general components: building shell (including construction and design costs), building services systems (for example, elevators, HVAC, and plumbing system), and fixed equipment (for example, sterilizers, casework, fume hoods, cold rooms, and glassware/washers). A cognizant agency for indirect costs may authorize a recipient or subrecipient to use more than these three groupings in exceptional cases. When a recipient or subrecipient elects to depreciate its buildings by their components, the same depreciation method must be used for indirect and financial statements purposes, as described in paragraphs (d)(1) and (2).

(4) No depreciation may be allowed on assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (meaning, from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods before the conversion from the use allowance method and depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Adequate property records must support depreciation charges, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. The recipient or subrecipient may use statistical sampling techniques when taking these inventories. In addition, the recipient or subrecipient must maintain adequate depreciation records showing the amount of depreciation.

### § 200.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the recipient's or subrecipient's established written policies for improving working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) These costs must be equitably apportioned to all activities of the recipient or subrecipient. Income generated from these activities must be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the recipient's or subrecipient's objective is to operate food services on a breakeven basis. Losses sustained because of operating objectives other than the above are allowable only when:

(1) The recipient or subrecipient can demonstrate unusual circumstances; and

(2) Approved by the cognizant agency for indirect costs.

### § 200.438 Entertainment and prizes.

(a) *Entertainment costs.* Costs of entertainment, including amusement, diversion, and social activities and any associated costs (such as gifts), are unallowable unless they have a specific and direct programmatic purpose and are included in a Federal award.

(b) *Prizes.* Costs of prizes or challenges are allowable if they have a specific and direct programmatic purpose and are included in the Federal award. Federal agencies should refer to OMB guidance in M–10–11 ''Guidance on the Use of Challenges and Prizes to Promote Open Government,'' issued March 8, 2010, or its successor.

### § 200.439 Equipment and other capital expenditures.

(a) See § 200.1 for the definitions of *capital expenditures*, *equipment*, *special purpose equipment*, *general purpose equipment*, *acquisition cost*, *and capital assets.*

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are allowable as direct costs, but only

with the prior written approval of the Federal agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $10,000 or more have the prior written approval of the Federal agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment that materially increase their value or useful life are allowable as a direct cost, but only with the prior written approval of the Federal agency or pass-through entity. See § 200.436 on the allowability of depreciation on buildings, capital improvements, and equipment. See § 200.465 on the allowability of real property and equipment rental costs.

(4) When approved as a direct cost in accordance with paragraphs (b)(1) through (3), capital expenditures must be charged in the period in which the expenditure is incurred or as otherwise determined appropriate and negotiated with the Federal agency.

(5) The recipient or subrecipient may claim the unamortized portion of any equipment written off as a result of a change in capitalization levels by continuing to claim the otherwise allowable depreciation on the equipment or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the Federal agency instructs the recipient or subrecipient to otherwise dispose of or transfer the equipment, the costs of disposal or transfer are allowable.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436.

### § 200.440 Exchange rates.

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. Before providing approval, the Federal agency must ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Antideficiency Act.

(b) The recipient or subrecipient is required to make reviews of local currency gains to determine the need for additional Federal funding before the expiration date of the Federal award. Subsequent adjustments for currency increases may be allowable only when the recipient or subrecipient provides the Federal agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available.

### § 200.441 Fines, penalties, damages and other settlements.

Costs resulting from recipient or subrecipient violations of, alleged violations of, or failure to comply with, Federal, State, local, tribal, or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with the prior written approval of the Federal agency. See § 200.435.

### § 200.442 Fundraising and investment management costs.

(a) Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions, are unallowable. Fundraising costs for meeting the Federal program objectives are allowable with the prior written approval of the Federal agency.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds, which include Federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fundraising and investment activities must be allocated an appropriate share of indirect costs in accordance with § 200.413.

### § 200.443 Gains and losses on the disposition of depreciable assets.

(a) The recipient or subrecipient must include gains and losses on the sale, retirement, or other disposition of depreciable property in the year they occur as credits or charges to the asset cost grouping(s) of the property. The amount of the gain or loss is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 200.436 and 200.439.

(2) The property is given in exchange as part of the purchase price of a similar item, and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(3) A loss results from failing to maintain proper insurance, except as provided in § 200.447.

(4) Compensation for the use of the property was provided through use allowances instead of depreciation.

(5) Gains and losses arising from extraordinary or bulk sales, retirements, or other dispositions must be considered on a case-by-case basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section must be excluded in computing Federal award costs.

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 200.310 through 200.316.

### § 200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable except as provided in § 200.475. Unallowable costs include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a local government or the chief executive of an Indian Tribe;

(2) Salaries and other expenses of a State legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, or school board, whether incurred for purposes of legislation or executive direction;

(3) Costs of the judicial branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation. However, this does not preclude the allowability of other legal activities of the Attorney General as described in § 200.435; and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided as a direct cost under a program statute or regulation.

(b) Indian Tribes and Councils of Governments (COGs) (see definition for *Local government* in § 200.1) may include up to 50 percent of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and their staff in the indirect cost calculation without documentation.

### § 200.445 Goods or services for personal use.

(a) Costs of goods or services for the personal use of the recipient's or subrecipient's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) Housing costs (for example, depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses for the recipient's or subrecipient's employees are only allowable as direct costs and must be approved in advance by the Federal agency.

### § 200.446 Idle facilities and idle capacity.

(a) Definitions for the purpose of this section:

(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the recipient or subrecipient.

(2) Idle facilities mean completely unused facilities that exceed the recipient's or subrecipient's current needs.

(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

(i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and

(ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means maintenance, repair, housing, rent, and other related costs (for example, insurance, interest, and depreciation). These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load (for example, consolidated data centers).

(b) The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet workload requirements which may fluctuate, and are allocated appropriately to all benefiting programs; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under this exception, costs of idle facilities are allowable for a reasonable period, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. These costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

### § 200.447 Insurance and indemnification.

(a) Costs of insurance required or approved and maintained by the terms and conditions of the Federal award are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) The types, extent, and cost of coverage are in accordance with the recipient's or subrecipient's established written policy and sound business practices.

(2) Costs of insurance or contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the Federal agency has approved the costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) Insurance costs on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only when the insurance represents additional compensation (see § 200.431). This insurance is unallowable when the recipient or subrecipient is identified as the beneficiary.

(5) Insurance costs to correct defects in the recipient's or subrecipient's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance is an allowable cost of a Federal research program only when the program involves human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and assigned to individual projects based on how the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or

otherwise) are unallowable unless expressly authorized in the Federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for a self-insurance program, including workers' compensation, unemployment compensation, and severance pay, are allowable subject to the following requirements:

(1) The type, extent, and cost of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, a provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by considering factors such as the recipient's or subrecipient's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3)(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, and other relevant factors or information. Reserve levels related to employee-related coverages must normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve exceeding the levels described in paragraph (d)(3)(i) of this section must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to the types of insured risk and losses generated by the various insured activities or agencies of the recipient or subrecipient. If individual departments or agencies of the recipient or subrecipient experience significantly different levels of claims for a particular risk, those differences must be recognized by using separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (for example, general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with the claims collection regulations of the cognizant agency for indirect cost.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

(f) Indemnification includes securing the recipient or subrecipient against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the recipient or subrecipient only to the extent expressly provided for in the Federal award, except as provided in paragraph (c).

### § 200.448 Intellectual property.

(a) *Patent and copyright costs.* (1) The following costs related to securing patents and copyrights are allowable:

(i) Costs of preparing disclosures, reports, and other documents required by the Federal award and of searching the art to the extent necessary to make such disclosures;

(ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where the Federal Government requires that a title or a royalty-free license be conveyed to the Federal Government; and

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright

laws, regulations, clauses, and employee intellectual property agreements (See § 200.459).

(2) The following costs related to securing patents and copyrights are unallowable:

(i) Costs of preparing disclosures, reports, and other documents and of searching the art to make disclosures not required by the Federal award;

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

(b) *Royalties and other costs for the use of patents and copyrights.* (1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:

(i) The Federal Government already has a license or the right to free use of the patent or copyright.

(ii) The patent or copyright has been adjudicated to be invalid or administratively determined to be invalid.

(iii) The patent or copyright is considered to be unenforceable.

(iv) The patent or copyright is expired.

(2) Special care should be exercised in determining reasonableness when the royalties may have been obtained as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the recipient or subrecipient.

(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(iii) Royalties paid under an agreement entered into after a Federal award is made to a recipient or subrecipient.

(3) In any case involving a patent or copyright formerly owned by the recipient or subrecipient, the amount of royalty allowed must not exceed the cost which would have been allowed had the recipient or subrecipient retained ownership.

**§ 200.449 Interest.**

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the recipient's or subrecipient's own funds are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the requirements of this section.

(b) *Capital assets.* (1) Capital assets is defined in § 200.1. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For recipient or subrecipient fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) *Requirements for all recipients and subrecipients.* (1) The recipient or subrecipient uses the capital assets in support of Federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the recipient or subrecipient from an unrelated (arm's length) third party.

(3) The recipient or subrecipient obtains the financing via an arm's-length transaction (meaning, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The recipient or subrecipient limits its claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a lease contract that transfers ownership by the end of the contract may be determined less costly than purchasing through other types of debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The recipient or subrecipient expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that

cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over $1 million to purchase or construct facilities unless the recipient or subrecipient makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, ''initial equity contribution'' means the amount or value of contributions made by the recipient or subrecipient for the acquisition of facilities prior to occupancy.

(i) The recipient or subrecipient must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(ii) The recipient or subrecipient must impute interest on excess cash flow as follows:

(A) Annually, the recipient or subrecipient must prepare a cumulative (from the project's inception) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the recipient or subrecipient must divide the above-mentioned annual amounts by the months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The interest rate to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) *Additional requirements for states, local governments and Indian Tribes.* For interest costs to be allowable for states, local governments, and Indian Tribes, the recipient or subrecipient must have incurred the interest costs for buildings after October 1, 1980, or after September 1, 1995, for land and equipment.

(1) The requirement to offset the interest earned on borrowed funds against allowable interest cost (paragraph (c)(5) of this section) also applies to earnings on debt service reserve funds.

(2) The recipient or subrecipient must negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of $1 million or more, as described in paragraph (c)(7) of this section. For this purpose, a recipient or subrecipient must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) *Additional requirements for IHEs.* For interest costs to be allowable, the IHE must have incurred the interest costs after July 1, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) *Additional requirements for nonprofit organizations.* For interest costs to be allowable, the nonprofit organization must have incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) *Requirements for nonprofit organizations subject to full coverage under CAS.* The interest allowability provisions of this section do not apply to a nonprofit organization subject to ''full coverage'' under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201–2(a). The nonprofit organization's Federal awards are instead subject to CAS 414 (48 CFR 9904.414), ''Cost of Money as an Element of the Cost of Facilities Capital,'' and CAS 417 (48 CFR 9904.417), ''Cost of Money as an Element of the Cost of Capital Assets Under Construction.''

### § 200.450 Lobbying.

(a) *Lobbying costs associated with obtaining Federal assistance awards.* The costs of certain influencing activities associated with obtaining grants, cooperative agreements, contracts, or loans are unallowable. Lobbying with respect

to certain grants, cooperative agreements, contracts, and loans is governed by relevant statutes, including the provisions of 31 U.S.C. 1352, as well as the common rule, ''New Restrictions on Lobbying,'' published on February 26, 1990, including definitions, and the Office of Management and Budget ''Government-wide Guidance for New Restrictions on Lobbying'' and notices published on December 20, 1989, June 15, 1990, January 15, 1992, and January 19, 1996.

(b) *Executive lobbying costs.* Costs incurred in attempting to improperly influence, either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merit.

(c) *Restrictions on nonprofit organizations and IHEs.* In addition, the following restrictions apply to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established to influence the outcomes of elections in the United States;

(iii) Any attempt to influence:

(A) The introduction of Federal or State legislation;

(B) The enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or State legislation by preparing, distributing, or using publicity or propaganda or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient's or subrecipient's member of congress, legislative body, subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence State legislation to directly reduce the cost, or to avoid material impairment of the recipient's or subrecipient's authority to perform the grant, contract, or other agreement;

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award; or

(iv) Any activity excepted from the definitions of ''lobbying'' or ''influencing legislation'' by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and ''grass roots'' lobbying activities to retain their charitable deduction status and avoid punitive excise taxes, 26 U.S.C. (I.R.C.) 501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. 4911(d)(2) and 26 CFR 56.4911–2(c)(1) through (c)(3).

(3) When a recipient or subrecipient seeks reimbursement for indirect costs, total lobbying costs must be identified separately in the indirect cost rate proposal and thereafter be treated as other unallowable activity costs in accordance with § 200.413.

(4) The recipient or subrecipient must submit a certification that the requirements and standards of this section have been complied with as part of its annual indirect cost rate proposal. (See § 200.415.)

(5)(i) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record-keeping requirements in § 200.302 with respect to lobbying costs during a particular calendar month when:

(A) The employee engages in lobbying (as defined in paragraphs (c)(1) and (2) of this section) for 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(B) Within the preceding five-year period, the recipient or subrecipient has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(ii) When conditions in paragraph (c)(5)(i)(A) and (B) of this section are met, recipients and subrecipients are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(5)(i)(A) and (B) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(iii) In consultation with OMB, the Federal agency must establish procedures for resolving, in advance, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or recipient or subrecipient from contesting the lawfulness of such a determination.

### § 200.451 Losses on other awards or contracts.

Any excess costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the recipient's or subrecipient's contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another is unallowable. All losses are not allowable indirect costs and must be included in the appropriate indirect cost rate base for allocating indirect costs.

### § 200.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements that add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 200.439). These costs are only allowable to the extent not

paid through rental or other agreements.

### § 200.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary for the performance of a Federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are an allowable part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. Charging computing devices as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.

(d) Where Federally-donated or furnished materials are used in performing the Federal award, the materials will be used without charge.

### § 200.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the recipient's or subrecipient's membership in business, technical, and professional organizations are allowable.

(b) Costs of the recipient's or subrecipient's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See § 200.450.

### § 200.455 Organization costs.

(a) Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the recipient or subrecipient in connection with the establishment or reorganization of an organization, are unallowable except with prior approval of the Federal agency.

(b) The costs of any of the following activities are unallowable: activities undertaken to persuade employees of the recipient or subrecipient, or any other entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing.

(c) The costs related to data and evaluation are allowable. Data costs include (but are not limited to) the expenditures needed to gather, store, track, manage, analyze, disaggregate, secure, share, publish, or otherwise use data to administer or improve the program, such as data systems, personnel, data dashboards, cybersecurity, and related items. Data costs may also include direct or indirect costs associated with building integrated data systems—data systems that link individual-level data from multiple State and local government agencies for purposes of management, research, and evaluation. Evaluation costs include (but are not limited to) evidence reviews, evaluation planning and feasibility assessment, conducting evaluations, sharing evaluation results, and other personnel or materials costs related to the effective building and use of evidence and evaluation for program design, administration, or improvement.

### § 200.456 Participant support costs.

Participant support costs are allowable (see § 200.1*)*. The classification of items as participant support costs must be documented in the recipient's or subrecipient's written policies and procedures and treated consistently across all Federal awards.

### § 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for the protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear,

devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to § 200.439.

### § 200.458 Pre-award costs.

Pre-award costs are those incurred before the start date of the Federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. These costs are allowable only to the extent that they would have been allowed if incurred after the start date of the Federal award and only with the written approval of the Federal agency. If approved, these costs must be charged to the initial budget period of the Federal award unless otherwise specified by the Federal agency or pass-through entity.

### § 200.459 Professional service costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the recipient or subrecipient are allowable, subject to paragraphs (b) and (c) of this section when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under § 200.435.

(b) In determining the allowability of costs in a particular case, no single factor or any combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the recipient's or subrecipient's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to receiving a Federal award(s).

(4) The impact of Federal awards on the recipient's or subrecipient's business (meaning, what new problems have arisen).

(5) Whether the proportion of Federal work to the recipient's or subrecipient's total business influences the recipient or subrecipient in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or entity providing the service and the customary fees charged, especially on non-federally funded activities.

(8) Adequacy of the contractual agreement for the service (for example, description of the service, estimate of the time required, rate of compensation, and termination provisions).

(c) To be allowable, retainer fees must be supported by evidence of bona fide services available or rendered in addition to the factors in paragraph (b) of this section.

### § 200.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including developing data necessary to support the recipient's or subrecipient's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated to all current activities of the recipient or subrecipient. No proposal costs of past accounting periods may be allocated to the current period.

### § 200.461 Publication and printing costs.

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling, are allowable. These costs should be allocated as indirect costs to all benefiting activities of the recipient or subrecipient if they are not identifiable with a particular cost objective.

(b) Page charges, article processing charges (APCs), or similar fees such as open access fees for professional journal publications and other peer-reviewed publications resulting from a Federal award are allowable where:

(1) The publications report work supported by the Federal Government; and

(2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.

(3) The recipient or subrecipient may charge the Federal award during closeout for the costs of publication or sharing of research results if the costs were not incurred during the period of performance of the Federal award. These costs must be charged to the final budget period of the award unless otherwise specified by the Federal agency.

### § 200.462 Rearrangement and reconversion costs.

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations are allowable as a direct cost if the costs are incurred specifically for a Federal award and with the prior approval of the Federal agency or pass-through entity.

(b) Costs incurred in restoring or rehabilitating the recipient's or subrecipient's facilities to approximately the same condition existing immediately before the commencement of a Federal award(s), less costs related to normal wear and tear, are allowable.

### § 200.463 Recruiting costs.

(a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of ''help wanted'' advertising, operating costs of an employment office necessary to secure and maintain adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the recipient's or subrecipient's standard recruitment program. When the recipient or subrecipient uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the recipient or subrecipient, are unallowable.

(c) If relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part by a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the recipient or subrecipient must refund or credit the Federal Government for its share of those relocation costs. See § 200.464.

(d) Short-term visas (as opposed to longer-term immigration visas) are generally an allowable cost and they may be proposed as a direct cost because they are issued for a specific period and purpose and can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:

(1) Be critical and necessary for the conduct of the project;

(2) Be allowable under the applicable cost principles;

(3) Be consistent with the recipient's or subrecipient's cost accounting practices and established written policy; and

(4) Meet the definition of ''direct cost'' as described in the applicable cost principles.

### § 200.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of their immediate family and their household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to a maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incidental to the disposition of the employee's former home. These costs, together with those described in paragraph (b)(4) of this section, are limited to eight percent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. If relocation costs incurred incident to the recruitment of a new employee have been funded in whole or in part by a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the recipient or subrecipient must refund or credit the Federal Government for its share of the cost. If a new employee is relocating to an overseas location and dependents are not permitted for any reason, and the costs do not include transporting household goods, the costs must be considered travel costs in accordance with §200.474, *not relocation costs under* this section.

(d) The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

### §200.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) through (d) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as costs of comparable rental properties; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and if other options are available.

(b) Rental costs under ''sale and lease back'' arrangements are allowable only up to the amount that would have been allowed if the recipient or subrecipient had continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under ''less-than-arm's-length'' leases are allowable only up to the amount described in paragraph (b) of this section. For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement can control or substantially influence the actions of the other. Such leases include, but are not limited to, those between:

(1) Divisions of the recipient or subrecipient;

(2) The recipient or subrecipient and another entity under common control through common officers, directors, or members; and

(3) The recipient or subrecipient and a director, trustee, officer, or key employee of the recipient or subrecipient or an immediate family member, either directly or through corporations, trusts, or similar arrangements in

which they hold a controlling interest. For example, the recipient or subrecipient may establish a separate corporation to own property and lease it back to the recipient or subrecipient.

(4) Family members include one party with any of the following relationships to another party:

(i) Spouse and parents thereof;

(ii) Children and spouses thereof;

(iii) Parents and spouses thereof;

(iv) Siblings and spouses thereof;

(v) Grandparents and grandchildren and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(d) Rental costs under leases which are required to be accounted for as a financed purchase under GASB standards or a finance lease under FASB standards are allowable only up to the amount (described in paragraph (b) of this section) that would have been allowed if the recipient or subrecipient had purchased the property on the date the lease agreement was executed. Interest costs related to these leases are allowable if they meet the criteria in § 200.449. Unallowable costs include costs that would not have been incurred if the recipient or subrecipient had purchased the property, such as amounts paid for profit, management fees, and taxes.

(e) Rental or lease payments are allowable under lease contracts where the recipient or subrecipient is required to recognize an intangible right-to-use lease asset under GASB standards or right-of-use operating lease asset under FASB standards for purposes of financial reporting in accordance with GAAP.

(f) The rental of any property owned by any individuals or entities affiliated with the recipient or subrecipient, including commercial or residential real estate, for purposes such as the home office is unallowable.

### § 200.466 Scholarships, student aid costs, and tuition remission.

(a) Costs of scholarships, fellowships, and student aid programs at IHEs are allowable only when the purpose of the Federal award is to provide training to participants, and the Federal agency approves the cost.

(b) Tuition remission and other forms of compensation paid as, or instead of, wages to students performing necessary work are allowable provided that:

(1) The individual is conducting activities necessary to the Federal award;

(2) Tuition remission and other support are provided in accordance with the established written policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and

(3) The student is enrolled in an advanced degree program at the IHE or an affiliated institution during the academic period and the student's activities under the Federal award are related to their degree program;

(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) The IHE compensates students under Federal awards as well as other activities in similar manners.

(c) Charges for tuition remission and other forms of compensation paid to students as, or instead of, salaries and wages are subject to the reporting requirements in § 200.430. The charges must be treated as a direct or indirect cost in accordance with the actual work performed. Tuition remission may be charged on an average rate basis. See § 200.431.

### § 200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the recipient or subrecipient are unallowable unless they are allowed under § 200.421 *and are necessary to meet the requirements of the Federal award.*

### § 200.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities

operated by the recipient or subrecipient are allowable provided the charges for the services meet the conditions of either paragraph (b) or (c) of this section *and* take into account any items of income or Federal financing that qualify as applicable credits under § 200.406. These costs include charges for facilities such as computing facilities, wind tunnels, and reactors.

(b) The costs of such services, when material, must be charged directly to the applicable Federal awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate between activities under Federal awards and other activities of the recipient or subrecipient, including usage by the recipient or subrecipient for internal purposes; and

(2) Is designed to recover only the aggregate costs of the services. Each service's costs must normally consist of its direct costs and an allocable share of all indirect costs. Rates must be adjusted at least biennially and must consider any over or under-applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect costs.

(d) Under extraordinary circumstances, the cognizant agency for indirect costs and the recipient or subrecipient may negotiate and establish an alternative costing arrangement if it is in the Federal Government's best interest.

### § 200.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities are unallowable unless expressly authorized in the Federal award.

### § 200.470 Taxes (including Value Added Tax).

(a) *For States, local governments, and Indian Tribes.* (1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are, in effect, user fees for benefits provided to the Federal Government are allowable.

(3) This provision does not restrict the authority of the Federal agency to identify taxes where Federal participation is inappropriate. The cognizant agency for indirect costs may accept a reasonable approximation in circumstances where determining the amount of unallowable taxes would require an excessive amount of effort.

(b) *For nonprofit organizations and IHEs.* (1) Taxes that the recipient or subrecipient is required to pay and which are paid or accrued in accordance with GAAP are generally allowable. These costs include payments made to local governments instead of taxes and that are commensurate with the local government services received. The following taxes are unallowable:

(i) Taxes for which exemptions are available to the recipient or subrecipient directly or which are available to the recipient or subrecipient based on an exemption afforded the Federal Government and, in the latter case, when the Federal agency makes available the necessary exemption certificates;

(ii) Special assessments on land which represent capital improvements; and

(iii) Federal income taxes.

(2) Any refund of taxes and interest thereon, which were allowed as Federal award costs, must be credited to the Federal Government as a cost reduction or cash refund, as appropriate. However, any interest paid or credited to a recipient or subrecipient incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the Federal Government has reimbursed the recipient or subrecipient for the taxes, interest, and penalties.

(c) *Value Added Tax (VAT).* Foreign taxes charged for procurement transactions that a recipient or subrecipient is legally required to pay in a country are allowable. Foreign tax refunds or applicable credits under Federal awards refer to receipts or reduction of expenditures, which operate to offset

or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the recipient or subrecipient relate to allowable cost, these costs must be credited to the Federal agency as a cost reduction or cash refunds, as appropriate. In cases where the costs are credited back to the Federal award, the recipient or subrecipient may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, the Federal agency may allow the recipient or subrecipient to use the foreign government tax refund for approved activities under the Federal award.

### § 200.471 Telecommunication and video surveillance costs.

(a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

(b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 to:

(1) Procure or obtain, extend or renew a contract to procure or obtain;

(2) Enter into a contract (or extend or renew a contract) to procure; or

(3) Obtain the equipment, services, or systems.

### § 200.472 Termination and standard closeout costs.

(a) *Termination Costs.* Termination of a Federal award generally gives rise to the incurrence of costs or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They must be used in conjunction with the other termination requirements of this part.

(1) The cost of items reasonably usable on the recipient's or subrecipient's other work is unallowable unless the recipient or subrecipient submits evidence that it would not retain such items without sustaining a loss. In deciding whether such items are reasonably usable on other work of the recipient or subrecipient, the Federal agency or pass-through entity should consider the recipient's or subrecipient's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the recipient or subrecipient must be considered evidence that the items are reasonably usable on the recipient's or subrecipient's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order do not exceed the reasonable quantitative requirements of other work.

(2) If the recipient or subrecipient cannot discontinue certain costs immediately after the effective termination date, despite making all reasonable efforts, then the costs are generally allowable within the limitations of this part. Any costs continuing after termination due to the negligent or willful failure of the recipient or subrecipient to immediately discontinue the costs are unallowable.

(3) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(i) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the recipient or subrecipient;

(ii) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the Federal agency (see § 200.313 (d)); and

(iii) The loss of useful value for any one terminated Federal award is limited to the portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

(4) If paragraph (a)(4)(i) and (ii) below are satisfied, rental costs under unexpired leases (less the residual value of such leases) are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award. These rental costs may include the cost of alterations of the leased property and

the cost of reasonable restoration required by the lease, provided the alterations were necessary for the performance of the Federal award.

(i) The amount of claimed rental costs does not exceed the reasonable use value of the property leased for the period of the Federal award and a further period as may be reasonable; and

(ii) The recipient or subrecipient makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of the lease.

(5) The following settlement expenses are generally allowable.

(i) Accounting, legal, clerical, and similar costs that are reasonably necessary for:

(A) The preparation and presentation to the Federal agency or pass-through entity of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see §§ 200.339–200.343); and

(B) The termination and settlement of subawards.

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.

(6) Claims under subawards, including the allocable portion of claims common to the Federal award and other work of the recipient or subrecipient, are generally allowable. An appropriate share of the recipient's or subrecipient's indirect costs may be allocated to the amount of settlements with contractors and subrecipients, provided that the amount allocated is consistent with the requirements of § 200.414. These allocated indirect costs must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

(b) *Closeout Costs.* Administrative costs associated with the closeout activities of a Federal award are allowable. The recipient or subrecipient may charge the Federal award during the closeout for the necessary administrative costs of that Federal award (for example, salaries of personnel preparing final reports, publication and printing costs, costs associated with the disposition of equipment and property, and related indirect costs). These costs may be incurred until the due date of the final report(s). If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency.

### § 200.473 Training and education costs.

The cost of training and education provided for employee development is allowable.

### § 200.474 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating to goods purchased, in process, or delivered, are allowable. When the costs can be readily identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. When identification with the materials received cannot be readily made, the inbound transportation cost may be charged to the appropriate indirect cost accounts if the recipient or subrecipient follows a consistent, equitable procedure in this respect. If reimbursable under the terms and conditions of the Federal award, outbound freight should be treated as a direct cost.

### § 200.475 Travel costs.

(a) *General.* Travel costs include the transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the recipient or subrecipient. These costs may be charged on an actual cost basis, on a per diem or mileage basis, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip. The method used must be consistent with those normally allowed in like circumstances in the recipient's or subrecipient's other activities and in accordance with the recipient's or subrecipient's established written policies. Notwithstanding the provisions of § 200.444, travel costs of officials covered by that section are allowable with the prior written approval of the Federal agency or pass-through entity when they are specifically related to the Federal award.

(b) *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the recipient or subrecipient in its regular operations as the result of the recipient's or subrecipient's established written policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

(1) Participation of the individual is necessary for the Federal award; and

(2) The costs are reasonable and consistent with the recipient's or subrecipient's established written policy.

(c) *Dependents.* (1) Temporary dependent care costs (dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care are allowable provided that these costs:

(i) Are a direct result of the individual's travel to a conference for the Federal award;

(ii) Are consistent with the recipient's or subrecipient's established written policy for all travel; and

(iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of six months or more with prior approval of the Federal agency. See § 200.432.

(d) *Establishing rates and amounts.* In the absence of an established written policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701–11 (''Travel and Subsistence Expenses; Mileage Allowances''), by the Administrator of General Services, or by the President (or their designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205–46(a)).

(e) *Commercial air travel.* (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The recipient or subrecipient must justify and document these conditions on a case-by-case basis for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a recipient's or subrecipient's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the recipient or subrecipient can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* Travel costs by recipient or subrecipient-owned, -leased, or -chartered aircraft include the cost of the lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of these costs that exceeds the cost of airfare, as provided for in paragraph (d), is unallowable.

### § 200.476 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See § 200.475.

## Subpart F—Audit Requirements

GENERAL

### § 200.500 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

AUDITS

### § 200.501 Audit requirements.

(a) *Audit required.* A non-Federal entity that expends $1,000,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) *Single audit.* A non-Federal entity that expends $1,000,000 or more in Federal awards during the non-Federal entity's fiscal year must have a single audit conducted in accordance with § 200.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) or (d) of this section.

(c) *Program-specific audit election (in general).* A non-Federal entity may elect to have a program-specific audit conducted in accordance with § 200.507 if the following conditions are met:

(1) The non-Federal entity expends Federal awards under only one Federal program (excluding research and development); and

(2) The Federal program's statutes or regulations, or terms and conditions of the Federal award, do not require a financial statement audit of the non-Federal entity.

(d) *Program-specific audit election for research and development.* A non-Federal entity may elect to have a program-specific audit for research and development conducted in accordance with § 200.507, but only if all of the following conditions are met:

(1) The non-Federal entity expends Federal awards only from the same Federal agency, or the same Federal agency and the same pass-through entity; and

(2) The Federal agency, or pass-through entity in the case of a subrecipient, approves a program-specific audit in advance.

(e) *Exemption when Federal awards expended are less than $1,000,000.* A non-Federal entity that expends less than $1,000,000 in Federal awards during its fiscal year is exempt from Federal audit requirements for that year, except as noted in § 200.503. However, in all instances, the records of the non-Federal entity must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and the Government Accountability Office (GAO).

(f) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(g) *Subrecipients and contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Unless a program is exempt by Federal statute, Federal awards expended as a recipient or a subrecipient are subject to audit under this part. Payments received for goods or services provided as a contractor under a Federal award (see § 200.331) are not subject to audit under this part.

(h) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of a Federal award. Federal award compliance requirements normally do not flow down to contractors. However, for procurement transactions in which the contractor is made responsible for meeting program requirements, the auditee must ensure those requirements are met, including by clearly stating the contractor's responsibilities within the contract and reviewing the contractor's records to determine compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include a determination of whether these transactions comply with Federal statutes, regulations, and the terms and conditions of a Federal award. See also § 200.318(b).

(i) *For-profit subrecipient.* This subpart does not apply to for-profit organizations. As necessary, the pass-through entity is responsible for establishing requirements to ensure compliance by for-profit subrecipients. The subaward with a for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring throughout the performance of the subaward, and post-award audits (see § 200.332).

### § 200.502 Basis for determining Federal awards expended.

(a) *Determining Federal awards expended.* The determination of when a Federal award is expended must be

based on when the activity related to the Federal award occurs. Generally, the activity related to the Federal award pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as:

(1) Expenditure/expense transactions associated with grants, cooperative agreements, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, and direct appropriations;

(2) The disbursement of funds to subrecipients;

(3) The use of loan proceeds under loan and loan guarantee programs;

(4) The receipt of property (including surplus property);

(5) The receipt or use of program income;

(6) The distribution or use of food commodities;

(7) The disbursement of amounts entitling the non-Federal entity to an interest subsidy; and

(8) The period when insurance is in force.

(b) *Loan and loan guarantees (loans).* The Federal Government is at risk for loans until the debt is repaid. Therefore, the following guidelines must be used to calculate the value of Federal awards expended under loan programs (except as noted in paragraphs (c) and (d)):

(1) The value of new loans made or received during the audit period; plus

(2) The balance of loans from previous years at the beginning of the audit period for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) *Loan and loan guarantees (loans) at Institutions of Higher Education (IHE).* When loans are made to students of an IHE, but the IHE itself does not have continuing compliance requirements for the loans, then only the value of loans made during the audit period are considered Federal awards expended in that audit period. The balance of loans for previous audit periods is not included as Federal awards expended because the lender accounts for the prior balances.

(d) *Prior loan and loan guarantees (loans).* Loans, the proceeds of which were received and expended in prior years, are not considered Federal awards expended under this part when Federal statutes, regulations, and the terms and conditions of Federal awards pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) *Endowment funds.* The cumulative balance of Federal awards for endowment funds that are federally restricted is considered Federal awards expended in each audit period in which the funds are still restricted.

(f) *Free rent.* Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of a Federal award to carry out a Federal program must be included in determining Federal awards expended and is subject to audit under this part.

(g) *Valuing non-cash assistance.* Federal non-cash assistance (such as free rent, food commodities, donated property, or donated surplus property that is received as part of a Federal award to carry out a Federal program) must be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency and must be included in determining Federal awards expended under this part.

(h) *Medicare.* Medicare payments to a non-Federal entity for providing patient care services to Medicare-eligible individuals are not considered Federal awards expended under this part.

(i) *Medicaid.* Medicaid payments to a subrecipient for providing patient care services to Medicaid-eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) *Certain loans provided by the National Credit Union Administration.* For purposes of this part, loans from the National Credit Union Share Insurance Fund and the Central Liquidity Facility funded by contributions from insured non-Federal entities are not considered Federal awards expended.

### § 200.503 Relation to other audit requirements.

(a) *Other financial audits.* An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such an audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a Federal agency must rely upon and use that information.

(b) *Conducting additional audits.* Notwithstanding paragraph (a) of this section, a Federal agency, Inspectors General, or GAO may conduct or arrange additional audits to carry out its responsibilities under Federal statute or regulation. The provisions of this part do not authorize any non-Federal entity to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits not to be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed by other auditors.

(c) *Authority to conduct additional audits.* The provisions of this part do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or other Federal officials. For example, requirements that may be applicable under the FAR or CAS and the terms and conditions of a cost-reimbursement contract may include additional applicable audits to be conducted or arranged for by Federal agencies.

(d) *Federal agency to pay for additional audits.* A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) *Request for a program to be audited as a major program.* A Federal agency may request that an auditee have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. Such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited to allow for planning. After consultation with its auditor, the auditee should promptly respond to such a request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 200.518 and, if not, the estimated incremental cost. The Federal agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. With approval of the Federal agency, a pass-through entity may use the provisions of this paragraph for a subrecipient.

### § 200.504 Frequency of audits.

Audits required by this part must be performed annually unless biennial audits are permitted under paragraph (a) or (b) of this section. Biennial audits must cover both fiscal years within the biennial period.

(a) A State, local government, or Indian Tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo biennial (every other year) audits pursuant to this part. This requirement must still be in effect for the biennial period.

(b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo biennial audits pursuant to this part.

**§ 200.505 Remedies for audit noncompliance.**

In cases of continued inability or unwillingness of a non-federal entity to have an audit conducted in accordance with this part, Federal agencies or pass-through entities must take appropriate action as provided in § 200.339.

**§ 200.506 Audit costs.**

See § 200.425.

**§ 200.507 Program-specific audits.**

(a) *Program-specific audit guide available.* In some cases, a program-specific audit guide will be available to provide specific guidance to the auditor concerning internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement (Appendix VI, Program-Specific Audit Guides). When a current program-specific audit guide is available, the auditor must follow Generally Accepted Government Auditing Standards (GAGAS) and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available.* (1) When a current program-specific audit guide is not available, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee must prepare the financial statement(s) for the Federal program that includes a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 200.511(b), and a corrective action plan consistent with the requirements of § 200.511(c).

(3) The auditor must:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements for a major program in accordance with § 200.514(c);

(iii) Determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements for a major program under § 200.514(d);

(iv) Follow up on prior audit findings and perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511 When the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding, the auditor must report this condition as a current-year audit finding.; and

(v) Report any audit findings consistent with the requirements of § 200.516.

(4) The auditor's report(s) may be in the form of either combined or separate reports. It may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance that includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with

§ 200.515(d)(1) and findings and questioned costs consistent with the requirements of § 200.515(d)(3).

(c) *Report submission for program-specific audits.* (1) *Submission deadline and public availability.* The audit must be completed and submitted in accordance with paragraph (c)(2) or (c)(3) of this section. Unless a different period is specified in the program-specific audit guide, the audit must be submitted within 30 calendar days after the auditee receives the auditor's report(s) or nine months after the end of the audit period (whichever is earlier). The submission is due the next business day when the due date falls on a Saturday, Sunday, or Federal holiday. Unless restricted by Federal law or regulation, the auditee must make copies of the reporting package available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(2) *Program-specific audit guide available.* When a program-specific audit guide is available, the auditee must electronically submit the data collection form prepared in accordance with § 200.512(b), as applicable to the program-specific audit, to the Federal Audit Clearinghouse (FAC). The submission must also include the reporting required by the program-specific audit guide.

(3) *Program-specific audit guide not available.* When a program-specific audit guide is not available, the auditee must electronically submit the data collection form prepared in accordance with § 200.512(b) to the FAC. The submission must also include the financial statement(s) of the Federal program, summary schedule of prior audit findings, and corrective action plan as described in paragraph § 200.507(b)(2) and the auditor's report(s) described in paragraph § 200.507(b)(4).

(d) *Other sections of this part may apply.* Program-specific audits are subject to:

(1) 200.500 Purpose through 200.503 Relation to other audit requirements, paragraph (d);

(2) 200.504 Frequency of audits through 200.506 Audit costs;

(3) 200.508 Auditee responsibilities through 200.509 Auditor selection;

(4) 200.511 Audit findings follow-up;

(5) 200.512 Report submission, paragraphs (e) through (h);

(6) 200.513 Responsibilities;

(7) 200.516 Audit findings through 200.517 Audit documentation;

(8) 200.521 Management decision; and

(9) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

AUDITEES

### § 200.508 Auditee responsibilities.

The auditee must:

(a) Arrange for the audit required by this part in accordance with § 200.509, and ensure it is properly performed and submitted in accordance with § 200.512.

(b) Prepare financial statements, including the schedule of expenditures of Federal awards in accordance with § 200.510.

(c) Promptly follow up and take corrective action on audit findings. This includes preparing a summary schedule of prior audit findings and a corrective action plan in accordance with § 200.511(b) and (c), respectively.

(d) Provide the auditor access to personnel, accounts, books, records, supporting documentation, and any other information needed for the auditor to perform the audit required by this part.

### § 200.509 Auditor selection.

(a) *Auditor procurement.* When procuring audit services, the auditee must follow the procurement standards in §§ 200.317 through 200.327 of subpart D or the FAR (48 CFR part 42), as applicable. When requesting proposals for audit services, the objectives and scope of the audit must be made clear, and the non-Federal entity must request a copy of the audit organization's peer review report, which the auditor must provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of

peer and external quality control reviews, and price. Whenever possible, the auditee must make efforts to contract with businesses as stated in § 200.321 or the FAR (48 CFR part 42), as applicable.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceed $1 million. This restriction applies to the base year used to prepare the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they fully comply with the requirements of this part.

### § 200.510 Financial statements.

(a) *Financial statements.* The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year chosen to meet this part's requirements. However, organization-wide financial statements of the non-Federal entity may also include departments, agencies, and other organizational units that have separate audits in accordance with § 200.514(a) and prepare separate financial statements.

(b) *Schedule of expenditures of Federal awards.* The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. The schedule must include the total Federal awards expended as determined in accordance with § 200.502. The auditee may choose to provide information requested by Federal agencies or pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may separately list the amount of Federal awards expended for each year of a Federal award. The schedule must:

(1) List individual Federal programs by Federal agency using the applicable Assistance Listing number(s). For a cluster of programs, the non-Federal entity must provide the cluster name, a list of individual Federal programs within the cluster, and provide the Federal agency name and the applicable Assistance Listing number(s). For research and development, total Federal awards expended must be shown either by individual Federal award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision within the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity must be included.

(3) Provide total Federal awards expended for each individual Federal program and the Assistance Listings number or other identifying number when the Assistance Listings information is unavailable. For a cluster of programs, the auditee must also provide the total for the cluster.

(4) Include the total amount provided to subrecipients from each Federal program.

(5) For loan or loan guarantee programs described in § 200.502(b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This requirement is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.

(6) Include notes describing the significant accounting policies used in preparing the schedule and whether the auditee elected to use the de minimis indirect cost rate of up to 15 percent (see § 200.414).

### § 200.511 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year

audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under §200.516(c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include financial statement findings that the auditor was required to report in accordance with GAGAS.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or only partially corrected, the summary schedule must describe the reasons for the finding's recurrence, planned corrective action, and any partial corrective action taken. When the corrective action taken significantly differs from the corrective action previously reported in a corrective action plan or the Federal agency's or pass-through entity's management decision, the summary schedule must provide an explanation.

(3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee must prepare a corrective action plan to address each audit finding included in the auditor's report for the current year. The corrective action plan must be a document separate from the auditor's findings described in §200.516. The corrective action plan must also provide the name(s) of the contact person(s) responsible for the corrective action, the corrective action to be taken, and the anticipated completion date. When the auditee does not agree with the audit findings or believes corrective action is not required, the corrective action plan must include a detailed explanation of the reasons.

### §200.512 Report submission.

(a) *General.* (1) The audit, the data collection form, and the reporting package must be submitted within 30 calendar days after the auditee receives the auditor's report(s) or nine months after the end of the audit period (whichever is earlier). The cognizant agency for audit or oversight agency for audit (in the absence of a cognizant agency for audit) may authorize an extension when the nine-month timeframe would place an undue burden on the auditee. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

(2) The auditee must make copies available for public inspection unless restricted by Federal statute or regulation. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) *Data collection.* The FAC is the repository of record for subpart F reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

(1) The auditee must submit the required data collection form described in Appendix X of this part. This form

provides information about the auditee, its Federal programs, the results of the audit, and whether the audit was completed in accordance with this part. The form must include all information required by this part that is necessary for Federal agencies to use the audit to ensure the integrity of Federal programs. The form includes data elements and a format that OMB must approve, is available from the FAC, and include collections of information from the reporting package described in paragraph (c).

(2) A senior-level representative of the auditee (for example, a State controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection form stating that the auditee complied with the requirements of this part, including that:

(i) The data collection form was prepared in accordance with this part (and the instructions accompanying the form);

(ii) The reporting package does not include protected personally identifiable information;

(iii) The information included in its entirety is accurate and complete; and

(iv) The FAC is authorized to make the reporting package and the form publicly available on a website.

(3) An auditee that is an Indian Tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(l)) may opt not to authorize the FAC to make the reporting package publicly available on a website. To opt-out, an Indian Tribe or tribal organization must exclude the authorization described in paragraph (b)(2)(iv) of this section. In these instances, the Indian Tribe is responsible for submitting the reporting package directly to any pass-through entities through which it has received a Federal award and to pass-through entities for which the summary schedule of prior audit findings reported the status of any findings related to those Federal awards that the pass-through entity provided. Unless restricted by Federal statute or regulation, if the Indian Tribe opts not to authorize publication, it must make copies of the reporting package available for public inspection.

(4) The auditor must complete the applicable data elements of the data collection form using the information included in the reporting package described in paragraph (c) of this section. The auditor must sign a statement to be included as part of the data collection form stating:

(i) The source of information included in the data collection form;

(ii) The auditor's responsibility for the information;

(iii) The data collection form is not a substitute for the reporting package described in paragraph (c); and

(iv) The content of the form is limited to the collection of information prescribed by OMB.

(c) *Reporting package.* The reporting package must include the following:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 200.510(a) and (b), respectively;

(2) Summary schedule of prior audit findings discussed in § 200.511(b);

(3) Auditor's report(s) discussed in § 200.515; and

(4) Corrective action plan discussed in § 200.511(c).

(d) *Submission to FAC.* The auditee must electronically submit the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section to the FAC.

(e) *Requests for management letters issued by the auditor.* Auditees must submit, when requested by a Federal agency or pass-through entity, a copy of any management letters issued by the auditor.

(f) *Report retention requirements.* Auditees must keep a copy of the data collection form described in paragraph (b) of this section and a copy of the reporting package described in paragraph (c) on file for three years from the date of submission to the FAC. Copies of audit records must be maintained in accordance with § 200.336.

(g) *FAC responsibilities.* The FAC must make available the reporting packages received in accordance with paragraph (c) of this section and § 200.507(c) to the public, except for Indian Tribes exercising the option in paragraph (b)(3) of

this section, and maintain a database of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that have not submitted the required data collection forms and reporting packages.

(h) *Electronic filing*. Nothing in this part must preclude electronic submissions to the FAC in such a manner as may be approved by OMB.

FEDERAL AGENCIES

**§ 200.513 Responsibilities.**

(a) *Cognizant agency for audit responsibilities*. (1) A non-Federal entity expending more than $50 million a year in Federal awards must have a cognizant agency for audit. The cognizant agency for audit must be the Federal agency that provides the largest amount of direct funding (as listed on the non-Federal entity's Schedule of expenditures of Federal awards, see § 200.510(b)) unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total expenditures (as direct and subawards) by the non-Federal entity, then the Federal agency with the predominant amount of total funding is the designated cognizant agency for audit.

(2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2019 and every fifth year after that.

(3) Notwithstanding how audit cognizance is determined, a Federal agency may reassign cognizance to another Federal agency that provides substantial funding to an auditee if it agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must notify the FAC, the auditee, and the auditor (if known) of the change.

(4) The cognizant agency for audit must:

(i) Provide technical audit advice and liaison assistance to auditees and auditors.

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors and provide the results to other interested organizations.

(iii) Cooperate and support the Federal agency designated by OMB to lead a government-wide analysis to assess the quality of single audits. The government-wide analysis may rely on the current and ongoing quality control review work performed by Federal agencies, State auditors, and professional audit associations. This government-wide audit analysis must be performed at an interval determined by OMB, and the results must be posted publicly. In providing support to the government-wide analysis, a Federal agency must provide the following:

(A) An assessment of the extent to which single audits conform to the requirements, standards, and procedures of this part; and

(B) Recommendations to address audit quality issues, including recommendations for any changes to this part's requirements, standards, and procedures.

(iv) Promptly inform the appropriate Federal law enforcement officials and impacted Federal agencies of any direct reporting by the auditee or its auditor required by GAGAS, Federal statute, or regulation.

(v) Advise the community of independent auditors of any noteworthy or important factual trends related to the quality of audits stemming from quality control reviews. Significant problems or quality issues consistently identified through quality control reviews of audit reports must be referred to appropriate State licensing agencies and professional bodies.

(vi) Advise the auditor, Federal awarding agencies, and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee must work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit must notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors must

be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(vii) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon, rather than duplicate, audits performed in accordance with this part.

(viii) Coordinate a management decision for cross-cutting audit findings that affect the Federal programs of more than one agency when requested by any Federal agency whose awards are included in the audit finding of the auditee. Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects all Federal awards (including Federal awards of more than one Federal agency or pass-through entity); for example, a cross-cutting audit finding may include an issue related to the recipient's accounting system.

(ix) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(x) Provide advice to auditees as to how to handle changes in fiscal year.

(b) *Oversight agency for audit responsibilities.* An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 200.1 *oversight agency for audit*. A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:

(1) Must provide technical advice and assistance to auditees and auditors.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) *Awarding Federal agency responsibilities.* In addition to all other requirements of this part, the awarding Federal agency must:

(1) Ensure that audits are completed, and reports are received in a timely manner in accordance with the requirements of this part.

(2) Provide technical advice and assistance to auditees and auditors.

(3) Follow-up on audit findings to ensure that non-Federal entities take appropriate and timely corrective action. Follow-up includes:

(i) Issuing a management decision in accordance with § 200.521;

(ii) Monitoring the non-Federal entity's progress implementing a corrective action;

(iii) Using a cooperative audit resolution approach to improve Federal program outcomes through better audit resolution, follow-up, and corrective action, which means the use of audit follow-up techniques promoting prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

(A) A strong commitment by Federal agency and non-Federal entity leadership to Federal program integrity;

(B) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; non-Federal entities and their auditors working cooperatively with Federal agencies;

(C) A focus on current conditions and corrective action going forward;

(D) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(E) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

(iv) Tracking the effectiveness of the Federal agency's follow-up processes, the effectiveness of single audits in improving non-Federal entity accountability, and the use of single audits in making Federal award decisions. The Federal agency should develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow up on audit findings.

(4) Provide OMB with annual updates to the compliance supplement. These updates include working with OMB to ensure that the compliance supplement focuses the auditor on testing the compliance requirements most likely to cause improper payments, fraud, waste, abuse, or generate audit findings for which the Federal agency will take action in accordance with § 200.505. Prior to submitting compliance supplement drafts to OMB, Federal agencies should engage with external audit stakeholders, the Federal agency's Office of Inspector General, and the National Single Audit Coordinator (NSAC).

(5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the Federal agency. The accountable official must be:

(i) Responsible for ensuring that the Federal agency fulfills the requirements of this section and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.

(ii) Accountable for improving the effectiveness of the Federal agency's single audit processes in accordance with paragraph (c)(3)(iv).

(iii) Responsible for designating the Federal agency's key management single audit liaison.

(6) Provide OMB with the name of a key management single audit liaison. The liaison must:

(i) Serve as the Federal agency's point of contact for the single audit process within and outside the Federal Government.

(ii) Promote interagency coordination, consistency, and information sharing. This includes coordinating audit follow-up, identifying higher risk non-Federal entities, providing input on single audit and follow-up policy, enhancing the utility of the FAC, and identifying ways to use single audit results to improve Federal award accountability and best practices.

(iii) Oversee training for the Federal agency's program management personnel related to the single audit process.

(iv) Promote the Federal agency's use of a cooperative audit resolution approach as described in paragraph (c)(3)(iii) of this section.

(v) Coordinate the Federal agency's audit follow-up processes and ensure non-Federal entities implement corrective actions for audit findings.

(vi) Ensure the Federal agency fulfills its responsibility, as a cognizant agency for audit, to coordinate a management decision for cross-cutting audit findings under (a)(4)(viii) of this section. Cross-cutting audit findings means an audit finding where the same underlying condition or issue affects all Federal awards (including Federal awards of more than one Federal agency or pass-through entity). For example, this may include an issue related to the recipient's accounting system.

(vii) Ensure the Federal agency provides OMB with annual updates to the compliance supplement consistent with the compliance supplement preparation guide.

(viii) Support the mission of the Federal agency's single audit accountable official and coordinate with the Federal agency's Office of Inspector General and National Single Audit Coordinator (NSAC).

AUDITORS

### § 200.514 Standards and scope of audit.

(a) *General.* The audit must be conducted in accordance with GAGAS. The audit must also cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during the audit period. In these instances, the audit must include the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period.

(b) *Financial statements.* The auditor must determine whether the auditee's financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory as required by

State law). The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(c) *Internal control.* (1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control-Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(2) In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.

(3) Except as provided in paragraph (c)(4) of this section, the auditor must:

(i) Plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.

(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.* (1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements, and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor must follow the compliance supplement's guidance for programs not included.

(4) The compliance testing must include tests of transactions or other auditing procedures necessary to provide the auditor with sufficient appropriate audit evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor must follow up on prior audit findings regardless of whether a prior audit finding is related to a major program in the current year. Audit follow-up includes performing procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511. When the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding, the auditor must report this condition as a current-year audit finding.

(f) *Data collection form.* As required in § 200.512(b)(4), the auditor must complete and sign specified sections of the data collection form.

### § 200.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports. It may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) on whether the financial statement(s) of the auditee is presented fairly in all material respects in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory as required by State law). The auditor must also decide whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(b) A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of internal control and compliance testing and the results of the tests. Where applicable, the report must refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance for each major program and a report on internal control over compliance. This report must describe the scope of testing of internal control over compliance and include an opinion (or disclaimer of opinion) as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the auditor's results, which must include:

(i) The type of report the auditor issued (unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion) on whether the audited financial statements were prepared in accordance with GAAP;

(ii) A statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements;

(iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee;

(iv) A statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;

(v) The type of report the auditor issued (unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion) on compliance for major programs;

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 200.516(a);

(vii) An identification of major programs by listing each individual major program; however, in the case of a cluster of programs, only the cluster name as shown on the schedule of expenditures of Federal Awards is required;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 200.518(b)(1) or (3) when a recalculation of the Type A threshold is required for large loan or loan guarantees; and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under§ 200.520.

(2) Findings relating to the financial statements required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which must include audit findings as defined in § 200.516(a) and be reported in the following manner:

(i) Audit findings (for example, internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue must be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings that relate to both the financial statements (paragraph (d)(2) of this section) and Federal awards (this paragraph (d)(3)) must be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form and reference a detailed reporting in the other section.

(e) Nothing in this part precludes combining the reporting required by

this section with the reporting required by § 200.512(b) when allowed by GAGAS and Appendix X of this part.

**§ 200.516 Audit findings.**

(a) *Audit findings reported.* The auditor must report the following as an audit finding in the schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or a material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(3) Known questioned costs when either known or likely questioned costs are greater than $25,000 for a type of compliance requirement for a major program. When reporting questioned costs, the auditor must include information to provide proper perspective for evaluating the prevalence and consequences of the questioned costs.

(4) Known questioned costs greater than $25,000 for a Federal program that is not audited as a major program. Except for audit follow-up, the auditor is not required to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (for example, as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $25,000, the auditor must report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion. This must be included unless the circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs.

(6) Known or likely fraud affecting a Federal award, unless the fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs. This paragraph does not require the auditor to publicly report information that could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511(b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail and clarity.* Audit findings must be presented with sufficient detail and clarity for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies or pass-through entities to arrive at a management decision. As applicable, the following information must be included in audit findings:

(1) The Federal program and specific Federal award identification, including the Assistance Listings title and number, Federal award identification number and year, the name of the Federal agency, and name of the applicable pass-through entity. When information, such as the Assistance Listings title and number or Federal award identification number, is unavailable, the auditor must provide the best information available to describe the Federal award.

(2) The criteria or specific requirement for the audit finding (for example, the specific Federal statute, regulation, or term and condition of the Federal award). The criteria or specific requirement provides a context for evaluating evidence and understanding findings. The criteria should generally

identify the required or desired state or expectation with respect to the program or operation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action

(5) The possible asserted effect to provide sufficient information to the auditee and Federal agency or pass-through entity to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) The identification of known questioned costs, by applicable Assistance Listing number(s) and Federal award identification number(s), and how these questioned costs were computed.

(7) When there are known questioned costs but the dollar amount is undetermined or not reported, a description of why the dollar amount was undetermined or otherwise could not be reported.

(8) Information to provide proper perspective for evaluating the prevalence and consequences of the audit finding. For example, whether the audit finding represents an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. In addition, the audit finding should indicate whether the sampling was a statistically valid sample.

(9) The identification of whether the audit finding is a repeat of a finding in the immediately prior audit. The audit finding must identify the applicable prior year audit finding reference numbers in these instances.

(10) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(11) Views of responsible officials of the auditee.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission (see § 200.512(b)).

### § 200.517 Audit documentation.

(a) *Retention of audit documentation.* The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee. The cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity may extend the retention period by providing written notification to the auditor. When the auditor is aware that the Federal agency, pass-through entity, or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to the destruction of the audit documentation and reports.

(b) *Access to audit documentation.* Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation as is reasonable and necessary.

### § 200.518 Major program determination.

(a) *General.* The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must consider current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process described in paragraphs (b) through (h) of this section must be followed.

(b) *Step one.* (1) The auditor must identify and label the larger Federal programs as Type A programs. Type A

programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in table 1:

TABLE 1 TO PARAGRAPH (b)(1)

| Total Federal awards expended | Type A threshold |
|---|---|
| Equal to or exceed $1,000,000 but less than or equal to $34 million. | $1,000,000. |
| Exceed $34 million but less than or equal to $100 million | Total Federal awards expended times .03. |
| Exceed $100 million but less than or equal to $1 billion | $3 million. |
| Exceed $1 billion but less than or equal to $10 billion | Total Federal awards expended times .003. |
| Exceed $10 billion but less than or equal to $20 billion | $30 million. |
| Exceed $20 billion | Total Federal awards expended times .0015. |

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section must be labeled Type B programs.

(3) Including large loans and loan guarantees (loans) must not result in the exclusion of other programs as Type A programs. A Federal program providing loans is considered a large loan program when it exceeds four times the largest non-loan program. The auditor must identify each large loan program as a Type A program and exclude its values in determining other Type A programs. This recalculation of the Type A program is performed after removing the total of all large loan programs. For this paragraph, a program is only considered a Federal program providing loans if the value of Federal awards expended for loans within the program comprises 50 percent or more of the total Federal awards expended for the program. A cluster of programs is treated as one program, and the value of Federal awards expended under a loan program is determined as described in § 200.502.

(4) For biennial audits (see § 200.504), the determination of Type A and Type B programs must be based on the Federal awards expended during the two-year audit period.

(c) *Step two*. (1) The auditor must identify Type A programs that are low-risk. In making this determination, the auditor must consider whether the requirements in § 200.519(c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and preclude the program from being low-risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must not have had:

(i) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);

(ii) A modified opinion on the program in the auditor's report on major programs as required under § 200.515(c); or

(iii) Known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal agency request that a Type A program not be considered low-risk for a specific recipient. For example, it may be necessary for a large Type A program to be audited as a major program each year for a particular recipient for the Federal agency to comply with 31 U.S.C. 3515. The Federal agency must notify the auditee and, if known, the auditor of OMB's approval at least 180 calendar days prior to the end of the fiscal year to be audited.

(d) *Step three*. (1) The auditor must identify high-risk Type B programs using professional judgment and the criteria in § 200.519. However, the auditor is not required to identify more high-risk Type B programs than at least one-fourth of the number of low-risk Type A programs identified as low-risk under step two. Except for known material weakness in internal control or compliance problems as discussed in § 200.519(b)(1), (2), and (c)(1), a single criterion in risk would rarely cause a

Type B program to be considered high-risk. When identifying which Type B programs to assess for risk, the auditor is encouraged to use an approach that provides an opportunity for different high-risk Type B programs to be audited as major programs over a period of time.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed 25 percent (0.25) of the Type A threshold determined in step one.

(e) *Step four*. At a minimum, the auditor must audit all of the following as major programs:

(1) All Type A programs not identified as low-risk under step two.

(2) All Type B programs identified as high-risk under step three.

(3) Additional programs as necessary to comply with the percentage of coverage rule described in paragraph (f). This rule may require the auditor to audit more programs as major programs than the number of Type A programs.

(f) *Percentage of coverage rule*. When the auditee meets the criteria in § 200.520, the auditor only needs to audit the major programs identified in paragraphs (e)(1) and (2) of this section and such additional Federal programs with Federal awards expended that, in the aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in paragraphs (e)(1) and (2) of this section and such additional Federal programs with Federal awards expended that, in the aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

(g) *Documentation of risk*. The auditor must include in the audit documentation the risk analysis used for determining major programs.

(h) *Auditor's judgment*. The auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct when the determination was performed and documented in accordance with this part. Challenges by a Federal agency or pass-through entity must only be for clearly improper use of the requirements in this part. However, a Federal agency or pass-through entity may provide auditors guidance about the risk of a particular Federal program. The auditor must consider this guidance in determining major programs in audits not yet completed.

### § 200.519 Criteria for Federal program risk.

(a) *General*. The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as those described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) *Current and prior audit experience*. (1) Weaknesses in internal control over Federal programs would indicate higher risk. Therefore, consideration should be given to the control environment over Federal programs. This includes considering factors such as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of Federal awards, and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (for example, one college campus) or pervasive throughout the entity.

(ii) A weak system for monitoring subrecipients would indicate higher risk when significant parts of a Federal program are passed to subrecipients through subawards.

(2) Prior audit findings would indicate higher risk, especially when the situations identified in the audit findings could significantly impact a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of

higher risk than those recently audited as major programs without audit findings.

(c) *Oversight exercised by Federal agencies and pass-through entities.* (1) The oversight exercised by Federal agencies or pass-through entities may be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) With the concurrence of OMB, a Federal agency may identify Federal programs that are higher risk. OMB will identify these Federal programs in the compliance supplement.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third-party contracts or have eligibility criteria may be higher risk. Federal programs primarily involving staff payroll costs may be at high risk for noncompliance with the requirements of § 200.430 but otherwise be at low risk.

(2) The phase of a Federal program in its lifecycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(3) The phase of a Federal program in its lifecycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to the start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

### § 200.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 200.518.

(a) Single audits were performed on an annual basis in accordance with the provisions of this subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in § 200.512. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor's opinion on whether the financial statements were prepared in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory as required by State law), and the auditor's in-relation-to opinion on the schedule of expenditures of Federal awards were unmodified.

(c) No internal control deficiencies were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);

(2) A modified opinion on a major program in the auditor's report on major programs as required under § 200.515(c); or

(3) Known or likely questioned costs that exceeded five percent (.05) of the total Federal awards expended for a Type A program during the audit period.

## MANAGEMENT DECISIONS

### § 200.521 Management decisions.

(a) *General.* The management decision must clearly state whether or not

the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial statements, which are required to be reported in accordance with GAGAS.

(b) *Federal agency.* The cognizant agency for audit is responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency (see §200.513(a)(4)(viii)). The awarding Federal agency is responsible for issuing a management decision for audit findings that affect the Federal awards it makes to a non-Federal entity (see §200.513(c)(3)(i)).

(c) *Pass-through entity.* The pass-through entity is responsible for issuing a management decision for audit findings that affect subawards it issues to subrecipients under a Federal award (see §200.332(e)).

(d) *Time requirements.* The Federal agency or pass-through entity responsible for issuing a management decision must do so within six months of the FAC's acceptance of the audit report. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(e) *Reference numbers.* Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with §200.516(c).

## APPENDIX I TO PART 200—FULL TEXT OF NOTICE OF FUNDING OPPORTUNITY

(a) *General Requirements.*

(1) *Requirements for developing NOFOs.* In developing a notice of funding opportunity (NOFO), Federal agencies must:

(i) Be concise and use plain language per the guidance at *PlainLanguage.gov* wherever possible.

(ii) For electronic NOFOs and other information about them, comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(2) *Considerations for developing NOFOs.* Federal agencies may:

(i) Link to standard content to include required information rather than including the full language in the NOFO. The NOFO should make clear if linked information is critical—for example, standard terms and conditions, administrative and national policy requirements, and standard templates.

(ii) Include links to relevant regulations and other sources.

(iii) Use cross-references between the sections, including hyperlinks in electronic versions.

(3) *Required Consistency.* Potential applicants must be able to find similar information across all Federal NOFOs. To that end, Federal agencies must include the same or similar section headings and a table of contents with at least these sections:

(i) Basic Information

(ii) Eligibility

(iii) Program Description

(iv) Application Contents and Format

(v) Submission Requirements and Deadlines

(vi) Application Review Information

(vii) Award Notices

(viii) Post-Award Requirements and Administration

(b) *Required Sections and Information.*

As required below, the Federal agency must include the following sections and information in the text of a NOFO and a table of contents.

(1) *Basic Information.*

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal.

(i) This section must include the following:

(A) Federal Agency Name.

(B) Funding Opportunity Title.

(C)I Announcement Type (whether the funding opportunity is the initial announcement or a modification of a previously announced opportunity).

(D) Funding Opportunity Number (required, if the Federal agency has assigned a number to the funding opportunity announcement).

(E) Assistance Listing Number(s).

(F) Funding Details. The total amount of funding that the Federal agency expects to award, the anticipated number of awards, and the expected dollar values of individual awards, which may be a range.

(G) Key Dates. Key dates include due dates for submitting applications or Executive Order 12372 submissions, as well as for any letters of intent or preapplications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the Federal agency. If possible, the Federal agency should provide an anticipated award date. If the NOFO is evaluated on a ''rolling'' basis, the Federal agency should provide an estimate of the time needed to process an application and notify the applicant of the Federal agency's decision.

(H) Executive Summary. A brief description that is written in plain language and summarizes the goals and objectives of the program, the target audience, and eligible recipients. The text of the executive summary should not exceed 500 words

(I) Agency contact information.

(ii) This section could include the following:

(A) The amount of funding per Federal award, on average, experienced in previous years.

(B) Whether this is a new program or a one-time initiative.

(2) *Eligibility*.

This section addresses the factors that determine applicant or application eligibility.

(i) *Eligible Applicants*. This subsection must identify the following:

(A) A complete and specific list of entity types eligible to apply.

(B) Any additional restrictions on eligibility beyond the type of entity.

(C) Eligibility factors for the principal investigator or project director, if any.

(D) Criteria that would make any particular projects ineligible.

(E) A reference to any funding restriction elsewhere in the NOFO that could affect an applicant's or project's eligibility.

(F) A reference or link to any other factors that would disqualify an applicant or application, such as the responsiveness criteria in 6a.

(G) Any limit on the number of applications an applicant may submit under the announcement. Make clear whether the limitation is on the submitting organization, individual investigator or program director, or both.

(ii) *Cost Sharing*. This subsection must state:

(A) Whether there is required cost sharing. This statement must be clear that not committing to the required cost sharing will make the application ineligible. If cost sharing is not required, the announcement must say so.

(B) An explanation of the calculation for the required cost sharing. Required cost sharing may be a certain percentage or amount or in the form of contributions of specified items or activities (*for example*, provision of equipment).

(C) Any restrictions on the types of cost, such as in-kind contributions, acceptable as cost sharing.

(D) Any requirement to commit to cost sharing. This section should refer to the appropriate portions of section (b)(4) stating any pre-award requirements for the submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.

(3) *Program Description*. This section contains the full program description of the funding opportunity.

(i) This section must include the following:

(A) The general purpose of the funding and what it is expected to achieve for the public good.

(B) The Federal agency's funding priorities or focus areas, if any.

(C) Program goals and objectives.

(D) A description of how the award will contribute to achieving the program's goals and objectives.

(E) The expected performance goals, indicators, targets, baseline data, data collection, and other outcomes the Federal agency expects recipients to achieve.

(F) For cooperative agreements, the ''substantial involvement'' that the Federal agency expects to have or should reference where the potential applicant can find that information.

(G) Information on program specific unallowable costs so that the applicant can develop an application and budget consistent with program requirements and any limits on indirect costs.

(H) Any eligibility criteria for beneficiaries or program participants other than Federal award recipients.

(I) Citations for authorizing statutes and regulations for the funding opportunity.

(ii) This section could also include the following:

(A) Any program history, such as whether it is a new program or a new or changed area of program emphasis.

(B) Examples of successful projects funded in the past.

(C) For infrastructure projects subject to Build America, Buy America requirements, information on key items anticipated to be purchased under the program, and any related domestic sourcing concerns based on market research.

(D) Other information the Federal agency finds necessary.

(4) *Application Contents and Format*. This section must identify the required content of an application and the forms or formats an applicant must use. If any requirements are stated elsewhere, this section should refer to where those requirements may be found. This section also should include required

forms or formats as part of the announcement or state where the applicant may obtain them.

(i) This section must specifically address content and form or format requirements for:

(A) Whether pre-applications, letters of intent, or white papers are required or encouraged.

(B) The application as a whole.

(C) Component pieces of the application.

(D) Information that successful applicants must submit after notification of intent to make a Federal award but prior to a Federal award. For example, this could include evidence of compliance with requirements relating to human subjects or information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*).

(ii) Within each of the categories above, this subsection must include, where relevant:

(A) Limitations on page numbers.

(B) Formatting requirements, including font and font size, margins, paper size, and color limitations.

(C) Any requirements for file naming, file size limitations, or file format such as PDF.

(D) The number of copies required if paper submissions are allowed.

(E) The sequence required for application sections or components.

(F) Signature requirements, including those for electronic submissions.

(G) Any requirements for third-party information such as references, letters of support, or letters of commitment to the project or to contribute to cost sharing.

(H) A reference to any requirements to provide documentation to support an eligibility determination, such as proof of 501(c)(3) status or an authorizing tribal resolution.

(I) Instructions needed to develop the narrative portions of the application. Include any requirements for its order, format, or required headings.

(J) If applicable, the need to identify proprietary information. Include how to do so and how the Federal agency will handle it.

(5) *Submission Requirements and Deadlines.*

(i) *Address to Request Application Package.* This section must include the following:

(A) How to get application forms, kits, or other materials needed to apply. If the announcement contains everything needed, this section needs only say so. If not, the guidance must include:

*(1)* An internet address where the materials can be accessed.

*(2)* An email address.

*(3)* A U.S. Postal Service mailing address.

*(4)* Telephone number.

*(5)* Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, or other appropriate telecommunication relay service.

(ii) *Unique entity identifier and System for Award Management (SAM.gov).* This section must state the requirements for unique entity identifiers and registration in *SAM.gov*. It must include the following:

(A) Each applicant must:

*(1)* Be registered in *SAM.gov* before submitting its application;

*(2)* Provide a valid unique entity identifier in its application; and

*(3)* Continue to maintain an active registration in *SAM.gov* with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal agency.

(B) If individuals are eligible to apply, they are exempt from this requirement under 2 CFR 25.110(b).

(C) If the Federal agency exempts any applicants from this requirement under 2 CFR 25.110(c) or (d), a statement to that effect.

(iii) *Submission Instructions.* This section addresses how the applicant will submit the application. It must include the following:

(A) Actions needed prior to applying:

*(1)* Instructions on any registrations required to access electronic submission systems or links to them. Where possible, provide the expected time frames needed to complete the registration process.

(B) The methods for submitting the application:

*(1)* Whether the applicant must submit in electronic or paper form or whether the applicant has an option. Applicants should not be required to submit in more than one format.

*(2)* Instructions on how to submit electronically or links to them. Must include the URL to the electronic submission system and information on or links to information about the system or software requirements needed by the system.

*(3)* If the Federal agency allows paper submissions, the process used to approve this option if it is not automatically allowed.

*(4)* If the Federal agency allows paper submissions, the method for submitting the application. This information must include a postal address and ''care of'' information needed to route the application to the appropriate person, office, or email address, if the Federal agency allows such submissions.

(C) If applicable, this section also must say how applicants must submit pre-applications, letters of intent, third-party information, or other information required before the award. It must include the following:

*(1)* Instructions on how to submit electronically or links to them.

*(2)* Whether the applicant must submit in electronic or paper form or whether the applicant has an option.

*(3)* If the Federal agency allows paper submissions, the method for submitting the required information. This information must

include a postal address and ''care of'' information needed to route the application to the appropriate person, office, or email address.

(D) This section must also include what to do in the event of system problems and a point of contact who will be available if the applicant experiences technical difficulties.

(iv) *Submission Dates and Times.* This section must include due dates and times for all submissions. If they are different for electronic and paper submissions, be clear about the differences. This includes the following:

(A) Full applications.

(B) Any preliminary submissions, such as letters of intent, white papers, or pre-applications.

(C) Any other submissions required before Federal award separate from the full application.

(D) If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so.

(v) *Intergovernmental Review.* This section must include the following:

(A) Whether or not the funding opportunity is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs''.

(B) If it is applicable, include the following:

*(1)* A short description of this requirement.

*(2)* Where applicants can find their State's Single Point of Contact, learn whether their State has an intergovernmental review process, and if so, get information on their State's process. The list of SPOCs is on the Office of Management and Budget's website.

(6) *Application Review Information.*

(i) *Responsiveness Review.* This section includes information on the criteria that make an application or project ineligible. These are sometimes referred to as ''responsiveness'' criteria, ''go-no-go'' criteria, or ''threshold'' criteria. Federal agencies may change the title of this section as appropriate. This section must include the following:

(A) A brief understanding of the Federal agency responsiveness review process.

(B) A list and enough detail to understand the criteria or disqualifying factors to be reviewed.

(C) A reference to the regulation or requirement that describes the restriction, if applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, say so.

(ii) *Review Criteria.* This section must address the review criteria that the Federal agency will use to evaluate applications for merit. This information includes the merit and other review criteria evaluators will use to judge applications, including any statutory, regulatory, or other preferences that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed.

The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize the fairness of the process.

(A) This section must include the following:

*(1)* A clear description of each criterion and sub-criterion used.

*(2)* If criteria vary in importance, the relative percentages, weights, or other means used to distinguish between them.

*(3)* For statutory, regulatory, or other preferences, an explanation of those preferences with an explicit indication of their effect, for example, if they result in additional points being assigned.

*(4)* How an applicant's proposed cost sharing will be considered in the review process if it is not an eligibility criterion in Section 2b. For example, to assign a certain number of additional points to applicants who offer cost sharing or to break ties among applications with equivalent scores after evaluation against all other factors. If cost sharing will not be considered in the evaluation, the announcement should say so. Do not include statements that cost sharing is encouraged without providing clarity about what that means.

*(5)* The relevant information if the Federal agency permits applicants to nominate reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest.

(B) This section could include the following:

*(1)* The types of people responsible for evaluation against the merit criteria. For example, peers external to the Federal agency or Federal agency personnel.

*(2)* The number of people on an evaluation panel and how it operates, how reviewers are selected, reviewer qualifications, and how conflicts of interest are avoided.

(iii) *Review and Selection Process.* This section may vary in the level of detail provided.

(A) It must include the following:

*(1)* Any program policy, factors, or elements that the selecting official may use in selecting applications for the award. For example, geographical dispersion, program balance, or diversity.

*(2)* A brief description of the merit review process, including how the Federal agency uses merit review outcomes in final decisionmaking. For example, whether they are advisory only.

(B) It could also include the following:

*(1)* Who makes the final selections for awards.

*(2)* Any multi-phase review methods. For example, an external panel that advises on, makes, or approves final recommendations to the deciding official.

(iv) *Risk Review*.

(A) This section must include the following:

*(1)* A brief description of the factors used for the Federal agency's risk review as required by §200.206.

*(2)* If the Federal agency expects that any award under the NOFO will be more than the simplified acquisition threshold during its period of performance, include the following information:

*(i)* That before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, the Federal agency must review and consider any information about the applicant that is in the responsibility/qualification records available in *SAM.gov* (see 41 U.S.C. 2313).

*(ii)* That an applicant can review and comment on any information in the responsibility/qualification records available in *SAM.gov*.

*(iii)* That before making decisions in the risk review required by §200.206 the Federal agency will consider any comments by the applicant, along with information available in the responsibility/qualification records in *SAM.gov*.

(7) *Award Notices*. This section must address what a successful applicant can expect to receive following selection.

(i) It must include the following:

(A) If the Federal agency's practice is to provide a separate notice stating that an application has been selected before it makes the Federal award, indicate that the letter is not an authorization to begin performance and that the Federal award is the authorizing document.

(B) If pre-award costs are allowed, beginning performance is at the applicant's own risk.

(C) This section should indicate that the notice of Federal award signed by the grants officer, or equivalent, is the official document that obligates funds, and whether it is provided through postal mail or by electronic means and to whom.

(D) The timing, form, and content of notifications to unsuccessful applicants. See also §200.211.

(8) *Post-Award Requirements and Administration*.

*(i) Administrative and National Policy Requirements*. Providing information on administrative and policy requirements lets a potential applicant identify any requirements with which it would have difficulty complying. This section must include the following:

(A) A statement related to the ''general'' terms and conditions of the award, including requirements that the Federal agency normally includes.

(B) Any relevant specific terms and conditions.

(C) Any special requirements that could apply to specific awards after the review of applications and other information based on the particular circumstances of the effort to be supported. For example, if human subjects were to be involved or if some situations may justify specific terms on intellectual property, data sharing, or security requirements.

(D) As in other sections, the announcement need not include all terms and conditions of the award but may refer to documents with details on terms and conditions.

(ii) *Reporting*. This section includes information needed to understand the post-award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ from what the Federal agency's Federal awards usually require. For example, differences in report type, frequency, form, format, or circumstances for use. This section must include the following:

(A) The type of reporting required, such as financial or performance.

(B) The reporting frequency.

(C) The means of submission, such as paper or electronic.

(D) References to all relevant requirements, such as those at 2 CFR 180.335 and 180.350.

(E) If the Federal share of any Federal award may include more than $500,000 over the period of performance, this section must inform potential applicants about the post-award reporting requirements reflected in appendix XII to this part.

(9) *Other Information—Optional*. This section may include any additional information to help potential applicants. For example, the section could include the following:

(i) Related programs or other upcoming or ongoing Federal agency funding opportunities for similar activities.

(ii) Current internet addresses for Federal agency websites that may be useful to an applicant in understanding the program.

(iii) Routine notices to applicants. For example, the Federal Government is not obligated to make any Federal award as a result of the announcement, or only grants officers can bind the Federal Government to the expenditure of funds.

[89 FR 30204, Apr. 22, 2024]

## APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all

contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of ''federally assisted construction contract'' in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, ''Equal Employment Opportunity'' (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and implementing regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, ''Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction''). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland ''Anti-Kickback'' Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of ''funding agreement'' under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that ''funding agreement,'' the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional

Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), ''Debarment and Suspension.'' SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.323.

(K) See §200.216.

(L) See §200.322.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

## APPENDIX III TO PART 200—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR INSTITUTIONS OF HIGHER EDUCATION (IHES)

### A. GENERAL

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1 for a discussion of the components of indirect (F&A) costs.

*1. Major Functions/Activities of an IHE*

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

(3) Only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. Salary costs above statutory limits are not considered cost sharing.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities

are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in §200.468 of this part.

*2. Criteria for Distribution*

a. *Base period*. A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings*. The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the indirect (F&A) cost categories referred to in subsection B.1. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in subsection c of this section. Each such pool or cost grouping should then be distributed individually to the related cost objectives, using the distribution base or method most appropriate in light of the guidelines set forth in subsection d of this section.

c. *General considerations on cost groupings*. The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an indirect (F&A) cost category include but are not limited to the following:

(1) If certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in subsections b and d.

(2) If any types of expense ordinarily treated as general administration or departmental administration are charged to Federal awards as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the indirect (F&A) costs allocable to those Federal awards and included in the direct cost of other activities for cost allocation purposes.

(3) If it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) If activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect (F&A) costs (such as for overall management) which are properly allocable to such activities.

(5) If the institution elects to treat fringe benefits as indirect (F&A) charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. Selection of distribution method.

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; with a traceable cause-and-effect relationship; or with logic and reason, where neither benefit nor a cause-and-effect relationship is determinable.

(2) If a cost grouping can be identified directly with the cost objective benefitted, it should be assigned to that cost objective.

(3) If the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost

analysis studies, however, must (a) be appropriately documented in sufficient detail for subsequent review by the cognizant agency for indirect costs, (b) distribute the costs to the related cost objectives in accordance with the relative benefits derived, (c) be statistically sound, (d) be performed specifically at the institution at which the results are to be used, and (e) be reviewed periodically, but not less frequently than rate negotiations, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution must be made in accordance with the appropriate base cited in Section B, unless one of the following conditions is met:

(a) It can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards, or

(b) The institution qualifies for, and elects to use, the simplified method for computing indirect (F&A) cost rates described in Section D.

(5) Notwithstanding subsection (3), effective July 1, 1998, a cost analysis or base other than that in Section B must not be used to distribute utility or student services costs. Instead, subsection B.4.c, may be used in the recovery of utility costs.

e. Order of distribution.

(1) Indirect (F&A) costs are the broad categories of costs discussed in Section B.1.

(2) Depreciation, interest expenses, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect (F&A) cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in subsection (3), this order of allocation does not apply.

(3) Normally an indirect (F&A) cost category will be considered closed once it has been allocated to other cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect (F&A) cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect (F&A) cost categories described in Section B is required.

B. IDENTIFICATION AND ASSIGNMENT OF INDIRECT (F&A) COSTS

*1. Definition of Facilities and Administration*

See §200.414 which provides the basis for these indirect cost requirements.

*2. Depreciation*

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with §200.436.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the following manner:

(1) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(2) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.

(3) Depreciation on buildings, capital improvements and equipment related to space (e.g., individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to benefitting functions on the basis of:

(a) The employee full-time equivalents (FTEs) or salaries and wages of those individual functions benefitting from the use of that space; or

(b) Institution-wide employee FTEs or salaries and wages applicable to the benefitting major functions (see Section A.1) of the institution.

(4) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category must be assigned to the instruction function of the institution. The amount allocated to the employee category must be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

*3. Interest*

Interest on debt associated with certain buildings, equipment and capital improvements, as defined in §200.449, must be classified as an expenditure under the category

Facilities. These costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital improvements to which the interest relates.

*4. Operation and Maintenance Expenses*

a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation, and interest costs.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the same manner as described in subsection 2.b for depreciation.

c. A utility cost adjustment of up to 1.3 percentage points may be included in the negotiated indirect cost rate of the IHE for organized research, per the computation alternatives in paragraphs (c)(1) and (2) of this section:

(1) Where space is devoted to a single function and metering allows unambiguous measurement of usage related to that space, costs must be assigned to the function located in that space.

(2) Where space is allocated to different functions and metering does not allow unambiguous measurement of usage by function, costs must be allocated as follows:

(i) Utilities costs should be apportioned to functions in the same manner as depreciation, based on the calculated difference between the site or building actual square footage for monitored research laboratory space (site, building, floor, or room), and a separate calculation prepared by the IHE using the ''effective square footage'' described in subsection (c)(2)(ii) of this section.

(ii) ''Effective square footage'' allocated to research laboratory space must be calculated as the actual square footage times the relative energy utilization index (REUI) posted on the OMB Web site at the time of a rate determination.

A. This index is the ratio of a laboratory energy use index (lab EUI) to the corresponding index for overall average college or university space (college EUI).

B. In July 2012, values for these two indices (taken respectively from the Lawrence Berkeley Laboratory ''Labs for the 21st Century'' benchmarking tool and the US Department of Energy ''Buildings Energy Databook'' and were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB website.

*5. General Administration and General Expenses*

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; *i.e.*, solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of general administration and general expenses include: Those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel; and the operations of the central administrative management information systems. General administration and general expenses must not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See subsection 6.)

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to serviced or benefitted functions on the modified total cost basis. Modified total costs consist of the same elements as those in Section C.2. When an activity included in this indirect (F&A) cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

*6. Departmental Administration Expenses*

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research units. Organized research units include such units as institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads) and other professional personnel conducting research and/or instruction, must be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance must be added to the computation of the indirect (F&A) cost rate for major functions in Section C; the expenses covered by the allowance must be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in subsections (1) and (2) are allowable, as well as an appropriate share of general administration and general expenses, operation and maintenance expenses, and depreciation.

(4) Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. The following guidelines apply to the determination of departmental administrative costs as direct or indirect (F&A) costs.

(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect (F&A) costs. For example, salaries of technical staff, laboratory supplies (*e.g.*, chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs must be treated as direct costs wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefitting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. See §§ 200.413(c) and 200.468.

(2) Items such as office supplies, postage, local telephone costs, and memberships must normally be treated as indirect (F&A) costs.

c. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school must be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in subsection (1) must be allocated to the appropriate functions of the department on the modified total cost basis.

*7. Sponsored Projects Administration*

a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, print shops, and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation. Appropriate adjustments will be made for services provided to other functions or organizations.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment must be made to eliminate any duplicate charges to Federal awards when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect (F&A) cost items, such as accounting, procurement, or personnel administration.

*8. Library Expenses*

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under §200.406. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation. Costs incurred in the purchases of rare books (museum-type books) with no value to Federal awards should not be allocated to them.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category must consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category must consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis. This category may also include post-doctorate fellows and graduate students.

(3) The other users category must consist of a reasonable factor as determined by institutional records to account for all other users of library facilities.

c. Amount allocated in paragraph b of this section must be assigned further as follows:

(1) The amount in the student category must be assigned to the instruction function of the institution.

(2) The amount in the professional employee category must be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category must be assigned to the other institutional activities function of the institution.

*9. Student Administration and Services*

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with subpart E of this Part. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, interest expense, and depreciation.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses in this category must be allocated to the instruction function, and subsequently to Federal awards in that function.

*10. Offset for Indirect (F&A) Expenses Otherwise Provided for by the Federal Government*

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in subsections 2 through 9.

b. The items in this group must be treated as a credit to the affected individual indirect (F&A) cost category before that category is allocated to benefitting functions.

C. DETERMINATION AND APPLICATION OF INDIRECT (F&A) COST RATE OR RATES

*1. Indirect (F&A) Cost Pools*

a. (1) Subject to subsection b, the separate categories of indirect (F&A) costs allocated to each major function of the institution as prescribed in Section B, must be aggregated and treated as a common pool for that function. The amount in each pool must be divided by the distribution base described in subsection 2 to arrive at a single indirect (F&A) cost rate for each function.

(2) The rate for each function is used to distribute indirect (F&A) costs to individual Federal awards of that function. Since a common pool is established for each major function of the institution, a separate indirect (F&A) cost rate would be established for each of the major functions described in Section A.1 under which Federal awards are carried out.

(3) Each institution's indirect (F&A) cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the indirect (F&A) costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the indirect (F&A) cost pools, as described in Sections A.2 and B.2 through B.9, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in subsection 2) for each major function (organized research, instruction, etc., as described

in Section A.1 functions of an institution) must contain all the programs or activities which utilize the indirect (F&A) costs allocated to that major function. At the time an indirect (F&A) cost proposal is submitted to a cognizant agency for indirect costs, each institution must describe the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

*2. The Distribution Basis*

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and up to the first $50,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in §200.1. For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

*3. Negotiated Lump Sum for Indirect (F&A) Costs*

A negotiated fixed amount in lieu of indirect (F&A) costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect (F&A) services cannot be readily determined. Such negotiated indirect (F&A) costs will be treated as an offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

*4. Predetermined Rates for Indirect (F&A) Costs*

Public Law 87–638 (76 Stat. 437) as amended (41 U.S.C. 4708) authorizes the use of predetermined rates in determining the ''indirect costs'' (indirect (F&A) costs) applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect (F&A) costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect (F&A) costs during the ensuing accounting periods.

*5. Negotiated Fixed Rates and Carry-Forward Provisions*

When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect (F&A) cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect (F&A) costs allocable to Federal awards for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years must not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant agency for indirect costs as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant agency for indirect costs. In the event that an institution returns to a post-determined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent post-determined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

*6. Provisional and Final Rates for Indirect (F&A) Costs*

Where the cognizant agency for indirect costs determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate must be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency for indirect costs during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the institution's fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or

downward adjustments will be made based on the actual allowable costs incurred for the period involved.

*7. Fixed Rates for the Life of the Sponsored Agreement*

a. Except as provided in paragraph (c)(1) of §200.414, Federal agencies must use the negotiated rates in effect at the time of the initial award throughout the life of the Federal award. Award levels for Federal awards may not be adjusted in future years as a result of changes in negotiated rates. ''Negotiated rates'' per the rate agreement include final, fixed, and predetermined rates and exclude provisional rates. ''Life'' for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal awarding agency at the time of the Federal award. If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the negotiated rate for the last year of the Federal award must be extended through the end of the life of the Federal award.

b. Except as provided in §200.414, when an educational institution does not have a negotiated rate with the Federal Government at the time of an award (because the educational institution is a new recipient or the parties cannot reach agreement on a rate), the provisional rate used at the time of the award must be adjusted once a rate is negotiated and approved by the cognizant agency for indirect costs.

*8. Limitation on Reimbursement of Administrative Costs*

a. Notwithstanding the provisions of subsection C.1.a, the administrative costs charged to Federal awards awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, must be limited to 26% of modified total direct costs (as defined in subsection 2) for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation, interest costs, operation and maintenance expenses, and fringe benefits costs, as provided by Section B, and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section B.

b. Institutions should not change their accounting or cost allocation methods if the effect is to change the charging of a particular type of cost from F&A to direct, or to reclassify costs, or increase allocations from the administrative pools identified in paragraph B.1 of this Appendix to the other F&A cost pools or fringe benefits. Cognizant agencies for indirect cost are authorized to allow changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

*9. Alternative Method for Administrative Costs*

a. Notwithstanding the provisions of subsection C.1.a, an institution may elect to claim a fixed allowance for the ''Administration'' portion of indirect (F&A) costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under ''Administration'' as defined in Section B.1, whichever is less. Under this alternative, no cost proposal need be prepared for the ''Administration'' portion of the indirect (F&A) cost rate nor is further identification or documentation of these costs required (see subsection c). Where a negotiated indirect (F&A) cost agreement includes this alternative, an institution must make no further charges for the expenditure categories described in Section B.5, Section B.6, Section B.7, and Section B.9.

b. In negotiations of rates for subsequent periods, an institution that has elected the option of subsection a may continue to exercise it at the same rate without further identification or documentation of costs.

c. If an institution elects to accept a threshold rate as defined in subsection a of this section, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its indirect (F&A) cost rate, the institution must reconcile its indirect (F&A) cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in Section A.1, as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling indirect (F&A) cost proposals to financial statements and allocating facilities costs.

*10. Individual Rate Components*

In order to provide mutually agreed-upon information for management purposes, each indirect (F&A) cost rate negotiation or determination must include development of a rate for each indirect (F&A) cost pool as well as the overall indirect (F&A) cost rate.

*11. Negotiation and Approval of Indirect (F&A) Rate*

a. Cognizant agency for indirect costs is defined in Subpart A.

(1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds directly to the educational institution for the most recent three years. Information on funding must be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding directly to an educational institution, the cognizant agency for indirect costs assignment must default to HHS. Notwithstanding the method for cognizance determination described in this section, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and must be decided based on mutual agreement between HHS and DOD. Where a non-Federal entity only receives funds as a subrecipient, see §200.332.

(2) After cognizance is established, it must continue for a five-year period.

b. Acceptance of rates. See §200.414.

c. Correcting deficiencies. The cognizant agency for indirect costs must negotiate changes needed to correct systems deficiencies relating to accountability for Federal awards. Cognizant agencies for indirect costs must address the concerns of other affected agencies, as appropriate, and must negotiate special rates for Federal agencies that are required to limit recovery of indirect costs by statute.

d. Resolving questioned costs. The cognizant agency for indirect costs must conduct any necessary negotiations with an educational institution regarding amounts questioned by audit that are due the Federal Government related to costs covered by a negotiated agreement.

e. Reimbursement. Reimbursement to cognizant agencies for indirect costs for work performed under this Part may be made by reimbursement billing under the Economy Act, 31 U.S.C. 1535.

f. Procedure for establishing facilities and administrative rates must be established by one of the following methods:

(1) Formal negotiation. The cognizant agency for indirect costs is responsible for negotiating and approving rates for an educational institution on behalf of all Federal agencies. Federal awarding agencies that do not have cognizance for indirect costs must notify the cognizant agency for indirect costs of specific concerns (i.e., a need to establish special cost rates) which could affect the negotiation process. The cognizant agency for indirect costs must address the concerns of all interested agencies, as appropriate. A pre-negotiation conference may be scheduled among all interested agencies, if necessary. The cognizant agency for indirect costs must then arrange a negotiation conference with the educational institution.

(2) Other than formal negotiation. The cognizant agency for indirect costs and educational institution may reach an agreement on rates without a formal negotiation conference; for example, through correspondence or use of the simplified method described in this section D of this Appendix.

g. Formalizing determinations and agreements. The cognizant agency for indirect costs must formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest. Determinations should include a description of any adjustments, the actual amount, both dollar and percentage adjusted, and the reason for making adjustments.

h. Disputes and disagreements. Where the cognizant agency for indirect costs is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency for indirect costs must be followed for resolution of the disagreement.

*12. Standard Format for Submission*

For facilities and administrative (indirect (F&A)) rate proposals, educational institutions must use the standard format, shown in section E of this appendix, to submit their indirect (F&A) rate proposal to the cognizant agency for indirect costs. The cognizant agency for indirect costs may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions that use the simplified method for calculating indirect (F&A) rates, as described in Section D of this Appendix.

As provided in section C.10 of this appendix, each F&A cost rate negotiation or determination must include development of a rate for each F&A cost pool as well as the overall F&A rate.

D. SIMPLIFIED METHOD FOR SMALL INSTITUTIONS

*1. General*

a. Where the total direct cost of work covered by this Part at an institution does not exceed $10 million in a fiscal year, the simplified procedure described in subsections 2 or 3 may be used in determining allowable indirect (F&A) costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information must be utilized as a basis for determining the indirect (F&A) cost rate applicable to all Federal awards. The institution may use either the salaries and wages (see subsection 2) or modified total direct costs (see subsection 3) as the distribution basis.

b. The simplified procedure should not be used where it produces results which appear inequitable to the Federal Government or the institution. In any such case, indirect (F&A) costs should be determined through use of the regular procedure.

*2. Simplified Procedure—Salaries and Wages Base*

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The total amount of salaries and wages included in the indirect (F&A) cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a from the amount of salaries and wages included under subsection b.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to direct salaries and wages for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

*3. Simplified Procedure—Modified Total Direct Cost Base*

a. Establish the total costs incurred by the institution for the base period.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments. In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The modified total direct costs amount included in the indirect (F&A) cost pool must be separately identified.

c. Establish a modified total direct cost distribution base, as defined in Section C.2, The distribution basis, that consists of all institution's direct functions.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to the modified total direct costs for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

E. DOCUMENTATION REQUIREMENTS

The standard format for documentation requirements for indirect (indirect (F&A)) rate proposals for claiming costs under the regular method is available on the OMB website.

F. CERTIFICATION

*1. Certification of Charges*

To assure that expenditures for Federal awards are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads ''By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and intent set forth in the award documents. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code, Title 18, Section 1001 and Title 31, Sections 3729–3733 and 3801–3812)''.

*2. Certification of Indirect (F&A) Costs*

a. *Policy*. Cognizant agencies must not accept a proposed indirect cost rate unless such costs have been certified by the educational institution using the Certificate of indirect (F&A) Costs set forth in subsection F.2.c

b. The certificate must be signed on behalf of the institution by the chief financial officer or an individual designated by an individual at a level no lower than vice president or chief financial officer.

An indirect (F&A) cost rate is not binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish indirect (F&A) cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government must unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When indirect (F&A) cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

c. *Certificate*. The certificate required by this section must be in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(3) This proposal does not include any costs which are unallowable under subpart E of this part such as (without limitation): Public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Institution of Higher Education:
Signature: _____
Name of Official: _____
Title: _____
Date of Execution: _____

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015; 85 FR 49577, Aug. 13, 2020; 89 FR 30206, Apr. 22, 2024]

## APPENDIX IV TO PART 200—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR NONPROFIT ORGANIZATIONS

### A. GENERAL

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in §200.413(d). After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefitting cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. ''Major nonprofit organizations'' are defined in paragraph (a) of §200.414. See indirect cost rate reporting requirements in sections B.2.e and B.3.g of this Appendix.

### B. ALLOCATION OF INDIRECT COSTS AND DETERMINATION OF INDIRECT COST RATES

*1. General*

a. If a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in section B.2 of this Appendix.

b. If an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it

devotes to such activities as fundraising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in section B.2 through B.5 of this Appendix.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, must be so selected as to avoid inequities in the allocation of the costs.

*2. Simplified Allocation Method*

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in §200.413(e).

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as subawards for $50,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in §200.1.

d. Except where a special rate(s) is required in accordance with section B.5 of this Appendix, the indirect cost rate developed under the above principles is applicable to all Federal awards of the organization. If a special rate(s) is required, appropriate modifications must be made in order to develop the special rate(s).

e. For an organization that receives more than $10 million in direct Federal funding in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in paragraph (a) of §200.414, is required. The rate in each case must be stated as the percentage which the amount of the particular indirect cost category (*i.e.,* Facilities or Administration) is of the distribution base identified with that category.

*3. Multiple Allocation Base Method*

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs must be accumulated into separate cost groupings, as described in subparagraph b. Each grouping must then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in section B.3.c of this Appendix.

b. Identification of indirect costs. Cost groupings must be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping must constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: ''Facilities'' and ''Administration,'' as described in section A.3 of this Appendix. The indirect cost pools are defined as follows:

(1) Depreciation. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with §200.436.

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with §200.449.

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expenses category must also include its allocable share of fringe benefit costs, depreciation, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to

any major function of the organization. This category must also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs must be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate as described in §200.413. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation must be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution must be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards. The results of special cost studies (such as an engineering utility study) must not be used to determine and allocate the indirect costs to Federal awards.

(1) Depreciation. Depreciation expenses must be allocated in the following manner:

(a) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(b) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to the benefitting functions on the basis of:

(i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or

(ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital equipment to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses must be allocated in the same manner as the depreciation.

(4) General administration and general expenses. General administration and general expenses must be allocated to benefitting functions based on modified total costs (MTC). The MTC is the modified total direct costs (MTDC), as described in §200.1, plus the allocated indirect cost proportion. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to benefitting functions based on MTC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation, interest, operation and maintenance, and general administration and general expenses must be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories should be allocated in the order determined to be most appropriate by the organization. This order of allocation does not apply if cross allocation of costs is made as provided in section B.3.d.2 of this Appendix.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs must not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with section B.5 of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs must be distributed to applicable Federal awards and other benefitting activities within each major function on the basis of MTDC (see definition in §200.1).

g. Individual Rate Components. An indirect cost rate must be determined for each separate indirect cost pool developed. The rate in each case must be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement must include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools must be classified within two broad categories: ''Facilities'' and ''Administration,'' as described in §200.414(a).

*4. Direct Allocation Method*

a. Some nonprofit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fundraising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, information technology, and the like are prorated individually as direct costs to each category and to each Federal award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each Federal award or other activity. The bases must be established in accordance with reasonable criteria and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates must be computed in the same manner as that described in section B.2 of this Appendix.

*5. Special Indirect Cost Rates*

In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single Federal award or it may consist of work under a group of Federal awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (i) the rate differs significantly from that which would have been obtained under sections B.2, B.3, and B.4 of this Appendix, and (ii) the volume of work to which the rate would apply is material.

C. NEGOTIATION AND APPROVAL OF INDIRECT COST RATES

*1. Definitions*

As used in this section, the following terms have the meanings set forth in this section:

a. *Cognizant agency for indirect costs* means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.

b. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference

between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. *Provisional rate or billing rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a final rate for the period.

f. *Indirect cost proposal* means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. *Cost objective* means a function, organizational subdivision, contract, Federal award, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

*2. Negotiation and Approval of Rates*

a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards directly funded to an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards directly funded to the organization for at least three years. All concerned Federal agencies must be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates in accordance with section B.5 of this Appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs. (See also §200.414.) If the nonprofit does not receive any funding from any Federal agency, the pass-through entity is responsible for the negotiation of the indirect cost rates in accordance with §200.332(a)(4).

b. Except as otherwise provided in §200.414(f), a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award.

c. Unless approved by the cognizant agency for indirect costs in accordance with §200.414(g), organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on Federal awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, must not be negotiated if (i) all or a substantial portion of the organization's Federal awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates must be negotiated where neither predetermined nor fixed rates are appropriate. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the organization's fiscal year. If that event does not occur, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

g. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the nonprofit organization. The cognizant agency for indirect costs must make available copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency for indirect costs and the nonprofit organization, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

D. Certification of Indirect (F&A) Costs

(1) Required Certification. No proposal to establish indirect (F&A) cost rates must be acceptable unless such costs have been certified by the nonprofit organization using the Certificate of Indirect (F&A) Costs set forth in section j. of this appendix. The certificate must be signed on behalf of the organization by an individual at a level no lower than vice president or chief financial officer for the organization.

(2) Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal awards to which they apply and with subpart E of this part.

(3) This proposal does not include any costs which are unallowable under subpart E of this part such as (without limitation): Public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Nonprofit Organization: _____
Signature: _____
Name of Official: _____
Title: _____
Date of Execution: _____

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54410, Sept. 10, 2015; 85 FR 49579, Aug. 13, 2020; 89 FR 30206, Apr. 22, 2024]

## APPENDIX V TO PART 200—STATE/LOCAL GOVERNMENTWIDE CENTRAL SERVICE COST ALLOCATION PLANS

### A. GENERAL

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled ''*A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government.*'' A copy of this brochure may be obtained from the HHS Cost Allocation Services or at their website.

### B. DEFINITIONS

1. *Agency or operating agency* means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of Federal awards or activities of the governmental unit.

2. *Allocated central services* means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. *Billed central services* means central services that are billed to benefitted agencies or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

4. *Cognizant agency for indirect costs* is defined in §200.1. The determination of cognizant agency for indirect costs for states and local governments is described in section F.1.

5. *Major local government* means local government that receives more than $100 million in direct Federal awards subject to this Part.

### C. SCOPE OF THE CENTRAL SERVICE COST ALLOCATION PLANS

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. omitted from the plan will not be reimbursed.

### D. SUBMISSION REQUIREMENTS

1. Each state will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each major local government is also required to submit a plan to its cognizant agency for indirect costs annually.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Part and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a local government only receives funds as a subrecipient, the pass-through entity will be responsible for monitoring the subrecipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency for indirect costs on a case-by-case basis.

E. DOCUMENTATION REQUIREMENTS FOR SUBMITTED PLANS

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency for indirect costs on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

*1. General*

All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the state/local government whether or not they are shown as benefitting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Part, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

*2. Allocated Central Services*

For each allocated central service*, the plan must also include the following: a brief description of the service, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. must also be included.

*3. Billed Services*

a. *General.* The information described in this section must be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. Internal service funds.

(1) For each internal service fund or similar activity with an operating budget of $5 million or more, the plan must include: A brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, *e.g.*, regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by GAAP) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this part, with an explanation of how variances will be handled.

(2) Revenues must consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users must be provided. Expenses must be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. *Self-insurance funds.* For each self-insurance fund, the plan must include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted

but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. *Fringe benefits.* For fringe benefit costs, the plan must include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information must be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or state-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

*4. Required Certification*

Each central service cost allocation plan will be accompanied by a certification in the following form:

CERTIFICATE OF COST ALLOCATION PLAN

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of this Part and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit: _____
Signature: _____
Name of Official: _____
Title: _____
Date of Execution: _____

F. NEGOTIATION AND APPROVAL OF CENTRAL SERVICE PLANS

*1. Federal Cognizant Agency for Indirect Costs Assignments for Cost Negotiation*

In general, unless different arrangements are agreed to by the concerned Federal agencies, for central service cost allocation plans, the cognizant agency responsible for review and approval is the Federal agency with the largest dollar value of total Federal awards with a governmental unit. For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is the Federal agency with the largest dollar value of direct Federal awards with a governmental unit or component, as appropriate. Once designated as the cognizant agency for indirect costs, the Federal agency must remain so for a period of five years. In addition, the following Federal agencies continue to be responsible for the indicated governmental entities:

*Department of Health and Human Services*—Public assistance and state-wide cost allocation plans for all states (including the District of Columbia and Puerto Rico), state and local hospitals, libraries and health districts.

*Department of the Interior*—Indian tribal governments, territorial governments, and state and local park and recreational districts.

*Department of Labor*—State and local labor departments.

*Department of Education*—School districts and state and local education agencies.

*Department of Agriculture*—State and local agriculture departments.

*Department of Transportation*—State and local airport and port authorities and transit districts.

*Department of Commerce*—State and local economic development districts.

*Department of Housing and Urban Development*—State and local housing and development districts.

*Environmental Protection Agency*—State and local water and sewer districts.

*2. Review*

All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the cognizant agency for indirect costs on a timely basis. The cognizant agency for indirect costs will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency for indirect costs.

*3. Agreement*

The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation must be made available to all Federal agencies for their use.

*4. Adjustments*

Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in subpart F, General Provisions for selected Items of Cost of this Part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, must be adjusted, or a refund must be made at the option of the cognizant agency for indirect costs, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations. Adjustments or cash refunds may include, at the option of the cognizant agency for indirect costs, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. OTHER POLICIES

*1. Billed Central Service Activities*

Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

*2. Working Capital Reserves*

Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 calendar days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 calendar days may be approved by the cognizant agency for indirect costs in exceptional cases.

*3. Carry-Forward Adjustments of Allocated Central Service Costs*

Allocated central service costs are usually negotiated and approved for a future fiscal year on a ''fixed with carry-forward'' basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This ''carry-forward'' procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

*4. Adjustments of Billed Central Services*

Billing rates used to charge Federal awards must be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds $500,000. Adjustment methods may include, at the option of the cognizant agency, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations.

*5. Records Retention*

All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in subpart D of this part.

*6. Appeals*

If a dispute arises in the negotiation of a plan between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

*7. OMB Assistance*

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54410, Sept. 10, 2015; 85 FR 49581, Aug. 13, 2020]

## APPENDIX VI TO PART 200—PUBLIC ASSISTANCE COST ALLOCATION PLANS

### A. GENERAL

Federally-financed programs administered by state public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Appendix extends these requirements to all Federal awarding agencies whose programs are administered by a state public assistance agency. Major federally-financed programs typically administered by state public assistance agencies include: Temporary Aid to Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

### B. DEFINITIONS

1. *State public assistance agency* means a state agency administering or supervising the administration of one or more public assistance programs operated by the state as identified in Subpart E of 45 CFR Part 95. For the purpose of this Appendix, these programs include all programs administered by the state public assistance agency.

2. *State public assistance agency costs* means all costs incurred by, or allocable to, the state public assistance agency, except expenditures for financial assistance, medical contractor payments, food stamps, and payments for services and goods provided directly to program recipients.

### C. POLICY

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the state public assistance agency. Where a letter of approval or disapproval is transmitted to a state public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

### D. SUBMISSION, DOCUMENTATION, AND APPROVAL OF PUBLIC ASSISTANCE COST ALLOCATION PLANS

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in section E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the calendar quarter following the event that required the amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency for indirect costs acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the state public assistance agency and will inform the state agency of the action taken on the plan or plan amendment.

### E. REVIEW OF IMPLEMENTATION OF APPROVED PLANS

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the Federal awarding agencies, single audits, or audits conducted by the cognizant agency for indirect costs.

2. Where inappropriate charges affecting more than one Federal awarding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more Federal awarding agencies, the dispute must be resolved in accordance with the appeals procedures set out in 45 CFR Part 16.

Disputes involving only one Federal awarding agency will be resolved in accordance with the Federal awarding agency's appeal process.

4. To the extent that problems are encountered among the Federal awarding agencies or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

### F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Part. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual Federal awards. Cash refunds, offsets, and credits may include at the option of the cognizant agency for indirect cost, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency for indirect cost claims collection regulations.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49581, Aug. 13, 2020]

## Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

### A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to this part) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled ''*A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.*'' A copy of this brochure may be obtained from HHS Cost Allocation Services or at their website.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain state/local-wide central service costs, general administration of the non-Federal entity accounting and personnel services performed within the non-Federal entity, depreciation on buildings and equipment, the costs of operating and maintaining facilities.

5. This Appendix does not apply to state public assistance agencies. These agencies should refer instead to Appendix VI to this part.

### B. Definitions

1. *Base* means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each Federal award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

2. *Base period* for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, must be so selected as to avoid inequities in the allocation of costs.

3. *Cognizant agency for indirect costs* means the Federal agency responsible for reviewing and approving the governmental unit's indirect cost rate(s) on the behalf of the Federal Government. The cognizant agency for indirect costs assignment is described in Appendix V, section F.

4. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

5. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

6. *Indirect cost pool* is the accumulated costs that jointly benefit two or more programs or other cost objectives.

7. *Indirect cost rate* is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

8. *Indirect cost rate proposal* means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

9. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency for indirect costs. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

10. *Provisional rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a ''final'' rate for that period.

### C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

#### *1. General*

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

#### *2. Simplified Method*

a. Where a non-Federal entity's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the non-Federal entity's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, subcontracts in excess of $50,000, and participant support costs), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

#### *3. Multiple Allocation Base Method*

a. Where a non-Federal entity's indirect costs benefit its major functions in varying degrees, such costs must be accumulated into separate cost groupings. Each grouping must then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration

the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with paragraph (C)(4) of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, subawards in excess of $50,000, and participant support costs), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

*4. Special Indirect Cost Rates*

a. In some instances, a single indirect cost rate for all activities of a non-Federal entity or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular Federal award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that Federal award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) The rate differs significantly from the rate which would have been developed under paragraphs (C)(2) and (C)(3) of this Appendix, and (2) the Federal award to which the rate would apply is material in amount.

b. Where Federal statutes restrict the reimbursement of certain indirect costs, it may be necessary to develop a special rate for the affected Federal award. Where a ''restricted rate'' is required, the same procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. SUBMISSION AND DOCUMENTATION OF PROPOSALS

*1. Submission of Indirect Cost Rate Proposals*

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in § 200.334.

b. A governmental department or agency (such as a state or local Department of Health, Department of Transportation, or Department of Housing) that receives more than $35 million in direct Federal funding during its fiscal year must submit its indirect cost rate proposal to its cognizant agency for indirect costs.

c. If a governmental department or agency (such as a state or local Department of Health, Department of Transportation, or Department of Housing) receives $35 million or less in direct Federal funding during its fiscal year, it must develop an indirect cost proposal in accordance with the requirements of this part and maintain the proposal and related supporting documentation for audit. This established rate must be accepted by any Federal agency to which the governmental department or agency applies for funding. Federal agencies must not compel the governmental department or agency to accept the de minimis rate or some other rate established by the Federal agency. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by an awarding Federal agency. The Federal agency's review should be limited to ensuring the proposal is consistent with the

principles of this part. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant agency for indirect costs).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

*2. Documentation of Proposals*

The following must be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency for indirect costs and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency for indirect costs in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

*3. Required certification.*

Each indirect cost rate proposal must be accompanied by a certification in the following form:

CERTIFICATE OF INDIRECT COSTS

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and the provisions of this Part. Unallowable costs have been adjusted for in allocating costs as indicated in the indirect cost proposal

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____
Signature: _____
Name of Official: _____
Title: _____
Date of Execution: _____

E. NEGOTIATION AND APPROVAL OF RATES

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency for indirect costs has reasonable assurance based on past experience and reliable projection of the non-Federal entity's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation must be formalized in a written agreement between

the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates must be made available to all Federal agencies for their use.

4. Refunds must be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in §200.420, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. OTHER POLICIES

*1. Fringe Benefit Rates*

If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual recipient agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the recipient agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency for indirect costs.

*2. Billed Services Provided by the Recipient Agency*

In some cases, governmental departments or agencies (components of the governmental unit) provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental departments or agencies (components of the governmental unit)should be guided by the requirements in Appendix V relating to the development of billing rates and documentation requirements, and should advise the cognizant agency for indirect costs of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

*3. Indirect Cost Allocations Not Using Rates*

In certain situations, governmental departments or agencies (components of the governmental unit), because of the nature of their Federal awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for indirect costs for review, negotiation, and approval.

*4. Appeals*

If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

*5. Collection of Unallowable Costs and Erroneous Payments*

Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations).

*6. OMB Assistance*

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75889, Dec. 19, 2014; 85 FR 49581, Aug. 13, 2020; 89 FR 30207, Apr. 22, 2024]

## APPENDIX VIII TO PART 200—NONPROFIT ORGANIZATIONS EXEMPTED FROM SUBPART E OF PART 200

1. Advance Technology Institute (ATI), Charleston, South Carolina
2. Aerospace Corporation, El Segundo, California
3. American Institutes of Research (AIR), Washington, DC
4. Argonne National Laboratory, Chicago, Illinois
5. Atomic Casualty Commission, Washington, DC
6. Battelle Memorial Institute, Headquartered in Columbus, Ohio
7. Brookhaven National Laboratory, Upton, New York
8. Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
9. CNA Corporation (CNAC), Alexandria, Virginia
10. Environmental Institute of Michigan, Ann Arbor, Michigan
11. Georgia Institute of Technology/Georgia Tech Applied Research Corporation/Georgia Tech Research Institute, Atlanta, Georgia
12. Hanford Environmental Health Foundation, Richland, Washington
13. IIT Research Institute, Chicago, Illinois

14. Institute of Gas Technology, Chicago, Illinois
15. Institute for Defense Analysis, Alexandria, Virginia
16. LMI, McLean, Virginia
17. Mitre Corporation, Bedford, Massachusetts
18. Noblis, Inc., Falls Church, Virginia
19. National Radiological Astronomy Observatory, Green Bank, West Virginia
20. National Renewable Energy Laboratory, Golden, Colorado
21. Oak Ridge Associated Universities, Oak Ridge, Tennessee
22. Rand Corporation, Santa Monica, California
23. Research Triangle Institute, Research Triangle Park, North Carolina
24. Riverside Research Institute, New York, New York
25. South Carolina Research Authority (SCRA), Charleston, South Carolina
26. Southern Research Institute, Birmingham, Alabama
27. Southwest Research Institute, San Antonio, Texas
28. SRI International, Menlo Park, California
29. Syracuse Research Corporation, Syracuse, New York
30. Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
31. Urban Institute, Washington DC
32. Nonprofit insurance companies, such as Blue Cross and Blue Shield Organizations
33. Other nonprofit organizations as negotiated with Federal awarding agencies

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49582, Aug. 13, 2020]

## APPENDIX IX TO PART 200—HOSPITAL COST PRINCIPLES

Until such time as revised guidance is proposed and implemented for hospitals, the existing principles located at 45 CFR part 75 Appendix IX, entitled ''Principles for Determining Cost Applicable to Research and Development Under Grants and Contracts with Hospitals,'' remain in effect.

[86 FR 10440, Feb. 22, 2021]

## APPENDIX X TO PART 200—DATA COLLECTION FORM

The data collection form is available as a series of workbooks on the Federal Audit Clearinghouse (*FAC.gov*). The form and submission instructions can be found at *https://www.fac.gov/*.

[89 FR 30207, Apr. 22, 2024]

## APPENDIX XI TO PART 200—COMPLIANCE SUPPLEMENT

The compliance supplement is available on the OMB website.

[85 FR 49582, Aug. 13, 2020]

## APPENDIX XII TO PART 200—AWARD TERM AND CONDITION FOR RECIPIENT INTEGRITY AND PERFORMANCE MATTERS

### I. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE

*(a) General Reporting Requirement.*

(1) If the total value of your active grants, cooperative agreements, and procurement contracts from all Federal agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient must ensure the information available in the responsibility/qualification records through the System for Award Management (*SAM.gov*), about civil, criminal, or administrative proceedings described in paragraph (b) of this award term is current and complete. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in responsibility/qualification records in *SAM.gov* on or after April 15, 2011 (except past performance reviews required for Federal procurement contracts) will be publicly available.

(b) *Proceedings About Which You Must Report.*

(1) You must submit the required information about each proceeding that—

(i) Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

(ii) Reached its final disposition during the most recent five-year period; and

(iii) Is one of the following—

(A) A criminal proceeding that resulted in a conviction;

(B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

(C) An administrative proceeding that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

(D) Any other criminal, civil, or administrative proceeding if—

(*1*) It could have led to an outcome described in paragraph (b)(1)(iii)(A) through (C);

(*2*) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(*3*) The requirement in this award term to disclose information about the proceeding does not conflict with applicable laws and regulations.

(c) *Reporting Procedures.* Enter the required information in *SAM.gov* for each proceeding described in paragraph (b) of this award term. You do not need to submit the information a second time under grants and cooperative agreements that you received if you already provided the information in *SAM.gov* because you were required to do so under Federal procurement contracts that you were awarded.

(d) *Reporting Frequency.* During any period of time when you are subject to the requirement in paragraph (a) of this award term, you must report proceedings information in *SAM.gov* for the most recent five-year period, either to report new information about a proceeding that you have not reported previously or affirm that there is no new information to report. If you have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000, you must disclose semiannually any information about the criminal, civil, and administrative proceedings.

(e) *Definitions.* For purposes of this award term—

*Administrative proceeding* means a non-judicial process that is adjudicatory in nature to make a determination of fault or liability (for example, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with the performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

*Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

*Total value of currently active grants, cooperative agreements, and procurement contracts* includes the value of the Federal share already received plus any anticipated Federal share under those awards (such as continuation funding).

II. [RESERVED]

[89 FR 30207, Apr. 22, 2024]

## PARTS 201–299 [RESERVED]

# Subtitle B—Federal Agency Regulations for Grants and Agreements

# CHAPTER III—DEPARTMENT OF HEALTH AND HUMAN SERVICES


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# PART 300—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS (EFF. until 10-01-25)

AUTHORITY: 5 U.S.C. 301, 2 CFR part 200.

SOURCE: 79 FR 75889, Dec. 19, 2014, unless otherwise noted.

EFFECTIVE DATE NOTE: At 89 FR 80061, Oct. 2, 2024, part 300 was revised, effective Oct. 1, 2025. The revised part 300 text follows the current part 300.

### § 300.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the Department of Health and Human Services adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, and has codified the text, with HHS-specific amendments in 45 CFR part 75 and the following provisions of 2 CFR part 200: §§ 200.1 (definitions of Modified Total Direct Cost, Equipment, and Supplies), 200.313(e), 200.314(a), 200.320, 200.333, 200.344, 200.414(f), and 200.501. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

[89 FR 80061, Oct. 2, 2024]

EFFECTIVE DATE NOTE: At 89 FR 80061, Oct. 2, 2024, Part 300 was revised, effective Oct. 1, 2025. For the convenience of the user, the revised text is set forth as follows:

# PART 300—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS (EFF. 10-01-25)

Sec.


Subpart A [Reserved]

Subpart B—General Provisions

300.106 Adoption of 2 CFR part 200.
300.112 Conflict of interest.

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

300.218 Special provisions for awards to for-profit organizations as recipients.
300.219 Special provisions for awards to Federal agencies.

Subpart D—Post Federal Award Requirements

300.300 Statutory and national policy requirements.
300.305 Federal payment.
300.308 Revision of budget and program plans.
300.315 Intangible property.

Subpart E—Cost Principles

300.414 Indirect costs.

HHS SELECTED ITEMS OF COST

300.477 Independent research and development costs.
300.478 Shared responsibility payments.

APPENDICES I THROUGH VIII TO PART 300 [RESERVED]

APPENDIX IX TO PART 75—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO RESEARCH AND DEVELOPMENT UNDER GRANTS AND CONTRACTS WITH HOSPITALS

APPENDICES X THROUGH XII TO PART 300 [RESERVED]


AUTHORITY: 5 U.S.C. 301, 2 CFR part 200.

## Subpart A [Reserved]

## Subpart B—General Provisions

### § 300.106 Adoption of 2 CFR part 200.

The Department of Health and Human Services adopts the Office of Management and Budget (OMB) guidance in 2 CFR part 200, with the additions included in this part and part 376 of this chapter. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

### § 300.112 Conflict of interest.

In addition to 2 CFR 200.112, the following requirements apply:

(a) HHS agencies' conflict of interest policies must:

(1) Address conditions under which outside activities, relationships, or financial interests are proper or improper;

(2) Provide for advance notification of outside activities, relationships, or financial interests, and a process of review as appropriate; and

(3) Outline how financial conflicts of interest may be addressed.

(b) Agencies with Public Health Service (PHS) funded research will ensure that any conflict-of-interest policies

are aligned with the requirements of 42 CFR part 50, subpart F.

## Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

### § 300.218 Special provisions for awards to for-profit organizations as recipients.

(a) *For-profit organizations.* This section contains provisions that apply to awards to for-profit organizations. These provisions are in addition to other applicable provisions of this part, or they make exceptions from other provisions of this part for awards to for-profit organizations.

(b) *Prohibition against profit.* Except for awards under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR) programs (15 U.S.C. 638), no HHS funds may be paid as profit to any recipient even if the recipient is a for-profit organization. Profit is any amount in excess of allowable direct and indirect costs.

(c) *Program income.* Except for grants for research, program income earned by a for-profit organization may not be used to further eligible project or program objectives except in the SBIR and STTR programs.

(d) *For-profit organization audits.* (1) For-profit organizations that receive awards (including for-profit hospitals) have two options regarding audits:

(i) A financial related audit of a particular award in accordance with GAGAS, in those cases where the for-profit organization receives awards under only one HHS program; or, if awards are received under multiple HHS programs, a financial related audit of all awards in accordance with GAGAS; or

(ii) An audit that meets the requirements contained in 2 CFR 200, subpart F.

(2) For-profit organizations that receive annual awards totaling less than the audit requirement threshold in subpart F are exempt from HHS audit requirements for that year, but records must be available for review by appropriate officials of Federal agencies or the GAO. (See § 200.501).

(e) *Applicability.* The provisions of § 200.315(e) do not apply to for-profit organizations.

### § 300.219 Special provisions for awards to Federal agencies.

(a) An HHS agency must have explicit statutory authority that makes Federal agencies eligible for awards.

(b) All provisions of 2 CFR part 200, this part, and other HHS regulations apply to Federal entities receiving Federal awards, except for the following:

(1) Except for grants for research, any program income earned by a Federal institution must be used under the deduction alternative. Any program income earned after the period of performance should be returned to the United States Treasury.

(2) No salary or fringe benefit payments may be made from HHS agency funds to support career, career-conditional, or other Federal employees (civilian or uniformed services) without permanent appointments at a Federal institution receiving an award. While the level of effort required for the project must be allowed by the recipient as part of each individual's official duties, salary costs associated with an individual participating in an official capacity as a Federal employee under an award to that Federal institution are not allowable costs under an HHS award.

(3) Federal agencies may not be reimbursed for indirect costs under Federal awards.

## Subpart D—Post Federal Award Requirements

### § 300.300 Statutory and national policy requirements.

In addition to 2 CFR 200.300(a), the following requirements apply:

(a) It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the administration of HHS programs, activities, projects, assistance, and services, to the extent doing so is prohibited by Federal statute.

(b) HHS will follow all applicable Supreme Court decisions in administering its award programs.

(c) In the statutes listed in paragraphs (c)(1) through (13) of this section that HHS administers which prohibit discrimination on the basis of sex, the Department interprets those provisions to include a prohibition against discrimination on the basis of sexual orientation and gender identity, consistent with the Supreme Court's decision in *Bostock* v. *Clayton County*, 590 U.S. 644 (2020), and other Federal court precedent applying *Bostock*'s reasoning that sex discrimination includes discrimination based on sexual orientation and gender identity. This provision is interpretive and does not impose any substantive obligations on entities outside the Department. This paragraph (c) interprets the following HHS authorities that prohibit discrimination on the basis of sex:

(1) *8 U.S.C. 1522*. Authorization for programs for domestic resettlement of and assistance to refugees.

(2) *42 U.S.C. 290cc–33*. Projects for Assistance in Transition from Homelessness.

(3) *42 U.S.C. 290ff–1*. Children with Serious Emotional Disturbances.

(4) *42 U.S.C. 295m*. Title VII Health Workforce Programs.

(5) *42 U.S.C. 296g*. Nursing Workforce Development.

(6) *42 U.S.C. 300w–7*. Preventive Health Services Block Grant.

(7) *42 U.S.C. 300x–57*. Substance Use Prevention, Treatment, and Recovery Services Block Grant; Community Mental Health Services Block Grant.

(8) *42 U.S.C. 708*. Maternal and Child Health Block Grant.

(9) *42 U.S.C. 5151*. Disaster relief.

(10) *42 U.S.C. 8625*. Low Income Home Energy Assistance Program.

(11) *42 U.S.C. 9849*. Head Start.

(12) *42 U.S.C. 9918*. Community Services Block Grant Program.

(13) *42 U.S.C. 10406*. Family Violence Prevention and Services.

(d)(1) A grant applicant or recipient may rely on applicable Federal protections for religious freedom and conscience, and application of a particular provision(s) of this section to specific contexts, procedures, or services shall not be required where such protections apply.

(2) A grant applicant or recipient that seeks assurance consistent with paragraph (d)(1) of this section regarding the application of particular provision(s) of this part to specific contexts, procedures, or services may do so by submitting a notification in writing to the HHS awarding agency, the Office of the Assistant Secretary for Financial Resources (ASFR), or the Office for Civil Rights (OCR). Notification may be provided by the grant applicant or recipient at any time, including before an investigation is initiated or during the pendency of an investigation. The notification must include:

(i) The particular provision(s) of this section from which the applicant or recipient asserts they are exempt under Federal religious freedom or conscience protections;

(ii) The legal basis supporting the applicant's or recipient's exemption should include the standards governing the applicable Federal religious freedom and conscience protections, such as the provisions in the relevant statute from which the applicant or recipient is requesting an exemption; the Church, Coats-Snowe, and Weldon Amendments; the generally applicable requirements of the Religious Freedom Restoration Act (RFRA); and

(iii) The factual basis supporting the applicant's or recipient's exemption, including identification of the conflict between the applicant's or recipient's religious or conscience beliefs and the requirements of this section, which may include the specific contexts, procedures, or services that the applicant or recipient asserts will violate their religious or conscience beliefs overall or based on an individual matter related to a particular grant.

(3) A temporary exemption from administrative investigation and enforcement will take effect upon the applicant's or recipient's submission of the notification—regardless of whether the assurance is sought before or during an investigation. The temporary exemption is limited to the application of the particular provision(s) of the relevant statute as applied to the specific contexts, procedures, or services identified

in the notification to the HHS awarding agency, ASFR, or OCR.

(i) If the notification is received before an investigation is initiated, within 30 days of receiving the notification, OCR, ASFR, or the HHS awarding agency must provide the applicant or recipient with email confirmation acknowledging receipt of the notification. The HHS awarding agency, working jointly with ASFR and OCR, will then work expeditiously to reach a determination of applicant's or recipient's notification request.

(ii) If the notification is received during the pendency of an investigation, the temporary exemption will exempt conduct as applied to the specific contexts, procedures, or services identified in the notification during the pendency of the HHS awarding agency's review and determination, working jointly with ASFR and OCR, regarding the notification request. The notification shall further serve as a defense to the relevant investigation or enforcement activity regarding the applicant or recipient until the final determination of the applicant's or recipient's exemption assurance request or the conclusion of the investigation.

(4) If the HHS awarding agency, working jointly with ASFR and OCR, makes a determination to provide assurance of the applicant's or recipient's exemption from the application of the relevant statutory provision(s) or that modified application of certain provision(s) is required, the HHS awarding agency, ASFR, or OCR, will provide the applicant or recipient the determination in writing, and if granted, the applicant or recipient will be considered exempt from OCR's administrative investigation and enforcement with regard to the application of that provision(s) as applied to the specific contexts, procedures, or services provided. The determination does not otherwise limit the application of any other provision of the relevant statute to the applicant or recipient or to other contexts, procedures, or services.

(5) An applicant or recipient subject to an adverse determination of its request for an exemption assurance may appeal the Department's determination under the administrative procedures set forth at 45 CFR part 81. The temporary exemption provided for in paragraph (f)(3) of this section will expire upon a final decision under 45 CFR part 81.

(6) A determination under this paragraph (d) is not final for purposes of judicial review until after a final decision under 45 CFR part 81.

(e) Any provision of this section held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be severable from this section and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other, dissimilar circumstances.

### § 300.305 Federal payment.

In addition to 2 CFR 200.305(b), the following requirement applies:

(a) For States, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and TFM 4A–2000 Overall Disbursing Rules for All Federal Agencies. To the extent that Treasury-State CMIA agreements and default procedures do not address expenditure of program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds, such funds must be expended before requesting additional cash payments.

(b) [Reserved]

### § 300.308 Revision of budget and program plans.

In addition to the requirements of 2 CFR 200.308(f) a recipient or subrecipient must also request approval from the Federal agency or pass-through entity for the inclusion of research patient care costs in research awards made for the performance of research work.

### § 300.315 Intangible property.

In addition to the requirements of 2 CFR 200.315(c), no scholarship, fellowship, training grant, or other funding agreement made primarily to a recipient for educational purposes will contain any provision giving the Federal agency rights to inventions made by the recipient or subrecipient.

## Subpart E—Cost Principles

### § 300.414 Indirect costs.

In addition to 2 CFR 200.414(c), the following specific indirect cost provisions apply:

(a) Indirect costs on training grants are limited to a fixed rate of eight percent of MTDC exclusive of tuition and related fees, direct expenditures for equipment, and subawards in excess of $25,000;

(b) Indirect costs on grants awarded to foreign organizations and foreign public entities and performed fully outside of the territorial limits of the U.S. may be paid to support the costs of compliance with federal requirements at a fixed rate of eight percent of MTDC exclusive of tuition and related fees, direct expenditures for equipment, and subawards in excess of $25,000; and

(c) Negotiated indirect costs may be paid to the American University, Beirut, and the World Health Organization.

HHS Selected Items of Cost

### § 300.477 Independent research and development costs.

Independent research and development is research and development which is conducted by an organization, and which is not sponsored by Federal or non-Federal awards, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development. The cost of independent research and development, including their proportionate share of indirect costs, are unallowable.

### § 300.478 Shared responsibility payments.

(a) *Payments for failure to maintain minimum essential health coverage.* Any payments or assessments imposed on an individual or individuals pursuant to 26 U.S.C. 5000A(b) as a result of any failure to maintain minimum essential coverage as required by 26 U.S.C. 5000A(a) with respect to any period prior to January 1, 2019, are not allowable expenses under Federal awards from an HHS awarding agency.

(b) *Payments for failure to offer health coverage to employees.* Any payments or assessments imposed on an employer pursuant to 26 U.S.C. 4980H as a result of the employer's failure to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan are not allowable expenses under Federal awards from an HHS awarding agency.

Appendices I Through VIII to Part 300 [Reserved]

2. At 89 FR 80064, Oct. 2, 2024, Part 300 was amended by transferring 45 CFR part 75, appendix IX, to appendix IX to part 300, effective Oct. 1, 2025.

# PARTS 301–375 [RESERVED]

# PART 376—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

376.10 What does this part do?
376.20 Does this part apply to me?
376.30 What policies and procedures must I follow?

Subpart A—General

376.137 Who in the Department of Health and Human Services (HHS) may grant an exception to let an excluded person participate in a covered transaction?
376.147 Does an exclusion from participation in Federal health care programs under Title XI of the Social Security Act affect a person's eligibility to participate in nonprocurement and procurement transactions?

Subpart B—Covered Transactions

376.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

376.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?
376.370 What are the obligations of Medicare carriers and intermediaries?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

376.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subpart E—Excluded Parties List System [Reserved]

Subpart F—General Principles Relating to Suspension and Debarment Actions [Reserved]

Subpart G—Suspension [Reserved]

Subpart H—Debarment [Reserved]

Subpart I—Definitions

376.935 Disqualified (HHS supplement to government-wide definition at 2 CFR 180.935).

376.995 Principal (HHS supplement to government-wide definition at 2 CFR 180.995).

Subpart J [Reserved]

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 6101 (note); E.O. 12689 (3 CFR, 1989 Comp., p. 235); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 11738 (3 CFR, 1973 Comp., p. 799).

SOURCE: 72 FR 9234, Mar. 1, 2007, unless otherwise noted.

### § 376.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Health and Human Services (HHS or Department) policies and procedures for nonprocurement debarment and suspension. HHS thereby gives regulatory effect to the OMB guidance as supplemented by this part. This part satisfies the requirements in 2 CFR 180.20, section 3 of Executive Order 12549, ''Debarment and Suspension'', Executive Order 12689, ''Debarment and Suspension'' and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

[72 FR 9234, Mar. 1, 2007, as amended at 85 FR 72906, Nov. 16, 2020]

### § 376.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)), apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' under subpart B of 2 CFR part 180, as supplemented by this part, and the definition of nonprocurement transaction'' at 2 CFR 180.970.

(b) Respondent in HHS suspension or debarment action;

(c) HHS debarment or suspension official;

(d) HHS grants officer, agreements officer, or other HHS official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 376.30 What policies and procedures must I follow?

The policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, including the corresponding section that HHS published in 2 CFR part 376 identified by the same section number. The contracts under a nonprocurement transaction, that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, 2 CFR 376.220). For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, HHS policies and procedures are those in the OMB guidance at 2 CFR part 180.

## Subpart A—General

### § 376.137 Who in the Department of Health and Human Services (HHS) may grant an exception to let an excluded person participate in a covered transaction?

The HHS Debarring/Suspension Official has the authority to grant an exception to let an excluded person participate in a covered transaction as provided at 2 CFR 180.135.

### § 376.147 Does an exclusion from participation in Federal health care programs under Title XI of the Social Security Act affect a person's eligibility to participate in nonprocurement and procurement transactions?

Any individual or entity excluded from participation in Medicare, Medicaid, and other Federal health care programs under Title XI of the Social Security Act, 42 U.S.C. 1320a–7, 1320a–7a, 1320c–5, or 1395ccc, and implementing regulation at 42 CFR part 1001, will be subject to the prohibitions against participating in covered transactions, as set forth in this part and part 180, and is prohibited from participating in all Federal Government procurement programs and nonprocurement programs. For example, if an individual or entity is excluded by the HHS Office of the Inspector General from participation in Medicare, Medicaid, and/or other Federal health care programs, in accordance with 42 U.S.C. 1320a–7, then that individual or entity is prohibited from participating in all Federal Government procurement and nonprocurement programs (42 CFR part 1001).

## Subpart B—Covered Transactions

### § 376.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b), this part also applies to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c). (See optional lower tier coverage in the diagram in the appendix to 2 CFR part 180.)

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 376.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

To communicate the requirements to lower-tier participants, you must include a term or condition in the lower-tier transaction requiring the lower-tier participant's compliance with 2 CFR part 180, as supplemented by this subpart.

### § 376.370 What are the obligations of Medicare carriers and intermediaries?

Because Medicare carriers, intermediaries and other Medicare contractors undertake responsibilities on behalf of the Medicare program (Title XVIII of the Social Security Act), these entities assume the same obligations and responsibilities as the HHS Medicare officials responsible for the Medicare Program with respect to actions under 2 CFR part 376. This would include the requirement for these entities to check the Excluded Parties List System (EPLS) and take necessary steps to effect this part.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 376.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and require the participant to include a similar term or condition in lower-tier covered transactions.

## Subpart E—Excluded Parties List System [Reserved]

## Subpart F—General Principles Relating to Suspension and Debarment Actions [Reserved]

## Subpart G—Suspension [Reserved]

## Subpart H—Debarment [Reserved]

## Subpart I—Definitions

### § 376.935 Disqualified. (HHS supplement to government-wide definition at 2 CFR 180.935).

*Disqualified* means persons prohibited from participating in specified federal procurement and nonprocurement transactions pursuant to the statutes listed in 2 CFR 180.935, and pursuant to Title XI of the Social Security Act (42 U.S.C. 1320a–7, 1320a–7a, 1320c–5, and 1395ccc) as enforced by the HHS Office of the Inspector General.

### § 376.995 Principal (HHS supplement to government-wide definition at 2 CFR 180.995).

*Principal* means individuals, in addition to those listed at 2 CFR 180.995, who participate in HHS covered transactions including:

(a) Providers of federally required audit services; and

(b) Researchers.

## Subpart J [Reserved]

# PART 382—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

382.10 What does this part do?
382.20 Does this part apply to me?
382.30 What policies and procedures must I follow?

Subpart A [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

382.225 Whom in HHS does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients Who Are Individuals

382.300 Whom in HHS does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

382.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E—Violations of This Part and Consequences

382.500 Who in HHS determines that a recipient other than an individual violated the requirements of this part?
382.505 Who in HHS determines that a recipient who is an individual violated the requirements of this part?

Subpart F [Reserved]

AUTHORITY: 41 U.S.C. 701–707.

SOURCE: 74 FR 58190, Nov. 12, 2009, unless otherwise noted.

### § 382.10 What does this part do?

This part requires that the award and administration of HHS grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for the HHS grants and cooperative agreements; and

(b) Establishes HHS policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

### § 382.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of an HHS grant or cooperative agreement; or

(b) HHS awarding official.

### § 382.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in

the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| (1) 2 CFR 182.225(a) ..... | § 382.225 ..... | Whom in HHS a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace. |
| (2) 2 CFR 182.300(b) ..... | § 382.300 ..... | Whom in HHS a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| (3) 2 CFR 182.500 ..... | § 382.500 ..... | Who in HHS is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| (4) 2 CFR 182.505 ..... | § 382.505 ..... | Who in HHS is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, HHS policies and procedures are the same as those in the OMB guidance.

## Subpart A [Reserved]

## Subpart B—Requirements for Recipients Other Than Individuals

### § 382.225 Whom in HHS does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each HHS office from which it currently has an award.

## Subpart C—Requirements for Recipients Who Are Individuals

### § 382.300 Whom in HHS does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each HHS office from which it currently has an award.

## Subpart D—Responsibilities of Agency Awarding Officials

### § 382.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

*Drug-free workplace.* You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of part 382, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

## Subpart E—Violations of This Part and Consequences

### § 382.500 Who in HHS determines that a recipient other than an individual violated the requirements of this part?

The agency head is the official authorized to make the determination under 2 CFR 182.500.

### § 382.505 Who in HHS determines that a recipient who is an individual violated the requirements of this part?

The agency head is the official authorized to make the determination under 2 CFR 182.505.

## Subpart F [Reserved]

## PARTS 383–399 [RESERVED]

# CHAPTER IV—DEPARTMENT OF AGRICULTURE


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

Sec.
400.0 Definitions.
400.1 Applicability.
400.2 Conflict of interest.

AUTHORITY: 5 U.S.C. 301; 2 CFR part 200.

SOURCE: 89 FR 68322, Aug. 26, 2024, unless otherwise noted.

## § 400.0 Definitions.

The definitions in this part are for terms used in this chapter, and to define for USDA terms present in 2 CFR Subtitle A but not defined in that subtitle. Different definitions may be found in Federal statutes, regulations, or other sources that apply more specifically to particular programs or activities. Where parts of this chapter provide alternate definitions than those in this part, those definitions take precedence over any definition in this part. For terms used in this chapter that are not defined in this part, the definitions in 2 CFR part 200 apply. All terms not otherwise defined will use the dictionary definition.

*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.

*Awarding official* means a person with the authority to enter into, administer, and/or terminate financial assistance awards and make related determinations and findings.

*Construction* means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms ''buildings, structures, or other real property'' include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. For the purposes of 2 CFR part 184, construction also encompasses structures, facilities, and equipment incorporated into an infrastructure project regardless of whether they constitute real property.

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

*Discretionary award* means an award in which the Federal awarding agency, in keeping with specific statutory authority that enables the agency to exercise judgment (''discretion''), selects the recipient and/or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected by a USDA awarding agency on a non-competitive basis exclusively under the conditions set forth at 2 CFR 415.1.

*Eligible applications* means those materials which have been submitted by a recipient for consideration for an award of Federal financial assistance and have been determined to comply with the minimum documentation and other requirements, which may be identified in respective notices of funding opportunities and applicable Federal statutes or regulations that apply more specifically to particular programs or activities.

*Federal financial assistance support* means the transfer of anything of value by a USDA awarding agency through a Federal financial assistance instrument as defined at 2 CFR part 200.1, inclusive of Federally funded subawards and subcontracts under such instruments, to a recipient. Such support may be provided as a cash or in-kind contribution.

*Geospatial data* means information that is tied to a location on the Earth, including by identifying the geographic location and characteristics of natural or constructed features and boundaries on the Earth, and that is generally represented in vector datasets by points, lines, polygons, or other complex geographic features or phenomena; may be derived from, among other things, remote sensing, mapping, and surveying technologies; includes images and raster datasets, aerial photographs, and other forms of geospatial data or datasets in digitized or non-digitized form.

*Information* means any communication or representation of knowledge, such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.

*Information dissemination product* means any recorded information, regardless of physical form or characteristics, disseminated to the public.

*Maintenance* means those activities conducted for the repair or upkeep of buildings, structures, facilities, and equipment which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition.

*Production of an audiovisual* means any steps that lead to a finished audiovisual, including but not limited to design, layout, script-writing, filming, editing, fabrication, sound recording or taping. The term does not include the placing of captions to make accessible films or videotapes not originally produced for use by individuals who are Deaf or hard of hearing.

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

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

*USDA awarding agency* means any component agency or staff office of the U.S. Department of Agriculture which provides any Federal financial assistance to or executes a Federal financial assistance instrument with a recipient.

### § 400.1 Applicability.

This part adopts the OMB guidance in subparts A through F of 2 CFR part 200, as supplemented by this chapter, 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 chapter.

### § 400.2 Conflict of interest.

(a) Each USDA awarding agency must establish conflict of interest policies for its Federal financial assistance actions. Each USDA awarding agency employee must comply with the requirements set forth at 5 CFR part 2635, as well as 5 CFR part 8301 where applicable, when the USDA employee takes any action related to Federal financial assistance.

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

(1) Recipients must maintain written standards of conduct covering conflicts of interest and governing the performance of their 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 an entity considered for a Federal award. The recipient 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 officers, employees, or agents of the recipient.

(2) If the recipient 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, the recipient is unable or appears to be unable to be impartial in conducting a Federal award action involving a related organization.

(3) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. Recipients are responsible for notifying the respective USDA awarding agency in writing of any conflicts of interest that may arise during the period of performance of an award, including those which have been

reported by subrecipients, no later than 5 calendar days following discovery. Upon receipt of such a disclosure, the respective USDA awarding agency must review and make a determination in writing if a potential or real conflict of interest exists and develop a plan for addressing or mitigating the issue, which may include remedies found at 2 CFR 200.339. USDA awarding agencies must make a determination within 30 calendar days of disclosure unless a longer period of time is necessary due to the complexity of the situation.

# PART 401—BUY AMERICA PREFERENCES FOR INFRASTRUCTURE PROJECTS

Sec.
401.1 What does this part do?
401.2 Waivers.

AUTHORITY: 5 U.S.C. 301; Pub. L. 117–58, 135 Stat. 1294; 2 CFR part 184; 2 CFR part 200.

SOURCE: 89 FR 68323, Aug. 26, 2024, unless otherwise noted.

## §401.1 What does this part do?

This part identifies the USDA policy for the implementation of waivers to the domestic content procurement preferences as required by 2 CFR 184.7(b).

## §401.2 Waivers.

On its public website, USDA must maintain waiver request submission instructions and guidance on the format, contents, and supporting materials required for waiver requests by which:

(a) USDA awarding agencies may request waivers to the application of the Buy America Preference; and,

(b) Prime recipients and subrecipients may request project-specific waivers from the respective USDA awarding agencies to the application of the Buy America Preference.

# PARTS 402–414 [RESERVED]

# PART 415—GENERAL PROGRAM ADMINISTRATIVE REGULATIONS

### Subpart A—Application for Federal Assistance

415.1 Administrative standards for discretionary grants and cooperative agreements.

### Subpart B— Miscellaneous

415.2 Acknowledgement of USDA Support on Information Dissemination Products.

### 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; 2 CFR part 200; 7 CFR 2.28.

SOURCE: 89 FR 68323, Aug. 26, 2024, unless otherwise noted.

## Subpart A—Application for Federal Assistance

### §415.1 Administrative standards for discretionary grants and cooperative agreements.

(a) All USDA awarding agencies must demonstrate a commitment to encouraging free and open competition in all discretionary grant and cooperative agreement funding opportunities. USDA awarding agencies must ensure that all eligible applications for discretionary grants and cooperative agreements receive fair and impartial review, be evaluated only on criteria as stated in the respective notice of funding opportunity, and that no applicant receive an unfair advantage.

(b) USDA awarding agencies must enter into discretionary grants and cooperative agreements only after competition. Exceptions to this requirement may only be made by USDA awarding agencies where expressly provided by statute, when directed by Congress, where the requirement is determined to be inconsistent with international assistance objectives of USDA, or as specified in paragraph (d) of this section or as approved by the Secretary and OMB under paragraph (e). A USDA awarding agency's competitive award process must adhere to the following standards:

(1) All notices of funding opportunities for discretionary grants and cooperative agreements must be published on *Grants.gov* as described in 2 CFR 200.204(a). When notices of funding opportunities contain an information collection requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) or its implementing regulations at 5 CFR part 1320, USDA awarding agencies must seek and obtain OMB approval before collecting information from the public.

(i) Supplementary to the requirements at paragraph (b)(1), USDA awarding agencies may make use of other methods of disseminating public information concerning notices of funding opportunities. In doing so, USDA awarding agencies must:

(A) Pursue the broadest dissemination of information concerning notices of funding opportunities in order to reach the greatest number and diversity of potential applicants.

(B) Avoid any appearance that an unfair advantage has been provided to any entity, inclusive of the memberships or networks of such entities, which may arise from the use of any dissemination method.

(C) Provide only public information concerning notices of funding opportunities.

(D) Seek the greatest cost savings to the Government, whenever possible.

(ii) Nothing in this part will be interpreted as to limit, impede, or otherwise prevent the attendance of any USDA awarding agency's staff, acting in their official capacity, at a conference, event, or similar activity, for the purposes of disseminating public information concerning notices of funding opportunities.

(2) Applications must be evaluated objectively by independent reviewers in accordance with evaluation criteria set forth in writing by the USDA awarding agency. USDA awarding agencies must establish written procedures to gain reasonable assurance that individuals selected to serve as independent reviewers are qualified to conduct any assigned review activity and that applications are scored by independent reviewers solely on the basis of criteria announced in the respective published notice of funding opportunity. Independent reviewers must make written comments or make a written determination of scoring, as appropriate, concerning each application to which they are assigned.

(i) Independent reviewers may be from the private or public sector, including another Federal agency, or within the awarding agency. Independent reviewers must not be any individual who holds or has been delegated approval or award authority for the applications being reviewed or components thereof.

(ii) Anyone who has or might appear to have a conflict of interest with any element of an application considered for selection or funding will be ineligible to serve as an independent reviewer. A conflict of interest might arise when the prospective independent reviewer, the reviewer's immediate family members, or the reviewer's partner, 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 or other interest in or tangible personal benefit from the applicant or applicant organizations; or is negotiating for, or has any arrangement, concerning prospective employment.

(3) Notwithstanding this paragraph (b), unless directed by Congress or authorized by statute, USDA awarding agencies may, but are not required to, review, evaluate for eligibility, or otherwise consider for funding any unsolicited application, proposal materials, ideas, pitches, or any other request for Federal funds provided by any entity

for the purpose of obtaining Federal financial assistance.

(c) The final decision to award is at the discretion of the awarding official in each USDA awarding agency. The awarding official must consider the ranking, comments, and recommendations from the respective independent reviewers, and any other pertinent information before deciding which applications to approve and their order of approval. Any appeals by applicants regarding the awarding decision must be handled by the awarding agency using existing, written agency appeal procedures.

(d) The awarding official may make a determination that competition is not deemed appropriate for a particular transaction. Such determination must be made in writing on a case-by-case basis and be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Government and necessary to the accomplishment of the goals of USDA. Reasons for considering noncompetitive awards are:

(1) Nonmonetary awards of property or services.

(2) Awards of less than $100,000.

(3) Awards to fund continuing work already started under a previous award for which competition for continued support would have a significant adverse effect on continuity or completion of the activity.

(4) Time constraints associated with a public health, safety, welfare, or national security requirement preclude competition.

(e) USDA awarding agencies may establish alternate exceptions from competition for discretionary awards. All such alternative exceptions will be subject to review and approval both by the Secretary and by OMB, pursuant to pursuant to 2 CFR 200.102, and 2 CFR 200.107 when applicable, and publicly set forth in writing by the USDA awarding agency.

(f) All actions taken USDA awarding agencies for the purpose of accomplishing any element of Federal financial assistance programs, awards, and any related or subsequent transactions, must comply with the direction set forth in Office of Federal Procurement Policy (OFPP) Policy Letter 11–01 and successor policy regarding the performance of inherently governmental and critical functions.

## Subpart B—Miscellaneous

### §415.2 Acknowledgement of USDA support on information dissemination products.

Recipients must have an acknowledgement of USDA awarding agency support placed on any information dissemination products produced with any Federal financial assistance support, including those which report the results or, or describe, a Federal financial assistance-supported activity.

(a) Unless the provisions of the Federal financial assistance 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 public.

(2) [Reserved]

(b) USDA awarding agencies must require award terms and conditions imposed for the specific purpose of complying with law, regulation, or USDA policy, related to the acknowledgement of USDA awarding agency Federal financial assistance support.

## 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:

*Order* means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled Intergovernmental Review of Federal Programs.

*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 must publish, no less than annually, 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. This list must be available on the USDA's public website.

### § 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 substitution 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 or on *Grants.gov*, in accordance with § 415.5 for intergovernmental review under these regulations. Each State, before selecting programs and activities, must consult with local elected officials.

(b) Each State that adopts a process must 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 must 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.

### § 415.9 Communication with State and local elected officials.

(a) The Secretary provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or an activity that is not covered under the State process.

(b) This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which the Department in its discretion deems appropriate.

(c) In order to facilitate communication with State and local officials the Secretary has established an office within the Department to receive all communications pertinent to this Order. Communications should be sent to:

(1) The Office of the Chief Financial Officer, Room 143–W, 1400 Independence Avenue SW, Washington, DC 20250, Attention: E.O. 12372; or,

(2) As identified on the USDA's public website, an email address for electronic communications.

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

(a) Except in unusual circumstances, the Secretary gives State processes or directly affected State, areawide, regional, and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed Federal financial assistance in the form of noncompetitive continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance other than noncompetitive continuation awards.

(b) This section also applies to comments in cases in which the review, coordination and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act must allow areawide agencies a 60-day opportunity for review and comment.

### § 415.11 Processing comments.

(a) The Secretary follows the procedures in § 415.12 if:

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies; and

(2) That office or official transmits a State process recommendation for a program selected under § 415.8.

(b)(1) The single point of contact is not obligated to transmit comments from State, areawide, regional or local officials and entities where there is no State process recommendation.

(2) If a State process recommendation is transmitted by a single point of contact, all comments from State, areawide, regional and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected by a State process, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a State process recommendation for a non-selected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 415.12.

(e) The Secretary considers comments which do not constitute a State process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of §415.12, when such comments are provided by a single point of contact by the applicant, or directly to the Department by a commenting party.

### § 415.12 Accommodation of intergovernmental concerns.

(a) If a State process provides a State process recommendation to the Department through its single point of contact, the Secretary either—

(1) Accepts the recommendations;

(2) Reaches a mutually agreeable solution with the State process; or

(3) Provides the single point of contact with a written explanation of the decision, as determined by the Secretary. The Secretary may also supplement the written explanation by also providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

### § 415.13 Interstate situations.

(a) The Secretary is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials in States which have adopted a process and which selected the Department's program or activity;

(3) Making efforts to identify and notify the affected State, areawide, regional and local officials and entities in those States that have not adopted a process under the Order or do not select the Department's program or activity; and

(4) Responding, pursuant to §415.12, if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in §415.12 if a State process provides a State process recommendation to the Department through a single point of contact.

### § 415.14 Simplification, consolidation, or substitution of State plans.

(a) As used in this section:

(1) Simplify means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) Consolidate means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, and the planning period for the consolidated plan.

(3) Substitute means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute Federally required State plans without prior approval by the Secretary.

(c) The Secretary reviews each State plan a State has simplified, consolidated or substituted and accepts the plan only if its contents meet Federal requirements.

### § 415.15 Waivers.

In an emergency, the Secretary may waive any provision in Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities, 2 CFR 415.3 to 415.14.

# PART 416—GENERAL PROGRAM ADMINISTRATIVE REGULATIONS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Sec.

416.1 Special procurement provisions.
416.2 [Reserved]

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

SOURCE: 89 FR 68326, Aug. 26, 2024, unless otherwise noted.

## § 416.1 Special procurement provisions.

(a) In order to ensure objective contractor performance and eliminate unfair competitive advantage, a prospective contractor that develops or drafts specifications, requirements, statements of work, invitations for bids, request for proposals, contract term and conditions or other documents for use by a State in conducting a procurement under the USDA entitlement programs specified in 2 CFR 200.101(f)(4) through (7) must be excluded from competing for such procurements. Such prospective contractors are ineligible for contract awards resulting from such procurements regardless of the procurement method used. However, prospective contractors may provide States with specification information related to a State procurement under the USDA entitlement programs specified in 2 CFR 200.101(f)(4) through (7) and still compete for the procurement if the State, and not the prospective contractor, develops or drafts the specifications, requirements, statements of work, invitations for bid, and/or requests for proposals used to conduct the procurement.

(b) Procurements by States under USDA entitlement programs specified in 2 CFR 200.101(f)(4) through (7) must be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences.

## § 416.2 [Reserved]

# PART 417—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

417.10 What does this part do?
417.20 Does this part apply to me?
417.30 What policies and procedures must I follow?

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417.137 Who in the USDA may grant an exception to let an excluded person participate in a covered transaction?

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417.210 Which nonprocurement transactions are covered transactions?
417.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?
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417.332 What methods must I use to pass down requirements to participants in lower-tier covered transactions with whom I intend to do business?

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Subpart F—[Reserved]

Subpart G—Suspension

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417.865 How long may my debarment last?
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### Subpart I—Definitions

417.930 Debarring official (USDA supplement to government-wide definition at 2 CFR 180.930).
417.935 Disqualified (USDA supplement to government-wide definition at 2 CFR 180.935).
417.1010 Suspending official (USDA supplement to government-wide definition at 2 CFR 180.1010).

### Subpart J—[Reserved]

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 2209j; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); Pub. L. 101–576, 104 Stat. 2838; E.O. 12549 (51 FR 6370, 3 CFR, 1986 Comp., p. 189); E.O. 12689 (54 FR 34131, 3 CFR, 1989 Comp., p. 235); 2 CFR part 180; 7 CFR 2.28.

SOURCE: 89 FR 68326, Aug. 26, 2024, unless otherwise noted.

#### § 417.10 What does this part do?

This part adopts the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the USDA policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the USDA to the OMB guidance, as supplemented by this part. For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, USDA policies and procedures are those in the OMB guidance. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR, 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

#### § 417.20 Does this part apply to me?

Through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a:

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970, as supplemented by §§ 417.215 and 417.220);

(b) Respondent in a USDA debarment and suspension action;

(c) USDA debarment or suspension official; or

(d) USDA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

#### § 417.30 What policies and procedures must I follow?

The USDA policies and procedures that you must follow are the policies and procedures specified in this regulation and each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by 2 CFR 180.220 as supplemented by § 417.220. For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, USDA policies and procedures are those in the OMB guidance.

## Subpart A—General

#### § 417.137 Who in the USDA may grant an exception to let an excluded person participate in a covered transaction?

Within the USDA, a debarring official may grant an exception to let an excluded person participate in a covered transaction as provided under 2 CFR 180.135.

## Subpart B—Covered Transactions

#### § 417.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in 2 CFR 180.970, are covered transactions unless listed in § 417.215.

#### § 417.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?

(a) *Transactions not covered.* In addition to the nonprocurement transactions listed in 2 CFR 180.215, the following nonprocurement transactions are not covered transactions:

(1) An entitlement or mandatory award required by a statute, including a lower tier entitlement or mandatory award that is required by a statute.

(2) The export or substitution of Federal timber governed by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (The ''Export Act''), which prevents a debarred person from entering into any contract for the purchase of unprocessed timber from Federal lands. See 16 U.S.C. 620d(d)(1)(A).

(3) The receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety, and animal and plant health and safety.

(4) The receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services.

(5) If the person is a State or local government, the provision of official grading and inspection services, animal damage control services, animal and plant health and safety inspection services.

(6) The receipt of licenses, permits, or certificates under regulatory programs conducted in the interest of ensuring fair trade practices.

(7) Permits, licenses, exchanges and other acquisitions of real property, rights of way, and easements under natural resource management programs.

(8) Any transaction to be implemented outside the United States that is below the primary tier covered transaction in a USDA foreign assistance program.

(9) Any transaction to be implemented outside the United States that is below the primary tier covered transaction in a USDA export credit guarantee program or direct credit program.

(b) *Limited requirement to check SAM.gov.* Notwithstanding the fact that transactions to be implemented outside the United States that are below the primary tier covered transaction in a USDA foreign assistance program, export credit guarantee program or direct credit program are not covered transactions, pursuant to paragraphs (a)(8) and (9) of this section, primary tier participants under these programs must check *SAM.gov* prior to entering into any transaction with a person at the first lower tier and must not enter into such a transaction if the person is excluded or disqualified in *SAM.gov*.

(c) *Exception.* A cause for suspension or debarment under 2 CFR 180.700 or 2 CFR 180.800 may be based on the actions of a person with respect to a procurement or nonprocurement transaction under a USDA program even if such transaction has been excluded from covered transaction status by this section or § 417.220.

### § 417.220 Are any procurement contracts included as covered transactions?

In addition to the procurement contracts listed in 2 CFR 180.220, the following procurement contracts are covered transactions:

(a) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction covered under § 417.210, and the contract amount is expected to equal or exceed $25,000.

(2) [Reserved]

(b) Any procurement contract to be implemented outside the United States that is below the primary tier covered transaction in a USDA foreign assistance program is not a covered transaction, notwithstanding the provisions in 2 CFR 180.220(a) and 2 CFR 180.220(b) and paragraph (a) of this section.

(c) Any procurement contract to be implemented outside the United States that is below the primary tier covered transaction in a USDA export credit guarantee program or direct credit program is not a covered transaction, notwithstanding the provisions in 2 CFR 180.220(a) and 2 CFR 180.220(b) and paragraph (a) of this section.

(d) Notwithstanding the fact that procurement contracts to be implemented outside the United States that are below the primary tier covered transaction in a USDA foreign assistance program, export credit guarantee program or direct credit program are

not covered transactions, pursuant to paragraph (b) and (c) of this section, primary tier participants under these programs must check *SAM.gov* prior to entering into any procurement contract that is expected to equal or exceed $25,000 with a person at the first lower tier and must not enter into such a procurement contract if the person is excluded or disqualified in *SAM.gov*.

### § 417.221 How would the exclusions from coverage for the USDA's foreign assistance programs apply?

The primary tier covered transaction would be the food aid grant agreement entered into between USDA and a program participant, such as a U.S. private voluntary organization. USDA would have to check *SAM.gov* before entering into the food aid grant agreement to ensure that the U.S. private voluntary organization that would be the primary tier participant is not excluded or disqualified. A transaction at the first lower tier might be a subrecipient agreement between the U.S. private voluntary organization and a foreign subrecipient of the commodities that were provided under the food aid grant agreement. Pursuant to § 417.215(a)(8), this nonprocurement transaction would not be a covered transaction. In addition, a transaction at the first lower tier might be a procurement contract entered into between the U.S. private voluntary organization and a foreign entity to provide supplies or services that are expected to equal or exceed $25,000 in value and that are needed by such organization to implement activities under the food aid grant agreement. Pursuant to § 417.220(b), this procurement contract would not be a covered transaction. However, pursuant to §§ 417.215(b) and 417.220(d), the U.S. private voluntary organization would be prohibited from entering into, at the first lower tier, an agreement with a subrecipient or a procurement contract that is expected to equal or exceed $25,000 with an entity that appears in *SAM.gov* as excluded or disqualified.

### § 417.222 How would the exclusions from coverage for the USDA's export credit guarantee and direct credit programs apply?

(a) *Export credit guarantee program.* In the case of the export credit guarantee program, the primary tier covered transaction would be the guarantee issued by the USDA to a U.S. exporter. The U.S. exporter usually assigns the guarantee to a U.S. financial institution, and this would create another primary tier covered transaction between USDA and the U.S. financial institution. USDA would have to check the *SAM.gov* before issuing a guarantee or accepting a guarantee assignment to ensure that the U.S. exporter or financial institution that would be the primary tier participant is not excluded or disqualified. A transaction at the first lower tier under the export credit guarantee program might be a payment obligation of a foreign bank to the U.S. exporter to pay on behalf of the importer for the exported U.S. commodities that are covered by the guarantee. Similarly, a transaction at the first lower tier might be a payment obligation of a foreign bank under an instrument, such as a loan agreement or letter of credit, to the U.S. financial institution assigned the guarantee, which has paid the exporter for the exported U.S. commodities and, in so doing, issued a loan to the foreign bank, which the foreign bank is obligated to repay on deferred payment terms. Pursuant to § 417.215(a)(9), these nonprocurement transactions would not be covered transactions. In addition, a transaction at the first lower tier under the export credit guarantee program might be a procurement contract (*i.e.*, a contract for the purchase and sale of goods) that is expected to equal or exceed $25,000 entered into between the U.S. exporter and the foreign importer for the U.S. commodities, the payment for which is covered by the guarantee. Pursuant to § 417.220(c), this procurement contract would not be a covered transaction. However, pursuant to §§ 417.215(b) and 417.220(d), the U.S. exporter or U.S. financial institution would be prohibited from entering into, at the first lower tier, an agreement with an importer (or intervening

purchaser) or foreign bank or a procurement contract that is expected to equal or exceed $25,000 with an entity that appears on the *SAM.gov* as excluded or disqualified.

(b) *Direct credit program.* In the case of the direct credit program, the primary tier covered transaction would be the financing agreement between the USDA and the U.S. exporter. USDA purchases the exporter's account receivable in a particular transaction pursuant to the financing agreement. On occasion, such a transaction may contemplate a payment obligation of a U.S. or foreign bank to make the required payments. USDA would have to check *SAM.gov* before entering into a financing agreement or accepting such a payor to ensure that the U.S. exporter or the bank, if any, that would be the primary tier participant is not excluded or disqualified. A transaction at the first lower tier might be a payment obligation of the importer to pay the exporter for the exported U.S. commodities that are covered by the financing agreement. Pursuant to § 417.215(a)(9), this nonprocurement transaction would not be a covered transaction. In addition, a transaction at the first lower tier might be a procurement contract that is expected to equal or exceed $25,000 entered into between the U.S. exporter and the foreign importer for the U.S. commodities, the payment for which is covered by the financing agreement. Pursuant to § 417.220(c), this procurement contract would not be a covered transaction. However, pursuant to §§ 417.215(b) and 417.220(d), the U.S. exporter would be prohibited from entering into, at the first lower tier, an agreement with an importer (or intervening purchaser) or bank, or a procurement contract that is expected to equal or exceed $25,000 with an entity that appears in *SAM.gov* as excluded or disqualified.

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 417.332 What methods must I use to pass down requirements to participants in lower-tier covered transactions with whom I intend to do business?

You as a participant must include a term or condition in lower tier covered transactions requiring lower tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by subpart C of this part.

## Subpart D—Responsibilities of Department of Agriculture Officials Regarding Transactions

### § 417.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower tier covered transactions.

## Subpart E—[Reserved]

## Subpart F—[Reserved]

## Subpart G—Suspension

### § 417.755 When will I know whether the USDA suspension is continued or terminated?

The record will remain open for the full 30 days, as called for in 2 CFR 180.725, even when you make a submission before the 30 days expire.

## Subpart H—Debarment

### § 417.865 How long may my debarment last?

The Secretary must permanently debar from participation in USDA programs any individual, organization, corporation, or other entity convicted of a felony for knowingly defrauding

the United States in connection with any program administered by USDA.

(a) *Reduction.* A debarment under this paragraph may be reduced by the Secretary to a period of not less than 10 years.

(b) *Exemption.* A debarment under this paragraph will not apply with regard to participation in USDA domestic food assistance programs. For purposes of this paragraph, participation in a domestic food assistance program does not include acting as an authorized retail food store in the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Assistance Program for Women, Infants, and Children (WIC), or as a nonbeneficiary entity in any of the domestic food assistance programs. The programs include:

(1) Special Nutrition Assistance Program, 7 U.S.C. 2011, *et seq.;*

(2) Food Distribution Program on Indian Reservations, 7 U.S.C. 2013(b);

(3) National School Lunch Program, 42 U.S.C. 1751, *et seq.;*

(4) Summer Food Service Program for Children, 42 U.S.C. 1761; Child and Adult Care Food Program, 42 U.S.C. 1766;

(5) Special Milk Program for Children, 42 U.S.C. 1772; School Breakfast Program, 42 U.S.C. 1773;

(6) Special Supplemental Nutrition Program for Women, Infants, and Children, 42 U.S.C. 1786;

(7) Commodity Supplemental Food Program, 42 U.S.C. 612c note;

(8) WIC Farmers Market Nutrition Program, 42 U.S.C. 1786;

(9) Senior Farmers' Market Nutrition Program, 7 U.S.C. 3007; and

(10) Emergency Food Assistance Program, 7 U.S.C. 7501, *et seq.*

### § 417.870 When do I know if the USDA debarring official debars me?

The record will remain open for the full 30 days, as called for in 2 CFR 180.820, even when you make a submission before the 30 days expire.

## Subpart I—Definitions

### § 417.930 Debarring official (USDA supplement to government-wide definition at 2 CFR 180.930).

The head of an organizational unit within USDA (*e.g.*, Administrator, Food and Nutrition Service), who has been delegated authority in 7 CFR part 2 to carry out a covered transaction, is delegated authority to act as the debarring official in connection with such transaction. This authority to act as a debarring official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may redelegate the authority to act as a debarring official to the Deputy Chief for the National Forest System or an Associate Deputy Chief for the National Forest System.

### § 417.935 Disqualified (USDA supplement to government-wide definition at 2 CFR 180.935).

*Disqualified* means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689), or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 3142);

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368), and E.O. 11738 (38 FR 25161, 3 CFR, 1973 Comp., p. 799);

(d) 515(h) of the Federal Crop Insurance Act (7 U.S.C. 1515(h));

(e) Section 12 of the Food and Nutrition Act of 2008 (7 U.S.C. 2021).

### § 417.1010 Suspending official (USDA supplement to government-wide definition at 2 CFR 180.1010).

The head of an organizational unit within USDA (*e.g.*, Administrator, Food and Nutrition Service), who has been delegated authority in 7 CFR part 2 to carry out a covered transaction, is delegated authority to act as the suspending official in connection with such transaction. This authority to act

as a suspending official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may redelegate the authority to act as a suspending official to the Deputy Chief for the National Forest System or an Associate Deputy Chief for the National Forest System.

## Subpart J—[Reserved]

# PART 418—NEW RESTRICTIONS ON LOBBYING

Sec.


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APPENDIX A TO PART 418—CERTIFICATION REGARDING LOBBYING


AUTHORITY: 31 U.S.C. 1352; 5 U.S.C. 301; 2 CFR 200.450.

SOURCE: 89 FR 68330, Aug. 26, 2024, unless otherwise noted.

## Subpart A—General

### §418.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement must file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement must file with that agency a disclosure form, in the OMB-approved format, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan must file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan must file with that agency a disclosure form, in the OMB-approved format, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

**§ 418.105 Definitions.**

For purposes of this part:

(a) *Agency*, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action* means:

(1) Any of the following Federal actions:

(i) The awarding of any Federal contract;

(ii) The making of any Federal grant;

(iii) The making of any Federal loan;

(iv) The entering into of any cooperative agreement; and,

(v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative* agreement means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian Tribe and Tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee and loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under 5 U.S.C., including a position under a temporary appointment;

(2) A member of the uniformed services as defined in 37 U.S.C. 101(3);

(3) A special Government employee as defined in 18 U.S.C. 202; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, 5 U.S.C. Appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person will be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

### §418.110 Certification and disclosure.

(a) Each person must file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b)(1) Each person must file a certification, and a disclosure form, if required, upon receipt by such person of:

(i) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(ii) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000,

(2) Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person must file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person must file a certification, and a disclosure form, if required, to the next tier above who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding $100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,

(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement.

(e) All disclosure forms, but not certifications, must be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person must forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section will be treated as a material representation of fact upon which all receiving tiers must rely. All liability arising from an erroneous representation will be borne solely by the tier filing that representation and must not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by 31 U.S.C. 1352.

(g) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C of this part.

## Subpart B—Activities by Own Employees

### § 418.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 418.100(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95–507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

### § 418.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 418.100(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, ''professional and technical services'' will be limited to advice and analysis directly applying any professional or technical discipline.

For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

### §418.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

## Subpart C—Activities by Other Than Own Employees

### §418.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in §418.100(a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in §418.110(a) and (b) regarding filing a disclosure form by each person, if required, will not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, ''professional and technical services'' will be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of

his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

## Subpart D—Penalties and Enforcement

### § 418.400 Penalties.

(a) Any person who makes an expenditure prohibited herein will be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (in the OMB-approved format) to be filed or amended if required herein, will be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency will consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section will be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons will be subject to an appropriate civil penalty between $10,000 and $100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

### § 418.405 Penalty procedures.

Agencies must impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804 through 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

### § 418.410 Enforcement.

The head of each agency must take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

## Subpart E—Exemptions

### § 418.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary must transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

APPENDIX A TO PART 418—CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned must complete and submit Standard Form-LLL, ''Disclosure of Lobbying Activities,'' in accordance with its instructions.

(3) The undersigned must require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients must certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

STATEMENT FOR LOAN GUARANTEES AND LOAN INSURANCE

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned must complete and submit Standard Form-LLL, ''Disclosure of Lobbying Activities,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement will be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

# PART 421—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

421.10 What does this part do?
421.20 Does this part apply to me?
421.30 What policies and procedures must I follow?

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

421.225 Whom in the USDA does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients Who Are Individuals

421.300 Whom in the USDA does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

421.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E—Violations of This Part and Consequences

421.500 Who in the USDA determines that a recipient other than an individual violated the requirements of this part?
421.505 Who in the USDA determines that a recipient who is an individual violated the requirements of this part?

AUTHORITY: 41 U.S.C. 701–707.

SOURCE: 76 FR 76610, Dec. 8, 2011, unless otherwise noted.

### § 421.10 What does this part do?

This part requires that the award and administration of USDA grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 8101–8106, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for USDA's grants and cooperative agreements; and

(b) Establishes USDA policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 8106 for Governmentwide implementing regulations.

[76 FR 76610, Dec. 8, 2011, as amended at 89 FR 68333, Aug. 26, 2024]

### § 421.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of a USDA grant or cooperative agreement; or

(b) USDA awarding official.

### § 421.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| (1) 2 CFR 182.225(a) | § 421.225 | Whom in the USDA a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace. |
| (2) 2 CFR 182.300(b) | § 421.300 | Whom in the USDA a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| (3) 2 CFR 182.500 | § 421.500 | Who in the USDA is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| (4) 2 CFR 182.505 | § 421.505 | Who in the USDA is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, USDA policies and procedures are the same as those in the OMB guidance.

## Subpart A—Purpose and Coverage [Reserved]

## Subpart B—Requirements for Recipients Other Than Individuals

### § 421.225 Whom in the USDA does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the awarding official for each USDA agency from which the recipient currently has an award.

## Subpart C—Requirements for Recipients Who Are Individuals

### § 421.300 Whom in the USDA does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual that is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify the awarding official for each USDA agency from which the recipient currently has an award.

## Subpart D—Responsibilities of Agency Awarding Officials

### § 421.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

*Drug-free workplace.* You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of part 421, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 8101–8106).

[89 FR 68333, Aug. 26, 2024]

## Subpart E—Violations of This Part and Consequences

### § 421.500 Who in the USDA determines that a recipient other than an individual violated the requirements of this part?

The Secretary of Agriculture and the Secretary's designee or designees are authorized to make the determination under 2 CFR 182.500.

### § 421.505 Who in the USDA determines that a recipient who is an individual violated the requirements of this part?

The Secretary of Agriculture and the Secretary's designee or designees are authorized to make the determination under 2 CFR 182.505.

# PART 422—RESEARCH INSTITUTIONS CONDUCTING USDA-FUNDED EXTRAMURAL RESEARCH; RESEARCH MISCONDUCT

Sec.

422.1 Definitions.
422.2 Procedures.
422.3 Inquiry, investigation, and adjudication.
422.4 USDA Panel to determine appropriateness of research misconduct policy.
422.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.
422.6 Notification of USDA of allegations of research misconduct.
422.7 Notification of ARIO during an inquiry or investigation.
422.8 Communication of research misconduct policies and procedures.
422.9 Documents required.
422.10 Reporting to USDA.
422.11 Research records and evidence.
422.12 Remedies for noncompliance.
422.13 Appeals.
422.14 Relationship to other requirements.

AUTHORITY: 5 U.S.C. 301; 7 CFR 2610.1(c); Federal Policy on Research Misconduct (65 FR 76260)

SOURCE: 89 FR 68333, Aug. 26, 2024, unless otherwise noted.

### § 422.1 Definitions.

The following definitions apply to this part:

*Adjudication.* The stage in response to an allegation of research misconduct when the outcome of the investigation is reviewed, and appropriate corrective actions, if any, are determined. Corrective actions generally will be administrative in nature, such as termination of an award, debarment, award restrictions, recovery of funds, or correction of the research record. However, if there is an indication of violation of civil or criminal statutes, civil or criminal sanctions may be pursued.

*Agency Research Integrity Officer (ARIO).* The individual appointed by a USDA agency that conducts research and who is responsible for:

(1) Receiving and processing allegations of research misconduct as assigned by the USDA RIO;

(2) Informing OIG and the USDA RIO and the research institution associated with the alleged research misconduct, of allegations of research misconduct

in the event it is reported to the USDA agency;

(3) Ensuring that any records, documents and other materials relating to a research misconduct allegation are provided to OIG when requested;

(4) Coordinating actions taken to address allegations of research misconduct with respect to extramural research with the research institution(s) at which time the research misconduct is alleged to have occurred, and with the USDA RIO;

(5) Overseeing proceedings to address allegations of extramurally funded research misconduct at intramural research institutions and research institutions where extramural research occurs;

(6) Ensuring that agency action to address allegations of research misconduct at USDA agencies performing extramurally funded research is performed at an organizational level that allows an independent, unbiased, and equitable process;

(7) Immediately notifying OIG, the USDA RIO, and the applicable research institution if:

(i) Public health or safety is at risk;

(ii) USDA's resources, reputation, or other interests need protecting;

(iii) Research activities should be suspended;

(iv) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;

(v) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(vi) The scientific community or the public should be informed; or

(vii) Behavior that is or may be criminal in nature is discovered at any point during the inquiry, investigation, or adjudication phases of the research misconduct proceedings;

(8) Documenting the dismissal of the allegation, and ensuring that the name of the accused individual and/or institution is cleared if an allegation of research misconduct is dismissed at any point during the inquiry or investigation phase of the proceedings;

(9) Other duties relating to research misconduct proceedings as assigned.

*Allegation.* A disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement, or by other means of communication to an institutional or USDA official.

*Applied research.* Systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

*Assistant Inspector General for Investigations.* The individual in OIG who is responsible for OIG's domestic and foreign investigative operations through OIG's national and regional investigative offices.

*Basic research.* Systematic study directed toward fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications towards processes or products in mind.

*Extramural research.* Research conducted by any research institution or entity other than the Federal agency to which the funds supporting the research were appropriated. Research institutions conducting extramural research may include Federal research facilities.

*Fabrication.* Making up data or results and recording or reporting them.

*Falsification.* Manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

*Finding of research misconduct.* The conclusion, proven by a preponderance of the evidence, that research misconduct occurred, that such research misconduct represented a significant departure from accepted practices of the relevant research community, and that such research misconduct was committed intentionally, knowingly, or recklessly.

*Inquiry.* The stage in the response to an allegation of research misconduct when an assessment is made to determine whether the allegation has substance and whether an investigation is warranted.

*Intramural research.* Research conducted by a Federal Agency, to which funds were appropriated for the purpose of conducting research.

*Investigation*. The stage in the response to an allegation of research misconduct when the factual record is formally developed and examined to determine whether to dismiss the case, recommend a finding of research misconduct, and/or take other appropriate remedies.

*Office of Inspector General (OIG)*. The Office of Inspector General of the United States Department of Agriculture.

*Office of Science and Technology Policy (OSTP)*. The Office of Science and Technology Policy of the Executive Office of the President.

*Plagiarism*. The appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

*Preponderance of the evidence*. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

*Research*. All basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals regardless of the funding mechanism used to support it.

*Research institution*. All organizations using Federal funds for research, including, for example, colleges and universities, Federally funded research and development centers, national user facilities, industrial laboratories, or other research institutes. Activities which meet this definition constitute research for purposes of this part, whether or not they are conducted or supported under a program which is considered ''research'' for other purposes. For example, some demonstration and service programs may include research/scientific activities.

*Research misconduct*. Fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion.

*Research record*. The record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, research records (including data, notes, journals, laboratory records (both physical and electronic)), progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

*USDA*. United States Department of Agriculture.

*USDA Research Integrity Officer (USDA RIO)*. The individual designated by the Office of the Under Secretary for Research, Education, and Economics (REE) who is responsible for:

(1) Overseeing USDA agency responses to allegations of research misconduct;

(2) Ensuring that agency research misconduct procedures are consistent with this part;

(3) Receiving and assigning allegations of research misconduct reported by the public;

(4) Developing Memoranda of Understanding with agencies that elect not to develop their own research misconduct procedures;

(5) Monitoring the progress of all research misconduct cases; and

(6) Serving as liaison with OIG to receive allegations of research misconduct when they are received via the OIG Hotline.

### § 422.2 Procedures.

Research institutions that conduct extramural research funded by USDA must foster an atmosphere conducive to research integrity. They must develop or have procedures in place to respond to allegations of research misconduct that ensure:

(a) Appropriate separations of responsibility for inquiry, investigation, and adjudication;

(b) Objectivity;

(c) Due process;

(d) Whistleblower protection;

(e) Confidentiality—to the extent possible and consistent with a fair and thorough investigation and as allowed by law, knowledge about the identity of subjects and complainants is limited to those who need to know; and

(f) Timely resolution.

### § 422.3 Inquiry, investigation, and adjudication.

A research institution that conducts extramural research funded by USDA bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct allegations reported directly to it. The research institution must perform an inquiry in response to an allegation, and must follow the inquiry with an investigation if the inquiry determines that the allegation or apparent instance of research misconduct has substance. The responsibilities for adjudication must be separate from those for inquiry and investigation. In most instances, USDA will rely on a research institution conducting extramural research to promptly:

(a) Initiate an inquiry into any suspected or alleged research misconduct;

(b) Conduct a subsequent investigation, if warranted;

(c) Acquire, prepare, and maintain appropriate records of allegations of extramural research misconduct and all related inquiries, investigations, and findings; and

(d) Take action to ensure the following:

(1) The integrity of research;

(2) The rights and interests of the subject of the investigation and the public are protected;

(3) The observance of legal requirements or responsibilities including cooperation with criminal investigations; and

(4) Appropriate safeguards for subjects of allegations, as well as complainants (see § 422.6). These safeguards should include timely written notification of subjects regarding substantive allegations made against them; a description of all such allegations; reasonable access to the data and other evidence supporting the allegations; and the opportunity to respond to allegations, the supporting evidence and the proposed findings of research misconduct, if any.

### § 422.4 USDA Panel to determine appropriateness of research misconduct policy.

Before USDA will rely on a research institution to conduct an inquiry, investigation, and adjudication of an allegation in accordance with this part, the research institution where the research misconduct is alleged must provide the ARIO its policies and procedures related to research misconduct at the institution. The research institution has the option of providing either a written copy of such policies and procedures or a website address where such policies and procedures can be accessed. The ARIO to whom the policies and procedures were made available must convene a panel comprised of the USDA RIO and ARIOs from the Forest Service, the Agricultural Research Service, and the National Institute of Food and Agriculture. The Panel will review the research institution's policies and procedures for compliance with the OSTP Policy and render a decision regarding the research institution's ability to adequately resolve research misconduct allegations. The ARIO will inform the research institution of the Panel's determination that its inquiry, investigation, and adjudication procedures are sufficient. If the Panel determines that the research institution does not have sufficient policies and procedures in place to conduct inquiry, investigation, and adjudication proceedings, or that the research institution is in any way unfit or unprepared to handle the inquiry, investigation, and adjudication in a prompt, unbiased, fair, and independent manner, the ARIO will inform the research institution in writing of the Panel's decision. An appropriate USDA agency, as determined by the Panel, will then conduct the inquiry, investigation, and adjudication of research misconduct in accordance with this part. If an allegation of research misconduct is made regarding extramural research conducted at a Federal research institution (whether USDA or not), it is presumed that the Federal research institution has research misconduct procedures consistent with the OSTP Policy. USDA reserves the right to convene the Panel to assess the sufficiency of a Federal agency's research misconduct procedures, should there be any question whether the agency's procedures will ensure a fair, unbiased, equitable, and independent inquiry, investigation, and adjudication process.

### § 422.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.

(a) USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation. This may be necessary if the USDA RIO or ARIO believes, using sound discretion, that despite the Panel's finding that the research institution in question had appropriate and OSTP-compliant research misconduct procedures in place, the research institution conducting the extramural research at issue:

(1) Did not adhere to its own research misconduct procedures;

(2) Did not conduct research misconduct proceedings in a fair, unbiased, or independent manner; or

(3) Has not completed research misconduct inquiry, investigation, or adjudication in a timely manner.

(b) Additionally, USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation for any other reason that the USDA RIO or ARIO considers it appropriate to conduct research misconduct proceedings in lieu of the research institution's conducting the extramural research at issue. This right is subject to paragraph (c) of this section.

(c) In cases where the USDA RIO or ARIO believes it is necessary for USDA to conduct its own inquiry, investigation, and adjudication subsequent to the proceedings of the research institution related to the same allegation, the USDA RIO or ARIO will reconvene the Panel, which will determine whether it is appropriate for the relevant USDA agency to conduct the research misconduct proceedings related to the allegation(s) of research misconduct. If the Panel determines that it is appropriate for a USDA agency to conduct the proceedings, the ARIO will immediately notify the research institution in question. The research institution must then promptly provide the relevant USDA agency with documentation of the research misconduct proceedings the research institution has conducted to that point, and the USDA agency will conduct research misconduct proceedings in accordance with the Agency research misconduct procedures.

### § 422.6 Notification of USDA of allegations of research misconduct.

(a) Research institutions that conduct USDA-funded extramural research must promptly notify OIG and the USDA RIO of all allegations of research misconduct or violations of Federal criminal statutes involving USDA funds when the institution inquiry into the allegation warrants the institution moving on to an investigation.

(b) Individuals at research institutions who suspect research misconduct at the institution should report allegations in accordance with the institution's research misconduct policies and procedures. Anyone else who suspects that researchers or research institutions performing Federally funded research may have engaged in research misconduct is encouraged to make a formal allegation of research misconduct to OIG.

(1) OIG has established a hotline for USDA employees and the general public to report fraud, waste, abuse, and mismanagement in USDA programs including allegations of research misconduct. Complaints, which may be submitted anonymously, must be filed with the OIG by submitting a complaint via the hotline on OIG's public website, sending a fax, or writing a letter.

(i) The OIG hotline may be accessed at *https://usdaoig.oversight.gov/hotline*.

(ii) Complainants who submit to the hotline on OIG's public website and who wish to provide additional documentation may fax them to (202) 690–2474.

(iii) Letters may be mailed to: United States Department of Agriculture, Office of Inspector General, P.O. Box 23399, Washington, DC 20026–3399.

(2) The USDA RIO may be reached at: USDA Research Integrity Officer, 214W Whitten Building, Washington, DC

20250. Telephone: (202) 690–0745. Email: *researchintegrity@usda.gov*.

(c) To the extent known, the following details should be included in any formal allegation:

(1) The name of the research projects involved, the nature of the alleged misconduct, and the names of the individual or individuals alleged to be involved in the misconduct;

(2) The source or sources of funding for the research project or research projects involved in the alleged misconduct;

(3) Important dates;

(4) Any documentation that bears upon the allegation; and

(5) Any other potentially relevant information.

(d) Safeguards for complainants give individuals the confidence that they can bring allegations of research misconduct made in good faith to the attention of appropriate authorities or serve as complainants to an inquiry or an investigation without suffering retribution. Safeguards include protection against retaliation for complainants who make good faith allegations, fair and objective procedures for the examination and resolution of allegations of research misconduct, and diligence in protecting the positions and reputations of those persons who make allegations of research misconduct in good faith. The identity of complainants who wish to remain anonymous will be kept confidential to the extent permitted by law or regulation.

### § 422.7 Notification of ARIO during an inquiry or investigation.

(a) Research institutions that conduct USDA-funded extramural research must promptly notify the ARIO should the institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) The resources, reputation, or other interests of USDA are in need of protection;

(3) Research activities should be suspended;

(4) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;

(5) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(6) The scientific community or the public should be informed; or

(7) There is reasonable indication of possible violations of civil or criminal law.

(b) If research misconduct proceedings reveal behavior that may be criminal in nature at any point during the proceedings, the institution must promptly notify the ARIO.

### § 422.8 Communication of research misconduct policies and procedures.

Institutions that conduct USDA-funded extramural research are to maintain and effectively communicate to their staff policies and procedures relating to research misconduct, including the guidelines in this part. The institution is to inform their researchers and staff members who conduct USDA-funded extramural research when and under what circumstances USDA is to be notified of allegations of research misconduct, and when and under what circumstances USDA is to be updated on research misconduct proceedings.

### § 422.9 Documents required.

(a) A research institution that conducts USDA-funded extramural research must maintain the following documents related to an allegation of research misconduct at the research institution:

(1) A written statement describing the original allegation;

(2) A copy of the formal notification presented to the subject of the allegation;

(3) A written report describing the inquiry stage and its outcome including copies of all supporting documentation;

(4) A description of the methods and procedures used to gather and evaluate information pertinent to the alleged misconduct during inquiry and investigation stages;

(5) A written report of the investigation, including the evidentiary record and supporting documentation;

(6) A written statement of the findings; and

(7) If applicable, a statement of recommended corrective actions, and any

response to such a statement by the subject of the original allegation, and/or other interested parties, including any corrective action plan.

(b) The research institution must retain the documents specified in paragraph (a) of this section for at least 3 years following the final adjudication of the alleged research misconduct.

### § 422.10 Reporting to USDA.

Following completion of an investigation into allegations of research misconduct, the institution conducting extramural research must provide to the ARIO a copy of the evidentiary record, the report of the investigation, recommendations made to the institution's adjudicating official, the adjudicating official's determination, the institution's corrective action taken or planned, and the written response of the individual who is the subject of the allegation to any recommendations.

### § 422.11 Research records and evidence.

(a) A research institution that conducts extramural research supported by USDA funds, as the responsible legal entity for the USDA-supported research, has a continuing obligation to create and maintain adequate records (including documents and other evidentiary matter) as may be required by any subsequent inquiry, investigation, finding, adjudication, or other proceeding.

(b) Whenever an investigation is initiated, the research institution must promptly take all reasonable and practical steps to obtain custody of all relevant research records and evidence as may be necessary to conduct the research misconduct proceedings. This must be accomplished before the research institution notifies the researcher/respondent of the allegation, or immediately thereafter.

(c) The original research records and evidence taken into custody by the research institution must be inventoried and stored in a secure place and manner. Research records involving raw data must include the devices or instruments on which they reside. However, if deemed appropriate by the research institution or investigator, research data or records that reside on or in instruments or devices may be copied and removed from those instruments or devices as long as the copies are complete, accurate, and have substantially equivalent evidentiary value as the data or records have when the data or records reside on the instruments or devices. Such copies of data or records must be made by a disinterested, qualified technician and not by the subject of the original allegation or other interested parties. When the relevant data or records have been removed from the devices or instruments, the instruments or devices need not be maintained as evidence.

### § 422.12 Remedies for noncompliance.

USDA agencies' implementation procedures identify the administrative actions available to remedy a finding of research misconduct. Such actions may include the recovery of funds, correction of the research record, debarment of the researcher(s) that engaged in the research misconduct, proper attribution, or any other action deemed appropriate to remedy the instance(s) of research misconduct. The agency should consider the seriousness of the misconduct, including, but not limited to, the degree to which the misconduct was knowingly conducted, intentional, or reckless; was an isolated event or part of a pattern; or had significant impact on the research record, research subjects, other researchers, institutions, or the public welfare. In determining the appropriate administrative action, the appropriate agency must impose a remedy that is commensurate with the infraction as described in the finding of research misconduct.

### § 422.13 Appeals.

(a) If USDA relied on an institution to conduct an inquiry, investigation, and adjudication, the alleged person(s) should first follow the institution's appeal policy and procedures.

(b) USDA agencies' implementation procedures, which must be made available on a designated USDA public website, identify the appeal process when a finding of research misconduct is elevated to the agency.

### § 422.14 Relationship to other requirements.

Some of the research covered by this part also may be subject to regulations of other governmental agencies (*e.g.*, a university that receives funding from a USDA agency and also under a grant from another Federal agency). If more than one agency of the Federal Government has jurisdiction, USDA will cooperate with the other agency(ies) in designating a lead agency. When USDA is not the lead agency, it will rely on the lead agency following its policies and procedures in determining whether there is a finding of research misconduct. Further, USDA may, in consultation with the lead agency, take action to protect the health and safety of the public, to promote the integrity of the USDA-supported research and research process, or to conserve public funds. When appropriate, USDA will seek to resolve allegations jointly with the other agency or agencies.

## PART 423—GEOSPATIAL DATA MANAGEMENT AND STANDARDS FOR FEDERAL FINANCIAL ASSISTANCE AWARDS

Sec.
423.1 What does this part do?
423.2 Disclosure of geospatial investments.

AUTHORITY: 43 U.S.C. Ch. 46; 5 U.S.C. 301.

SOURCE: 89 FR 68337, Aug. 26, 2024, unless otherwise noted.

### § 423.1 What does this part do?

This part implements the requirements at 43 U.S.C. 2808(b)(3) which pertain to the disclosure of USDA Federal financial assistance that involves geospatial data, as supplemented by this part.

### § 423.2 Disclosure of geospatial investments.

USDA awarding agencies must ensure that all Federal financial assistance instruments which involve the acquisition, storage, or distribution of geospatial data comply with USDA policy. For all such instruments, USDA awarding agencies must require award terms and conditions necessary for the specific purpose of complying with law, regulation, and USDA policy.

## PARTS 424–499 [RESERVED]

# CHAPTER VI—DEPARTMENT OF STATE


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# PART 600—THE UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

600.101 Applicability.
600.205 Federal awarding agency review of risk posed by applicants.
600.315 Intangible property.
600.407 Prior written approval (prior approval).

AUTHORITY: 5 U.S.C. 301; 22 U.S.C 2651a, 22 U.S.C. 2151, 22 U.S.C. 2451, 22 U.S.C. 1461, 2 CFR part 200.

SOURCE: 79 FR 76019, Dec. 19, 2014, unless otherwise noted.

## § 600.101 Applicability.

Under the authority listed above, the Department of State adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except for:

(a) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 (Subparts A through F) shall apply to all non-Federal entities, except as noted below.

(b) Subparts A through E of 2 CFR part 200 shall apply to all foreign organizations not recognized as Foreign Public Entities and Subparts A through D of 2 CFR part 200 shall apply to all U.S. and foreign for-profit entities, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statute or regulations of a foreign government. The Federal Acquisition Regulation (FAR) at 48 CFR part 30, Cost Accounting Standards, and Part 31 Contract Cost Principles and Procedures takes precedence over the cost principles in Subpart E for Federal awards to U.S. and foreign for-profit entities. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

## § 600.205 Federal awarding agency review of risk posed by applicants.

Use of 2 CFR 200.205 (the DOS review of risk posed by applicants) is required for all selected competitive and non-competitive awards.

## § 600.315 Intangible property.

If the DOS obtains research data solely in response to a FOIA request, the DOS may charge the requester fees consistent with the FOIA and applicable DOS regulations and policies.

## § 600.407 Prior written approval (prior approval).

The non-Federal entity must seek the prior written approval for indirect or special or unusual costs prior to incurring such costs where DOS is the cognizant agency.

# PART 601—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

601.10 What does this part do?
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### Subpart A—General

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### Subpart I—Definitions

601.930 Debarring Official (Department of State supplement to government-wide definition at 2 CFR 180.930).
601.1010 Suspending Official (Department of State supplement to government-wide definition at 2 CFR 180.1010).

### Subpart J [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108; Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549; (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3); CFR, 1989 Comp., p. 235).

SOURCE: 72 FR 10034, Mar. 7, 2007, unless otherwise noted.

#### § 601.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the DOS policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for DOS to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189); Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (31 U.S.C. 6101 note).

#### § 601.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970);

(b) Respondent in a DOS suspension or debarment action;

(c) DOS debarment or suspension official; and

(d) DOS grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

#### § 601.30 What policies and procedures must I follow?

The DOS policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180 and any supplemental policies and procedures set forth in this part.

## Subpart A—General

#### § 601.137 Who in the Department of State may grant an exception to let an excluded person participate in a covered transaction?

The Procurement Executive, Office of the Procurement Executive, DOS, may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Procurement Executive, Office of the Procurement Executive, DOS, grants an exception, the exception must be in writing and state the reason(s) for deviating from the government-wide policy in Executive Order 12549.

## Subpart B—Covered Transactions

#### § 601.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the DOS under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed $25,000. This extends the coverage of the DOS nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).

## Subpart C—Responsibilities of Participants Regarding Transactions

#### § 601.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You, as a participant, must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 601.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–H [Reserved]

## Subpart I—Definitions

### § 601.930 Debarring Official (Department of State supplement to government-wide definition at 2 CFR 180.930).

The Debarring Official for the Department of State is the Procurement Executive, Office of the Procurement Executive (A/OPE).

### § 601.1010 Suspending Official (Department of Energy supplement to government-wide definition at 2 CFR 180.1010).

The Debarring Official for the Department of State is the Procurement Executive, Office of the Procurement Executive (A/OPE).

## Subpart J [Reserved]

# PARTS 602–699 [RESERVED]

# CHAPTER VII—AGENCY FOR INTERNATIONAL DEVELOPMENT


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# PART 700—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

## Subpart A—Acronyms and Definitions


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## Subpart B—General Provisions


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700.10 Cost sharing.
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700.12 Contract provisions.
700.13 Additional provisions for awards to for-profit entities.
700.14 Award Suspension and Termination.
700.15 Disputes.


## Subpart E—Cost Principles [Reserved]

## Subpart F—Audit Requirements [Reserved]

## Subpart G—USAID-Specific Requirements


700.16 Marking.



AUTHORITY: Sec. 621, Public L. 87–195, 75 Stat 445, (22 U.S.C. 2381) as amended, E.O. 12163, Sept 29, 1979, 44 FR 56673; 2 CFR 1979 Comp., p. 435.

SOURCE: 89 FR 63074, Aug. 2, 2024, unless otherwise noted.


## Subpart A—Acronyms and Definitions

### § 700.0 Acronyms.

[Reserved]

### § 700.1 Definitions.

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

*Agreement Officer* means a person with the authority to enter into, administer, terminate, and closeout assistance agreements subject to this part, and make related determinations and findings on behalf of USAID. An Agreement Officer can only act within the scope of a duly authorized warrant or other valid delegation of authority. The term ''Agreement Officer'' includes persons warranted as ''Grant Officers'' and certain authorized representatives of the Agreement Officer acting within the limits of their authority as delegated by the Agreement Officer.

*An apparently successful applicant* means the applicant for USAID funding that the Agreement Officer recommends for an award after merit review, but who has not yet been awarded a grant, cooperative agreement or other assistance award. Apparently successful applicant status confers no right and constitutes no USAID commitment to an award, which still must be executed by the Agreement Officer.

*Award* has the same meaning as *Federal award* as defined in 2 CFR 200.1.

*Commodities* mean any material, article, supply, goods or equipment, excluding recipient offices, vehicles, and non-deliverable items for recipient's internal use in administration of the USAID-funded grant, cooperative agreement, or other agreement or subaward.

*End date* means the date on which the recipient or subrecipient completes all work under an award or the date on the award document, or any supplement or amendment, on which USAID sponsorship ends.

*Program* means the organized set of activities directed toward a common purpose, objective, or goal that a recipient or subrecipient undertakes or proposes.

*Suspension* means an action by USAID that temporarily withdraws Federal sponsorship under an award,

pending corrective action by the recipient or pending a decision to resume or terminate the award. Suspension of an award is a separate action from suspension under USAID regulations implementing E.O.s 12549 and 12689, ''Debarment and Suspension.'' See 2 CFR part 780.

*USAID* means the United States Agency for International Development.

## Subpart B—General Provisions

### § 700.2 Adoption of 2 CFR Part 200.

Under the authority listed above, the United States Agency for International Development (USAID) adopts the Office of Management and Budget (OMB) guidance for Federal Financial Assistance (subparts A through F of 2 CFR part 200), as supplemented by this part, as the USAID policies and procedures for Federal financial assistance administration. This part satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by this part.

### § 700.3 Applicability.

(a) Subparts A through D of 2 CFR part 200 apply to for-profit entities located in the United States or its territories. The Federal Acquisition Regulation (FAR) at 48 CFR part 30, Cost Accounting Standards, and Part 31, Contract Cost Principles and Procedures, takes precedence over the cost principles in Subpart E for Federal awards to U.S. for-profit entities.

(b) Subpart E applies to foreign organizations and foreign public entities, except where the Federal agency determines that the application of these subparts would be inconsistent with the international responsibilities of the United States or the laws of a foreign government. The Federal Acquisition Regulation (FAR) at 48 CFR part 30, Cost Accounting Standards, and Part 31, Contract Cost Principles and Procedures, takes precedence over the cost principles in Subpart E for Federal awards to foreign for-profit entities.

### § 700.4 Exceptions.

Consistent with 2 CFR 200.102:

(a) USAID's Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy, may authorize exceptions on a case-by-case basis for individual federal awards, recipients, or subrecipients except where otherwise required by law or where OMB or other approval is expressly required by this Part. No case-by-case exceptions may be granted to the provisions of Subpart F—Audit Requirements of this Part.

(b) USAID's Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy, may authorize exceptions, on a class or an individual case basis, to USAID program specific assistance regulations other than those which implement statutory and executive order requirements.

(c) The Federal agency may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB, required by Federal statutes, or regulations except for the requirements in Subpart F—Audit Requirements of this part. The Federal agency may apply less restrictive requirements when making awards at or below the simplified acquisition threshold, or when making fixed amount awards as defined in Subpart A—Acronyms and Definitions of 2 CFR part 200, except for those requirements imposed by statute or in Subpart F—Audit Requirements of this part.

### § 700.5 Supersession.

Effective December 26, 2014, this part supersedes the following regulations under *Title 22 of the Code of Federal Regulations:* 22 CFR part 226, ''Administration of Assistance Awards To U.S. Non-Governmental Organizations.''

## Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

### § 700.6 Metric system of measurement.

(a) The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce.

(b) Wherever measurements are required or authorized, the recipient must make, compute, and record in metric system units of measurement,

unless the Agreement Officer authorizes in writing that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, the recipient may express the measurements in both the metric and the traditional equivalent units, provided the metric units are listed first.

### § 700.7 Advance payment.

Advance payment mechanisms include, but are not limited to, Letter of Credit, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 205.

## Subpart D—Post Federal Award Requirements

### § 700.8 Payment.

(a) Use of resources before requesting advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments. This paragraph is not applicable to such earnings which are generated as foreign currencies.

(b) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows:

(1) Except for situations described in paragraph (b)(2) of this section, USAID does not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for receipt, obligation and expenditure of funds.

(2) Recipients must deposit and maintain advance payments of Federal funds in insured accounts whenever possible.

### § 700.9 Property standards.

(a) *Real property*. Unless the agreement provides otherwise, title to real property will vest in accordance with 2 CFR 200.311.

(b) *Equipment*. Unless the agreement provides otherwise, title to equipment will vest in accordance with 2 CFR 200.313.

### § 700.10 Cost sharing.

(a) ''Unrecovered indirect costs'' has the same meaning as in 2 CFR 200.306(c).

(b) Unrecovered indirect costs, including indirect costs on cost sharing, may be included as part of cost sharing.

### § 700.11 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) To permit USAID, in accordance with the small business provisions of the Foreign Assistance Act of 1961, as amended, to give United States small business firms an opportunity to participate in supplying commodities and services procured under the award, the recipient should provide the following information to the Office of Small Disadvantaged Business Utilization (OSDBU), USAID, Washington, DC 20523, at least 45 days prior to placing any order or contract in excess of the simplified acquisition threshold:

(1) Brief general description and quantity of goods or services;

(2) Closing date for receiving quotations, proposals or bids; and

(3) Address where solicitations or specifications can be obtained.

(b) [Reserved]

### § 700.12 Contract provisions.

(a) The recipient or subrecipient's contracts must contain the applicable provisions described in Appendix II to Part 200.

(b) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by the recipient or subrecipient must include a provision to the effect that the recipient or subrecipient, USAID, the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

### § 700.13 Additional provisions for awards to for-profit entities.

(a) This paragraph contains additional provisions that apply to awards to for-profit entities. These provisions supplement and make exceptions for awards to for-profit entities from other provisions of this part.

(1) Prohibition against profit. The agency or pass-through entity will not provide funds as profit to any for-profit entity receiving or administering Federal financial assistance as a recipient or subrecipient. Federal financial assistance does not include contracts as defined at 2 CFR 200.1, other contracts a Federal agency uses to buy goods or services from a contractor, or contracts to operate Federal government owned, contractor operated facilities (GOCOs). Profit is any amount in excess of allowable direct and indirect costs.

(2) [Reserved]

(b) [Reserved]

### § 700.14 Award Suspension and Termination.

If at any time USAID determines that continuation of all or part of the funding for a program should be suspended or terminated because such assistance would not be in the national interest of the United States or would be in violation of an applicable law, then USAID may, following notice to the recipient, suspend or terminate the award in whole or in part and prohibit the recipient from incurring additional obligations chargeable to the award other than those costs specified in the notice of suspension. If a suspension is put into effect and the situation causing the suspension continues for 60 calendar days or more, then USAID may terminate the award in whole or in part on written notice to the recipient and cancel any portion of the award which has not been disbursed or irrevocably committed to third parties.

### § 700.15 Disputes.

(a) The USAID Agreement Officer will decide any dispute under or relating to Federal financial assistance. The Agreement Officer must furnish the recipient a written copy of the decision.

(b) Decisions of the USAID Agreement Officer will be final unless, within 30 calendar days of receipt of the decision, the recipient appeals the decision to USAID's Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy. Appeals must be in writing with a copy concurrently furnished to the Agreement Officer.

(c) In order to facilitate review of the record by the USAID's Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy, the recipient will be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.

(d) Decisions by the Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy, will be final.

## Subpart E—Cost Principles [Reserved]

## Subpart F—Audit Requirements [Reserved]

## Subpart G—USAID-Specific Requirements

### § 700.16 Marking.

(a) *Definitions.* For the purposes of this section, the following definitions apply:

(1) *Activity* means a set of a recipient or subrecipient's actions using resources—such as commodities, technical assistance, or training to produce specific results, such as vaccinations given, schools built, microenterprise loans issued, or policies changed. The recipient or subrecipient undertakes activities to achieve the formally approved objectives of the award.

(2) *Branding strategy* means a strategy the apparently successful applicant or recipient submits describing how they will name and position the program, project, or activity and how they will promote and communicate it to beneficiaries and cooperating country citizens. In the branding strategy, the apparently successful applicant or recipient identifies all donors and explains how they will be acknowledged.

(3) *Marking plan* means a plan that the apparently successful applicant or recipient submits after merit review of

an application for USAID funding, detailing the public communications, commodities, and program materials and other items that will visibly bear the USAID Identity.

(4) *Public communications* are documents and messages the recipient or subrecipient intends to distribute to external audiences. They include, but are not limited to, correspondence, publications, studies, reports, audiovisual productions, and other informational products; applications, forms, press and promotional materials used in connection with USAID-funded programs, projects or activities, including signage and plaques; websites/internet activities; and events such as training courses, conferences, seminars, and press conferences.

(5) *USAID Identity* (Identity) means the official marking for the United States Agency for International Development (USAID) comprised of the USAID logo or seal and new brandmark with the tagline that clearly communicates our assistance is ''from the American people.'' Upon a written determination by the USAID Administrator, or delegate, the definition of the USAID Identity may be amended to include additional or substitute use of a logo or seal and tagline representing a presidential initiative or other high level interagency Federal initiative that requires consistent and uniform branding and marking by all participating agencies. The USAID Identity (including any required additional insignia or related identity) is available on the USAID website at *https://www.usaid.gov/branding* and is provided without royalty, license or other fee to recipients of USAID funded grants or cooperative agreements or other assistance awards.

(6) *Principal officer* means the most senior officer in an USAID Operating Unit in the field, for example, a USAID Mission Director or USAID Representative. For global programs managed from Washington but executed across many countries, such as disaster relief programs and assistance to internally displaced persons, humanitarian emergencies or immediate post conflict and political crisis responses, the cognizant Principal Officer may be an Office Director, for example, the Directors of USAID/W/Office of Foreign Disaster Assistance and Office of Transition Initiatives. For non-presence countries, the cognizant Principal Officer is the Senior USAID officer in a regional USAID Operating Unit responsible for the non-presence country, or in the absence of such a responsible operating unit, the Principal U.S Diplomatic Officer in the non-presence country exercising delegated authority from USAID.

(b) USAID policy is that a recipient or subrecipient must mark all programs, projects, activities, public communications, and commodities, specified further at paragraphs (d) through (g) of this section, partially or fully funded by a USAID grant or cooperative agreement or other assistance award or subaward with the USAID Identity, of a size and prominence equivalent to or greater than the recipient's, other donor's or any other third party's identity or logo.

(1) USAID reserves the right to require the USAID Identity to be larger and more prominent if it is the majority donor, or to require that a cooperating country government's identity be larger and more prominent if circumstances warrant; any such requirement will be on a case-by-case basis depending on the audience, program goals and materials produced.

(2) USAID reserves the right to request pre-production review of USAID funded public communications and program materials for compliance with the approved Marking Plan.

(3) USAID reserves the right to require marking with the USAID Identity in the event the recipient does not choose to mark with its own identity or logo.

(4) Recipients of USAID funded grants and cooperative agreements or other assistance awards must include a USAID-approved marking provision in any USAID funded subaward, to read as follows:

As a condition of receipt of this subaward, marking with the USAID Identity of a size and prominence equivalent to or greater than the recipient's, subrecipient's, other donor's or third party's is required. In the event the recipient chooses not to require marking with its own identity or logo by the subrecipient, USAID may, at its discretion,

require marking by the subrecipient with the USAID Identity.

(c) Subject to §700.16(b), (i), and (k), the recipient or subrecipient must mark program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management), with the USAID Identity. The recipient or subrecipient should erect temporary signs or plaques early in the construction or implementation phase. When construction or implementation is complete, the recipient or subrecipient must install a permanent, durable sign, plaque or other marking.

(d) Subject to §700.16(b), (i), and (k), the recipient or subrecipient must mark technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, websites/internet activities and other promotional, informational, media, or communications products funded by USAID with the USAID Identity.

(1) Any ''public communications'' as defined in §700.1, funded by USAID, in which the content has not been approved by USAID, must contain the following disclaimer:

This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government.

(2) The recipient must provide the Agreement Officer's Representative (AOR) or other USAID personnel designated in the grant or cooperative agreement with at least two copies of all program and communications materials produced under the award. In addition, the recipient must submit one electronic and/or one hard copy of all final documents to USAID's Development Experience Clearinghouse.

(e) Subject to §700.16(b), (i), and (k), the recipient or subrecipient must mark events financed by USAID such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities, with the USAID Identity. Unless directly prohibited and as appropriate to the surroundings, recipients should display additional materials such as signs and banners with the USAID Identity. In circumstances in which the USAID Identity cannot be displayed visually, recipients should otherwise acknowledge USAID and the American people's support.

(f) Subject to §700.16(b), (i), and (k), the recipient or subrecipient must mark all commodities financed by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs, and all other equipment, supplies and other materials funded by USAID, and their export packaging, with the USAID Identity.

(g) After merit review of applications for USAID funding, USAID Agreement Officers will request apparently successful applicants to submit a Branding Strategy, defined in §700.1. The proposed Branding Strategy will not be evaluated competitively. The Agreement Officer will review the proposed Branding Strategy for adequacy, and will negotiate, approve and include the Branding Strategy in the award. The Agreement Officer will specify the timeline for submission in the Notice of Funding Opportunity. If the Notice of Funding Opportunity indicates that the apparently successful applicant may submit a Branding Strategy after the award is made, the Agreement Officer must include a special award condition to indicate the required submission date. If the Agreement Officer requires submission before award, failure to submit or negotiate a Branding Strategy within the time specified by the Agreement Officer will make the apparently successful applicant ineligible for award.

(h) After merit review of applications for USAID funding, USAID Agreement Officers will request apparently successful applicants to submit a Marking Plan, defined in §700.1. The Marking Plan may include requests for approval of Presumptive Exceptions, paragraph (i) of this section. The apparently successful applicant must include all estimated costs associated with branding and marking USAID programs, such as plaques, labels, banners, press events,

promotional materials, and the like, in the total cost estimate of the grant or cooperative agreement or other assistance award. These costs are subject to revision and negotiation with the Agreement Officer upon submission of the Marking Plan. The Marking Plan will not be evaluated competitively. The Agreement Officer will review the proposed Marking Plan for adequacy, and will negotiate, approve and include the Marking Plan in the award. The Agreement Officer will specify the timeline for submission in the Notice of Funding Opportunity. If the Notice of Funding Opportunity indicates that the apparently successful applicant may submit a Marking Plan after the award is made, the Agreement Officer must include a special award condition to indicate the required submission date. If the Agreement Officer requires submission before award, failure to submit or negotiate a Marking Plan within the time specified by the Agreement Officer will make the apparently successful applicant ineligible for award. Agreement Officers have the discretion to suspend the implementation requirements of the Marking Plan if circumstances warrant. Recipients of a USAID funded grant or cooperative agreement or other assistance award or subaward should retain copies of any specific marking instructions or waivers in their project, program or activity files.

(i) Presumptive exceptions:

(1) The above marking requirements in §700.16(b) through (f) may not apply if marking would:

(i) Compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials, such as election monitoring or ballots, and voter information literature; political party support or public policy advocacy or reform; independent media, such as television and radio broadcasts, newspaper articles and editorials; public service announcements or public opinion polls and surveys.

(ii) Diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent.

(iii) Undercut host-country government ''ownership'' of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications better positioned as ''by'' or ''from'' a cooperating country ministry or government official.

(iv) Impair the functionality of an item, such as sterilized equipment or spare parts.

(v) Incur substantial costs or be impractical, such as items too small or other otherwise unsuited for individual marking, such as food in bulk.

(vi) Offend local cultural or social norms, or be considered inappropriate on such items as condoms, toilets, bed pans, or similar commodities.

(vii) Conflict with international law.

(2) The Agreement Officer must approve these exceptions. Apparently successful applicants may request approval of one or more of the presumptive exceptions, depending on the circumstances, in their Marking Plan. The Agreement Officer will review requests for presumptive exceptions for adequacy, along with the rest of the Marking Plan. When reviewing a request for approval of a presumptive exception, the Agreement Officer may review how program materials will be marked (if at all) if the USAID identity is removed. Exceptions approved will apply to subrecipients unless otherwise provided by USAID.

(j) In cases where the recipient does not comply with the Marking Plan, the Agreement Officer will initiate corrective action. Such action may involve informing the recipient of a USAID grant or cooperative agreement or other assistance award or subaward of instances of noncompliance and requesting that the recipient carry out its responsibilities as set forth in the Marking Plan and award. Major or repeated non compliance with the Marking Plan will be governed by the uniform suspension and termination procedures set forth at 2 CFR 200.340 through 2 CFR 200.343, and 2 CFR 700.14.

(k)(1) *Waivers.* USAID Principal Officers may at any time after award waive in whole or in part the USAID approved Marking Plan, including USAID marking requirements for each

USAID funded program, project, activity, public communication or commodity, or in exceptional circumstances may make a waiver by region or country, if the Principal Officer determines that otherwise USAID required marking would pose compelling political, safety, or security concerns, or marking would have an adverse impact in the cooperating country. USAID recipients may request waivers of the Marking Plan in whole or in part, through the AOR. No marking is required while a waiver determination is pending. The Principal Officer must make the waiver determination on safety or security grounds in consultation with U.S. Government security personnel if available, and must consider the same information that applies to determinations of the safety and security of U.S. Government employees in the cooperating country, as well as any information supplied by the AOR or the recipient for whom the waiver is sought. When reviewing a request for approval of a waiver, the Principal Officer may review how program materials will be marked (if at all) if the USAID Identity is removed. Approved waivers are not limited in duration but are subject to Principal Officer review at any time due to changed circumstances. Approved waivers ''flow down'' to recipients of subawards unless specified otherwise. Principal Officers may also authorize the removal of USAID markings already affixed if circumstances warrant. Principal Officers' determinations regarding waiver requests are subject to appeal to the Principal Officer's cognizant Assistant Administrator. Recipients may appeal by submitting a written request to reconsider the Principal Officer's waiver determination to the cognizant Assistant Administrator.

(2) *Non-retroactivity*. Marking requirements apply to any obligation of USAID funds for new awards as of January 2, 2006. Marking requirements also will apply to new obligations under existing awards, such as incremental funding actions, as of January 2, 2006, when the total estimated cost of the existing award has been increased by USAID or the scope of effort is changed to accommodate any costs associated with marking. In the event a waiver is rescinded, the marking requirements will apply from the date forward that the waiver is rescinded. In the event a waiver is rescinded after the period of performance but before closeout as defined in 2 CFR 200.1, the USAID mission or operating unit with initial responsibility to administer the marking requirements must make a cost benefit analysis as to requiring USAID marking requirements after the end date of the affected programs, projects, activities, public communications or commodities.

(l) USAID will provide the USAID Identity and other guidance at no cost or fee to recipients of USAID grants, cooperative agreements or other assistance awards or subawards. USAID will fund additional costs associated with marking requirements if reasonable, allowable, and allocable under 2 CFR part 200, subpart E. Recipients must follow the standard cost reimbursement provisions of the grant, cooperative agreement, other assistance award or subaward when applying for reimbursement of additional marking costs.

# PART 701—PARTNER VETTING IN USAID ASSISTANCE

Sec.

701.1 Definitions.
701.2 Applicability.
701.3 Partner vetting.
APPENDIX B TO PART 701—PARTNER VETTING PRE-AWARD REQUIREMENTS AND AWARD TERM.

AUTHORITY: 22 U.S.C. 2251 *et seq.;* 22 U.S.C. 2151t, 22 U.S.C. 2151a, 2151b, 2151c, and 2151d; 22 U.S.C. 2395(b).

SOURCE: 80 FR 36705, June 26, 2015, unless otherwise noted.

## § 701.1 Definitions.

This section contains the definitions for terms used in this part. Other terms used in the part are defined at 2 CFR part 200. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

*Key individual* means the principal officer of the organization's governing body (for example, chairman, vice chairman, treasurer and secretary of the board of directors or board of trustees); the principal officer and deputy

principal officer of the organization (for example, executive director, deputy director, president, vice president); the program manager or chief of party for the USG-financed program; and any other person with significant responsibilities for administration of the USG-financed activities or resources, such as key personnel as identified in the solicitation or resulting cooperative agreement. Key personnel, whether or not they are employees of the prime recipient, must be vetted.

*Key personnel* means those individuals identified for approval as part of substantial involvement in a cooperative agreement whose positions are essential to the successful implementation of an award. *Vetting official* means the USAID employee identified in the application or award as having responsibility for receiving vetting information, responding to questions about information to be included on the Partner Information Form, coordinating with the USAID Office of Security (SEC), and conveying the vetting determination to each applicant, potential subrecipients and contractors subject to vetting, and the agreement officer. The vetting official is not part of the office making the award selection and has no involvement in the selection process.

### § 701.2 Applicability.

The requirements established in this part apply to non-Federal entities, non-profit organizations, for-profit entities, and foreign organizations.

### § 701.3 Partner vetting.

(a) It is USAID policy that USAID may determine that a particular award is subject to vetting in the interest of national security. In that case, USAID may require vetting of the key individuals of applicants, including key personnel, whether or not they are employees of the applicant, first tier subrecipients, contractors, and any other class of subawards and procurements as identified in the assistance solicitation and resulting award. When USAID conducts partner vetting, it will not award to any applicant who determined ineligible by the vetting process.

(b) When USAID determines an award to be subject to vetting, the agreement officer determines the appropriate stage of the award cycle to require applicants to submit the completed USAID Partner Information Form, USAID Form 500–13, to the vetting official identified in the assistance solicitation. The agreement officer must specify in the assistance solicitation the stage at which the applicants will be required to submit the USAID Partner Information Form, USAID Form 500–13. As a general matter those applicants who will be vetted will be typically the applicants that have been determined to be apparently successful.

(c) Selection of the successful applicant proceeds separately from vetting. The agreement officer makes the selection determination separately from the vetting process and without knowledge of vetting-related information other than that, based on the vetting results, the apparently successful applicant is eligible or ineligible for an award. However, no applicants will be excluded from an award until after vetting has been completed.

(d) For those awards the agency has determined are subject to vetting, the agreement officer may only award to an applicant that has been determined to be eligible after completion of the vetting process.

(e)(1) For those awards the agency has determined are subject to vetting, the recipient must submit the completed USAID Partner Information Form any time it changes:

(i) Key individuals; or

(ii) Subrecipients and contractors for which vetting is required.

(2) The recipient must submit the completed Partner Information Form within 15 days of the change in either paragraph (e)(1)(i) or (ii) of this section.

(f) USAID may vet key individuals of the recipient, subrecipients and contractors periodically during program implementation using information already submitted on the Form.

(g) When the prime recipient is subject to vetting, vetting may be required for key individuals of subawards when the prime recipient requests prior approval in accordance with 2 CFR 200.308(c)(6) for the subaward, transfer, or contracting out of any work.

(h) When the prime recipient is subject to vetting, vetting may be required for key individuals of contractors of certain services. The agreement officer must identify these services in the assistance solicitation and any resulting award.

(i) When vetting of subawards is required, the agreement officer must not approve the subaward, transfer, or contracting out, or the procurement of certain classes of items until the organization subject to vetting has been determined eligible. When vetting of contractors is required, the recipient may not procure the identified services until the contractor has been determined to be eligible.

(j) The recipient may instruct prospective subrecipients or, when applicable contractors who are subject to vetting to submit the USAID Partner Information Form to the vetting official as soon as the recipient submits the USAID Partner Information Form for its key individuals.

(k) *Pre-award provision and award term.* (1) The agreement officer must insert the pre-award provision Partner Vetting Pre-Award Requirements in Appendix B of this part in all assistance solicitations USAID identifies as subject to vetting.

(2) The agreement officer must insert the award term Partner Vetting in Appendix B in all assistance solicitations and awards USAID identifies as subject to vetting.

## APPENDIX B TO PART 701—PARTNER VETTING PRE-AWARD REQUIREMENTS AND AWARD TERM

*Partner Vetting Pre-Award Requirements*

(a) USAID has determined that any award resulting from this assistance solicitation is subject to vetting. An applicant that has not passed vetting is ineligible for award.

(b) The following are the vetting procedures for this solicitation:

(1) Prospective applicants review the attached USAID Partner Information Form, USAID Form 500–13, and submit any questions about the USAID Partner Information Form or these procedures to the agreement officer by the deadline in the solicitation.

(2) The agreement officer notifies the applicant when to submit the USAID Partner Information Form. For this solicitation, USAID will vet [insert in the provision the applicable stage of the selection process at which the Agreement Officer will notify the applicant(s) who must be vetted]. Within the timeframe set by the agreement officer in the notification, the applicant must complete and submit the USAID Partner Information Form to the vetting official. The designated vetting official is:

Vetting official: _____

Address: _____

Email: _____

(for inquiries only).

(3) The applicants must notify proposed subrecipients and contractors of this requirement when the subrecipients or contractors are subject to vetting.

NOTE: Applicants who submit using non-secure methods of transmission do so at their own risk.

(c) Selection proceeds separately from vetting. Vetting is conducted independently from any discussions the agreement officer may have with an applicant. The applicant and any proposed subrecipient or contractor subject to vetting must not provide vetting information to anyone other than the vetting official. The applicant and any proposed subrecipient or contractor subject to vetting will communicate only with the vetting official regarding their vetting submission(s) and not with any other USAID or USG personnel, including the agreement officer or the agreement officer's representatives. The agreement officer designates the vetting official as the only individual authorized to clarify the applicant's and proposed subrecipient's and contractor's vetting information.

(d)(1) The vetting official notifies the applicant that it: (i) Is eligible based on the vetting results, (ii) is ineligible based on the vetting results, or (iii) must provide additional information, and resubmit the USAID Partner Information Form with the additional information within the number of days the vetting official specified in the notification.

(2) The vetting official will coordinate with the agency that provided the data being used for vetting prior to notifying the applicant or releasing any information. In any determination for release of information, the classification and sensitivity of the information, the need to protect sources and methods, and the status of ongoing law enforcement and intelligence community investigations or operations will be taken into consideration.

(e) Reconsideration: (1) Within 7 calendar days after the date of the vetting official's notification, an applicant that vetting has determined to be ineligible may request in writing to the vetting official that the Agency reconsider the vetting determination. The request should include any written explanation, legal documentation and any other

relevant written material for reconsideration.

(2) Within 7 calendar days after the vetting official receives the request for reconsideration, the Agency will determine whether the applicant's additional information merits a revised decision.

(3) The Agency's determination of whether reconsideration is warranted is final.

(f) Revisions to vetting information: (1) Applicants who change key individuals, whether the applicant has previously been determined eligible or not, must submit a revised USAID Partner Information Form to the vetting official. This includes changes to key personnel resulting from revisions to the technical portion of the application.

(2) The vetting official will follow the vetting process of this provision for any revision of the applicant's Form.

(g) Award. At the time of award, the agreement officer will confirm with the vetting official that the apparently successful applicant is eligible after vetting. The agreement officer may award only to an apparently successful applicant that is eligible after vetting.

*Partner Vetting*

(a) The recipient must comply with the vetting requirements for key individuals under this award.

(b) Definitions: As used in this provision, ''key individual,'' ''key personnel,'' and ''vetting official'' have the meaning contained in 22 CFR 701.1.

(c) The Recipient must submit within 15 days a USAID Partner Information Form, USAID Form 500–13, to the vetting official identified below when the Recipient replaces key individuals with individuals who have not been previously vetted for this award. Note: USAID will not approve any key personnel who are not eligible for approval after vetting. The designated vetting official is:

Vetting official: _____

Address: _____

Email: _____

(for inquiries only).

(d)(1) The vetting official will notify the Recipient that it—

(i) Is eligible based on the vetting results,

(ii) Is ineligible based on the vetting results, or

(iii) Must provide additional information, and resubmit the USAID Partner Information Form with the additional information within the number of days the vetting official specifies.

(2) The vetting official will include information that USAID determines releasable. USAID will determine what information may be released consistent with applicable law and Executive Orders, and with the concurrence of relevant agencies.

(e) The inability to be deemed eligible as described in this award term may be determined to be a material failure to comply with the terms and conditions of the award and may subject the recipient to suspension or termination as specified in the subpart ''Remedies for Noncompliance'' at 2 CFR part 200.

(f) Reconsideration: (1) Within 7 calendar days after the date of the vetting official's notification, the recipient or prospective subrecipient or contractor that has not passed vetting may request in writing to the vetting official that the Agency reconsider the vetting determination. The request should include any written explanation, legal documentation and any other relevant written material for reconsideration.

(2) Within 7 calendar days after the vetting official receives the request for reconsideration, the Agency will determine whether the recipient's additional information merits a revised decision.

(3) The Agency's determination of whether reconsideration is warranted is final.

(g) A notification that the Recipient has passed vetting does not constitute any other approval under this award.

Alternate I. When subrecipients will be subject to vetting, add the following paragraphs to the basic award term:

(h) When the prime recipient anticipates that it will require prior approval for a subaward in accordance with 2 CFR 200.308(c)(6) the subaward is subject to vetting. The prospective subrecipient must submit a USAID Partner Information Form, USAID Form 500–13, to the vetting official identified in paragraph (c) of this provision. The agreement officer must not approve a subaward to any organization that has not passed vetting when required.

(i) The recipient agrees to incorporate the substance of paragraphs (a) through (i) of this award term in all first tier subawards under this award.

Alternate II. When specific classes of services are subject to vetting, add the following paragraph:

(j) Prospective contractors at any tier providing the following classes of services

_____

_____

_____

must pass vetting. Recipients must not procure these services until they receive confirmation from the vetting official that the prospective contractor has passed vetting. (End of award term)

## PARTS 702–779 [RESERVED]

# PART 780—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.
780.10 What does this part do?
780.20 Does this part apply to me?
780.30 What policies and procedures must I follow?

Subpart A—General

780.137 Who in USAID may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

780.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

780.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

780.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–H [Reserved]

Subpart I—Definitions

780.930 Debarring Official (Agency for International Development supplement to government-wide definition at 2 CFR 180.930).
780.1010 Suspending Official (Agency for International Development supplement to government-wide definition at 2 CFR 180.1010).

Subpart J [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 76 FR 34144, June 13, 2011, unless otherwise noted.

### § 780.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the USAID policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for USAID to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189); Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (31 U.S.C. 6101 note).

### § 780.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''non-procurement transaction'' at 2 CFR 180.970);

(b) Respondent in a USAID suspension or debarment action;

(c) USAID debarment or suspension official; and

(d) USAID grants officer, agreements officer, or other official authorized to enter into any type of non-procurement transaction that is a covered transaction.

### § 780.30 What policies and procedures must I follow?

The USAID policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180 and any supplemental policies and procedures set forth in this part.

## Subpart A—General

### § 780.137 Who in USAID may grant an exception to let an excluded person participate in a covered transaction?

The Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy found in ADS 103—Delegations of Authority, may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Assistant Administrator, Bureau for Management or designee, grants an exception, the exception must be in writing and state the reason(s) for deviating

from the government-wide policy in Executive Order 12549.

[80 FR 12915, Mar. 12, 2015]

## Subpart B—Covered Transactions

### § 780.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the USAID under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed $25,000. This extends the coverage of the USAID non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 780.332 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

You, as a participant, must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 780.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, and supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–H [Reserved]

## Subpart I—Definitions

### § 780.930 Debarring Official (Agency for International Development supplement to government-wide definition at 2 CFR 180.930).

The *Debarring Official* for USAID is the Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy found in ADS 103—Delegations of Authority.

[80 FR 12916, Mar. 12, 2015]

### § 780.1010 Suspending Official (Agency for International Development supplement to government-wide definition at 2 CFR 180.1010).

The *Suspending Official* for USAID is the Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy found in ADS 103—Delegations of Authority.

[80 FR 12916, Mar. 12, 2015]

## Subpart J [Reserved]

# PART 782—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

782.10 What does this part do?
782.20 Does this part apply to me?
782.30 What policies and procedures must I follow?

### Subpart A—Purpose and Coverage [Reserved]

### Subpart B—Requirements for Recipients Other Than Individuals

782.225 Whom in USAID does a recipient other than an individual notify about a criminal drug conviction?

### Subpart C—Requirements for Recipients Who Are Individuals

782.300 Whom in USAID does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

782.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E—Violations of This Part and Consequences

782.500 Who in USAID determines that a recipient other than an individual violated the requirements of this part?
782.505 Who in USAID determines that a recipient who is an individual violated the requirements of this part?

Subpart F—Definitions

782.605 Award (USAID Supplement to Government Wide Definition at 2 CFR 182.605).

AUTHORITY: 41 U.S.C. 701–707.

SOURCE: 76 FR 34574, June 14, 2011, unless otherwise noted.

### § 782.10 What does this part do?

This part requires that the award and administration of USAID grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR Part 182) for USAID's grants and cooperative agreements; and

(b) Establishes USAID policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Government wide implementing regulations.

### § 782.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of a USAID grant or cooperative agreement; or

(b) USAID awarding official.

### § 782.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| (1) 2 CFR 182.225(a) | § 782.225 | Whom in USAID a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace. |
| (2) 2 CFR 182.300(b) | § 782.300 | Whom in USAID a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| (3) 2 CFR 182.500 | § 782.500 | Who in USAID is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| (4) 2 CFR 182.505 | § 782.505 | Who in USAID is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, USAID policies and procedures are the same as those in the OMB guidance.

## Subpart A—Purpose and Coverage [Reserved]

## Subpart B—Requirements for Recipients Other Than Individuals

### § 782.225 Whom in USAID does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify—

(a) Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, or you otherwise learn of the conviction. Your notification to the Federal agencies must—

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Within 30 calendar days of learning about an employee's conviction, you must either—

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

## Subpart C—Requirements for Recipients Who Are Individuals

### § 782.300 Whom in USAID does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each USAID office from which it currently has an award.

## Subpart D—Responsibilities of Agency Awarding Officials

### § 782.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

*Drug-free workplace.* You as the recipient must comply with drug-free workplace requirements in subpart B (or subpart C, if the recipient is an individual) of 782, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

## Subpart E—Violations of This Part and Consequences

### § 782.500 Who in USAID determines that a recipient other than an individual violated the requirements of this part?

The Director of the Office of Acquisition and Assistance is the official authorized to make the determination under 2 CFR 182.500.

### § 782.505 Who in USAID determines that a recipient who is an individual violated the requirements of this part?

The Director of the Office of Acquisition and Assistance is the official authorized to make the determination under 2 CFR 182.505.

## Subpart F—Definitions

### § 782.605 Award (USAID supplement to Government-wide definition at 2 CFR 182.605).

*Award* means an award of financial assistance by the U.S. Agency for International Development or other Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the

grant is exempted from coverage under the Government-wide rule that implements OMB Circular A–102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable to AID.

## PARTS 783–799 [RESERVED]

# CHAPTER VIII—DEPARTMENT OF VETERANS AFFAIRS


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| 800 | [Reserved] | |
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# PART 800 [RESERVED]

# PART 801—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

801.10 What does this part do?
801.20 Does this part apply to me?
801.30 What policies and procedures must I follow?

## Subpart A—General

801.137 Who in the Department of Veterans Affairs may grant an exception to allow an excluded person to participate in a covered transaction?

## Subpart B—Covered Transactions

801.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

## Subpart C—Responsibilities of Participants Regarding Transactions

801.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

801.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

## Subparts E–H [Reserved]

## Subpart I—Definitions

801.930 Debarring official (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.930).
801.995 Principal (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.995).
801.1010 Suspending official (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.1010).

## Subpart J—Limited Denial of Participation (Department of Veterans Affairs Optional Subpart for OMB Guidance at 2 CFR Part 180).

801.1100 General.
801.1105 Cause for a limited denial of participation.
801.1110 Scope and period of a limited denial of participation.
801.1111 Notice.
801.1112 Conference.
801.1113 Appeal.

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 38 U.S.C. 501(a) and 3703(c).

SOURCE: 72 FR 30240, May 31, 2007, unless otherwise noted.

### § 801.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Veterans Affairs (VA) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Department of Veterans Affairs to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

### § 801.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see Subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970, as supplemented by Subpart B of this part);

(b) Respondent in a Department of Veterans Affairs debarment or suspension action;

(c) Department of Veterans Affairs debarment or suspension official; or

(d) Department of Veterans affairs grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 801.30 What policies and procedures must I follow?

For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, Department of Veterans Affairs policies and procedures are those in the OMB guidance. For any such section where there is a corresponding

section in this part, the Department of Veterans Affairs policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, and as supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by §180.220 of the OMB guidance (2 CFR 180.220) as supplemented by §801.220 in this part (2 CFR 801.220).

## Subpart A—General

### §801.137 Who in the Department of Veterans Affairs may grant an exception to allow an excluded person to participate in a covered transaction?

Within the Department of Veterans Affairs, the Secretary of Veterans Affairs, the Under Secretary for Health, the Under Secretary for Benefits, and the Under Secretary for Memorial Affairs each has the authority to grant an exception to allow an excluded person to participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

## Subpart B—Covered Transactions

### §801.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

VA does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction, although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).

## Subpart C—Responsibilities of Participants Regarding Transactions

### §801.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### §801.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180 (as supplemented by subpart C of this part) and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–H [Reserved]

## Subpart I—Definitions

### §801.930 Debarring official (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.930).

In addition to the debarring official listed at 2 CFR 180.930, the debarring official for the Department of Veterans Affairs is:

(a) For the Veterans Health Administration, the Under Secretary for Health;

(b) For the Veterans Benefits Administration, the Under Secretary for Benefits; and

(c) For the National Cemetery Administration, the Under Secretary for Memorial Affairs.

### §801.995 Principal (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.995).

In addition to the principals identified at 2 CFR 180.995, for the Department of Veterans Affairs loan guaranty program, principals include, but are not limited to the following:

(a) Loan officers.

(b) Loan solicitors.

(c) Loan processors.

(d) Loan servicers.

(e) Loan supervisors.

(f) Mortgage brokers.
(g) Office managers.
(h) Staff appraisers and inspectors.
(i) Fee Appraisers and inspectors.
(j) Underwriters.
(k) Bonding companies.
(l) Real estate agents and brokers.
(m) Management and marketing agents.
(n) Accountants, consultants, investment bankers, architects, engineers, attorneys, and others in a business relationship with participants in connection with a covered transaction under the Department of Veterans Affairs loan guaranty program.
(o) Contractors involved in the construction, improvement or repair of properties financed with Department of Veterans Affairs guaranteed loans.
(p) Closing agents.

### § 801.1010 Suspending official (Department of Veterans Affairs supplement to government-wide definition at 2 CFR 180.1010).

In addition to the suspending official listed at 2 CFR 180.1010, the suspending official for the Department of Veterans Affairs is:
(a) For the Veterans Health Administration, the Under Secretary for Health;
(b) For the Veterans Benefits Administration, the Under Secretary for Benefits; and
(c) For the National Cemetery Administration, the Under Secretary for Memorial Affairs.

## Subpart J—Limited Denial of Participation (Department of Veterans Affairs Optional Subpart for OMB Guidance at 2 CFR Part 180).

### § 801.1100 General.

Field facility directors are authorized to order a limited denial of participation affecting any participant or contractor and its affiliates except lenders and manufactured home manufacturers. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to order a limited denial of participation shall be discretionary and in the best interests of the Government.

### § 801.1105 Cause for a limited denial of participation.

(a) *Causes.* A limited denial of participation shall be based upon adequate evidence of any of the following causes:
(1) Irregularities in a participant's or contractor's performance in the VA loan guaranty program;
(2) Denial of participation in programs administered by the Department of Housing and Urban Development or the Department of Agriculture, Rural Housing Service;
(3) Failure to satisfy contractual obligations or to proceed in accordance with contract specifications;
(4) Failure to proceed in accordance with VA requirements or to comply with VA regulations;
(5) Construction deficiencies deemed by VA to be the participant's responsibility;
(6) Falsely certifying in connection with any VA program, whether or not the certification was made directly to VA;
(7) Commission of an offense or other cause listed in § 180.800;
(8) Violation of any law, regulation, or procedure relating to the application for guaranty, or to the performance of the obligations incurred pursuant to a commitment to guaranty;
(9) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department.
(10) Imposition of a limited denial of participation by any other VA field facility.
(b) *Indictment.* A criminal indictment or information shall constitute adequate evidence for the purpose of limited denial of participation actions.
(c) *Limited denial of participation.* Imposition of a limited denial of participation by a VA field facility shall, at the discretion of any other VA field facility, constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for an additional conference or further hearing.

### § 801.1110 Scope and period of a limited denial of participation.

(a) *Scope and period.* The scope of a limited denial of participation shall be as follows:

(1) A limited denial of participation extends only to participation in the VA Loan Guaranty Program and shall be effective only within the geographic jurisdiction of the office or offices imposing it.

(2) The sanction may be imposed for a period not to exceed 12 months except for unresolved construction deficiencies. In cases involving construction deficiencies, the builder may be excluded for either a period not to exceed 12 months or for an indeterminate period which ends when the deficiency has been corrected or otherwise resolved in a manner acceptable to VA.

(b) *Effectiveness.* The sanction shall be effective immediately upon issuance and shall remain effective for the prescribed period. If the cause for the limited denial of participation is resolved before the expiration of the prescribed period, the official who imposed the sanction may terminate it. The imposition of a limited denial of participation shall not affect the right of the Department to suspend or debar any person under this part.

(c) *Affiliates.* An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is capable of meeting VA requirements and is currently a responsible entity and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

### § 801.1111 Notice.

(a) *Generally.* A limited denial of participation shall be initiated by advising a participant or contractor, and any specifically named affiliate, by certified mail, return receipt requested:

(1) That the sanction is effective as of the date of the notice;

(2) Of the reasons for the sanction in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under § 801.1105 for imposing the sanction;

(4) Of the right to request in writing, within 30 days of receipt of the notice, a conference on the sanction, and the right to have such conference held within 10 business days of receipt of the request;

(5) Of the potential effect of the sanction and the impact on the participant's or contractor's participation in Departmental programs, specifying the program(s) involved and the geographical area affected by the action.

(b) *Notification of action.* After 30 days, if no conference has been requested, the official imposing the limited denial of participation will notify VA Central Office of the action taken and of the fact that no conference has been requested. If a conference is requested within the 30-day period, VA Central Office need not be notified unless a decision to affirm all or a portion of the remaining period of exclusion is issued. VA Central Office will notify all VA field offices of sanctions imposed and still in effect under this subpart.

### § 801.1112 Conference.

Upon receipt of a request for a conference, the official imposing the sanction shall arrange such a conference with the participant or contractor and may designate another official to conduct the conference. The participant shall be given the opportunity to be heard within 10 business days of receipt of the request. This conference precedes, and is in addition to, the formal hearing provided if an appeal is taken under § 801.1113. Although formal rules of procedure do not apply to the conference, the participant or contractor may be represented by counsel and may present all relevant information and materials to the official or designee. After consideration of the information and materials presented, the official shall, in writing, advise the participant or contractor of the decision to withdraw, modify or affirm the limited denial of participation. If the decision is made to affirm all or a portion

of the remaining period of exclusion, the participant shall be advised of the right to request a formal hearing in writing within 30 days of receipt of the notice of decision. This decision shall be issued promptly, but in no event later than 20 days after the conference and receipt of materials.

### § 801.1113 Appeal.

Where the decision is made to affirm all or a portion of the remaining period of exclusion, any participant desiring an appeal shall file a written request for a hearing with the Under Secretary for Benefits, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. This request shall be filed within 30 days of receipt of the decision to affirm. If a hearing is requested, it shall be held in accordance with the procedures in §§ 108.825 through 108.855. Where a limited denial of participation is followed by a suspension or debarment, the limited denial of participation shall be superseded and the appeal shall be heard solely as an appeal of the suspension or debarment.

## PART 802—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

AUTHORITY: 5 U.S.C. 301; 38 U.S.C. 501, 2 CFR part 200, and as noted in specific sections.

SOURCE: 79 FR 76024, Dec. 19, 2014, unless otherwise noted.

### § 802.101 Applicable regulations.

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 shall apply to the Department of Veterans Affairs.

## PARTS 803–899 [RESERVED]

# CHAPTER IX—DEPARTMENT OF ENERGY


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# PART 900 [RESERVED]

# PART 901—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.


901.10 What does this part do?

901.20 Does this part apply to me?

901.30 What policies and procedures must I follow?

**Subpart A—General**

901.137 Who in the Department of Energy may grant an exception to let an excluded person participate in a covered transaction?

**Subpart B—Covered Transactions**

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**Subpart C—Responsibilities of Participants Regarding Transactions**

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**Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

901.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

**Subparts E–H [Reserved]**

**Subpart I—Definitions**

901.930 Debarring official (Department of Energy supplement to government-wide definition at 2 CFR 180.935).

901.950 Federal agency (Department of Energy supplement to government-wide definition at 2 CFR 180.910).

901.1010 Suspending official (Department of Energy supplement to government-wide definition at 2 CFR 180.1010).

**Subpart J [Reserved]**



AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*

SOURCE: 71 FR 70459, Dec. 5, 2006, unless otherwise noted.


### § 901.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the DOE policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for DOE to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189); Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (31 U.S.C. 6101 note).

### § 901.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970);

(b) Respondent in a DOE suspension or debarment action;

(c) DOE debarment or suspension official; and

(d) DOE grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 901.30 What policies and procedures must I follow?

The DOE policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180 and any supplemental policies and procedures set forth in this part.

## Subpart A—General

### § 901.137 Who in the Department of Energy may grant an exception to let an excluded person participate in a covered transaction?

The Director, Office of Procurement and Assistance Management, DOE, for DOE actions, and the Director, Office

of Acquisition and Supply Management, NNSA, for NNSA actions, may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Director, Office of Procurement and Assistance Management, DOE, for DOE actions, and Director, Office of Acquisition and Supply Management, NNSA, for NNSA actions, grants an exception, the exception must be in writing and state the reason(s) for deviating from the government-wide policy in Executive Order 12549.

## Subpart B—Covered Transactions

### § 901.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), DOE does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 901.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You, as a participant, must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 901.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–H [Reserved]

## Subpart I—Definitions

### § 901.930 Debarring official (Department of Energy supplement to government-wide definition at 2 CFR 180.930).

The Debarring Official for the Department of Energy, exclusive of NNSA, is the Director, Office of Procurement and Assistance Management, DOE. The Debarring Official for NNSA is the Director, Office of Acquisition and Supply Management, NNSA.

### § 901.950 Federal agency (Department of Energy supplement to government-wide definition at 2 CFR 180.950).

*DOE* means the U.S. Department of Energy, including the NNSA.

*NNSA* means the National Nuclear Security Administration.

### § 901.1010 Suspending official (Department of Energy supplement to government-wide definition at 2 CFR 180.1010).

The suspending official for the Department of Energy, exclusive of NNSA, is the Director, Office of Procurement and Assistance Management, DOE. The suspending official for NNSA is the Director, Office of Acquisition and Supply Management, NNSA.

## Subpart J [Reserved]

# PART 902—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

902.10 What does this part do?
902.20 Does this part apply to me?
902.30 What policies and procedures must I follow?

## Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

902.225 Whom in the DOE does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients Who Are Individuals

902.300 Whom in the DOE does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

902.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E—Violations of this Part and Consequences

902.500 Who in the DOE determines that a recipient other than an individual violated the requirements of this part?
902.505 Who in the DOE determines that a recipient who is an individual violated the requirements of this part?

Subpart F—Definitions

902.605 Award (DOE supplement to Governmentwide definition at 2 CFR 182.605).
902.645 Federal agency or agency.

AUTHORITY: 41 U.S.C. 701; 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*

SOURCE: 75 FR 39444, July 9, 2010, unless otherwise noted.

## § 902.10 What does this part do?

This part requires that the award and administration of DOE grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for the DOE's grants and cooperative agreements; and

(b) Establishes DOE policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

## § 902.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of a DOE grant or cooperative agreement; or

(b) DOE awarding official.

## § 902.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| (1) 2 CFR 182.225(a) | § 902.225 | Whom in the DOE a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace. |
| (2) 2 CFR 182.300(b) | § 902.300 | Whom in the DOE a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| (3) 2 CFR 182.500 | § 902.500 | Who in the DOE is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| (4) 2 CFR 182.505 | § 902.505 | Who in the DOE is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| (5) 2 CFR 182.605 | § 902.605 | Definition of ''Award''. |
| (6) 2 CFR 182.645 | § 902.645 | Definition of ''Federal agency or agency''. |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, DOE policies and procedures are the same as those in the OMB guidance.

## Subpart A—Purpose and Coverage [Reserved]

## Subpart B—Requirements for Recipients Other Than Individuals

### § 902.225 Whom in the DOE does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each DOE office from which it currently has an award.

## Subpart C—Requirements for Recipients Who Are Individuals

### § 902.300 Whom in the DOE does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each DOE office from which it currently has an award.

## Subpart D—Responsibilities of Agency Awarding Officials

### § 902.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of Part 902, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

## Subpart E—Violations of this Part and Consequences

### § 902.500 Who in the DOE determines that a recipient other than an individual violated the requirements of this part?

The Secretary of the Department of Energy and the Secretary's designee or designees are authorized to make the determinations under 2 CFR 182.500 for DOE, including NNSA.

### § 902.505 Who in the DOE determines that a recipient who is an individual violated the requirements of this part?

The Secretary of the Department of Energy and the Secretary's designee or designees are authorized to make the determinations under 2 CFR 182.500 for DOE, including NNSA.

## Subpart F—Definitions

### § 902.605 Award (DOE supplement to Governmentwide definition at 2 CFR 182.605).

The term *award* also includes Technology Investment Agreements (TIA). A TIA is a special type of assistance instrument used to increase the involvement of commercial firms in the Department's RD&D programs. A TIA may be either a type of cooperative agreement or a type of assistance transaction other than a cooperative agreement, depending on the intellectual property provisions. A TIA may be either expenditure based or fixed support.

### § 902.645 Federal agency or agency.

*Department of Energy* means the U.S. Department of Energy (DOE), including the National Nuclear Security Administration (NNSA).

## PARTS 903–909 [RESERVED]

# PART 910—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

## Subpart A [Reserved]

## Subpart B—General Provisions

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## Subpart D—Post Award Federal Requirements for For-Profit Entities

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MANAGEMENT DECISIONS

910.521 Management decision.

AUTHORITY: 42 U.S.C. 7101, *et seq.;* 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.;* 2 CFR part 200.

SOURCE: 79 FR 76024, Dec. 19, 2014, unless otherwise noted.

## Subpart A [Reserved]

## Subpart B—General Provisions

### § 910.120 Adoption of 2 CFR part 200.

(a) Under the authority listed above, the Department of Energy adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, with the following additions. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

(b) The additions include: Expanding the definition of non-Federal entity for DOE to include For-profit entities; adding back additional coverage from 10 CFR part 600 required by DOE statute; adding back coverage specific for For-Profit entities which existed in 10 CFR part 600 which still applies.

### § 910.122 Applicability.

(a) For DOE, unless otherwise noted in this part, the definition of Non-Federal entity found in 2 CFR 200.1 is expanded to include for-profit organizations in addition to states, local governments, Indian tribes, institutions of higher education (IHE), and nonprofit organizations.

(b) A for-profit organization is defined as one that distributes any profit

not reinvested into the business as profit or dividends to its employees or shareholders.

[79 FR 76024, Dec. 19, 2014, as amended at 87 FR 15320, Mar. 18, 2022]

### § 910.124 Eligibility.

(a) *Purpose and scope.* This section implements section 2306 of the Energy Policy Act of 1992, 42 U.S.C. 13525, and sets forth a general statement of policy, including procedures and interpretations, for the guidance of implementing DOE officials in making mandatory pre-award determinations of eligibility for financial assistance under Titles XX through XXIII of that Act.

(b) *Definitions.* The definitions in Subpart A of 2 CFR part 200, including the definition of the term ''Federal financial assistance,'' are applicable to this section. In addition, as used in this section:

*Act* means the Energy Policy Act of 1992.

*Company* means any business entity other than an organization of the type described in section 501(c) (3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)).

*Covered program* means a program under Titles XX through XXIII of the Act. (A list of covered programs, updated periodically as appropriate, is maintained and published by the Department of Energy.)

*Parent company* means a company that:

(1) Exercises ultimate ownership of the applicant company either directly, by ownership of a majority of that company's voting securities, or indirectly, by control over a majority of that company's voting securities through one or more intermediate subsidiary companies or otherwise, and

(2) Is not itself subject to the ultimate ownership control of another company.

*United States* means the several States, the District of Columbia, and all commonwealths, territories, and possessions of the United States.

*United States-owned company* means:

(1) A company that has majority ownership by individuals who are citizens of the United States, or

(2) A company organized under the laws of a State that either has no parent company or has a parent company organized under the laws of a State.

*Voting security* has the meaning given the term in the Public Utility Holding Company Act (15 U.S.C. 15b(17)).

(c) *What must DOE determine.* A company shall be eligible to receive an award of financial assistance under a covered program only if DOE finds that—

(1) Consistent with §910.124(d), the company's participation in a covered program would be in the economic interest of the United States; and

(2) The company is either—

(i) A United States-owned company; or

(ii) Incorporated or organized under the laws of any State and has a parent company which is incorporated or organized under the laws of a country which—

(A) Affords to the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Act;

(B) Affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and

(C) Affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(d) *Determining the economic interest of the United States.* In determining whether participation of an applicant company in a covered program would be in the economic interest of the United States under §910.124(c)(1), DOE may consider any evidence showing that a financial assistance award would be in the economic interest of the United States including, but not limited to—

(1) Investments by the applicant company and its affiliates in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States);

(2) Significant contributions to employment in the United States by the applicant company and its affiliates; and

(3) An agreement by the applicant company, with respect to any technology arising from the financial assistance being sought—

(i) To promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry); and

(ii) To procure parts and materials from competitive suppliers.

(e) Information an applicant must submit.

(1) Any applicant for Federal financial assistance under a covered program shall submit with the application for Federal financial assistance, or at such later time as may be specified by DOE, evidence for DOE to consider in making findings required under §910.124 (c)(1) and findings concerning ownership status under §910.124(c)(2).

(2) If an applicant for Federal financial assistance is submitting evidence relating to future undertakings, such as an agreement under §910.124(d)(3) to promote manufacture in the United States of products resulting from a technology developed with financial assistance or to procure parts and materials from competitive suppliers, the applicant shall submit a representation affirming acceptance of these undertakings. The applicant should also briefly describe its plans, if any, for any manufacturing of products arising from the program-supported research and development, including the location where such manufacturing is expected to occur.

(3) If an applicant for Federal financial assistance is claiming to be a United States-owned company, the applicant must submit a representation affirming that it falls within the definition of that term provided in §910.124(b).

(4) DOE may require submission of additional information deemed necessary to make any portion of the determination required by §910.124(b) 2.

(f) Other information DOE may consider.

In making the determination under §910.124(c)(2)(ii), DOE may—

(1) Consider information on the relevant international and domestic law obligations of the country of incorporation of the parent company of an applicant;

(2) Consider information relating to the policies and practices of the country of incorporation of the parent company of an applicant with respect to:

(i) The eligibility criteria for, and the experience of United States-owned company participation in, energy-related research and development programs;

(ii) Local investment opportunities afforded to United States-owned companies; and

(iii) Protection of intellectual property rights of United States-owned companies;

(3) Seek and consider advice from other federal agencies, as appropriate; and

(4) Consider any publicly available information in addition to the information provided by the applicant.

### §910.126 Competition.

(a) *General*. DOE shall solicit applications for Federal financial assistance in a manner which provides for the maximum amount of competition feasible.

(b) *Restricted eligibility*. If DOE restricts eligibility, an explanation of why the restriction of eligibility is considered necessary shall be included in the notice of funding opportunity or, program rule. Such restriction of eligibility shall be:

(1) Supported by a written determination initiated by the program office;

(2) Concurred in by legal counsel and the Contracting Officer; and

(3) Approved, prior to award, by an approver at least one level above the Contracting Officer.

(c) *Noncompetitive Federal financial assistance*. DOE may award a grant or cooperative agreement on a noncompetitive basis only if the application satisfies one or more of the follow selection criteria:

(1) The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect

on continuity or completion of the activity.

(2) The activity is being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity.

(3) The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

(4) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

(5) The award implements an agreement between the United States Government and a foreign government to fund a foreign applicant.

(6) Time constraints associated with a public health, safety, welfare or national security requirement preclude competition.

(7) The proposed project was submitted as an unsolicited proposal and represents a unique or innovative idea, method, or approach that would not be eligible for financial assistance under a recent, current, or planned notice of funding opportunity, and if, as determined by DOE, a competitive notice of funding opportunity would not be appropriate.

(8) The responsible program Assistant Secretary, Deputy Administrator, or other official of equivalent authority has determined that making the award non-competitively is in the public interest. This authority cannot not be delegated.

(d) *Approval requirements.* Determinations of noncompetitive awards shall be:

(1) Documented in writing;

(2) Concurred in by the responsible program technical official and local legal counsel; and

(3) Approved, prior to award, by the Contracting Officer and an approver at least one level above the CO.

(e) *Definitions.* For purposes of this section, the following definitions are applicable:

*Continuation Award*—A financial assistance award authorizing a second or subsequent budget period within an existing project period.

*Renewal Award*—A financial assistance award authorizing the first budget period of an extended project period.

[79 FR 76024, Dec. 19, 2014, as amended at 80 FR 57511, Sept. 24, 2015]

### § 910.127 Legal authority and effect.

(a) A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

(b) Recipients are free to accept or reject the award. A request to draw down DOE funds constitutes the Recipient's acceptance of the terms and conditions of this Award.

[80 FR 57511, Sept. 24, 2015]

### § 910.128 Disputes and appeals.

(a) *Informal dispute resolution.* Whenever practicable, DOE shall attempt to resolve informally any dispute over the award or administration of Federal financial assistance. Informal resolution, including resolution through an alternative dispute resolution mechanism, shall be preferred over formal procedures, to the extent practicable.

(b) *Alternative dispute resolution (ADR).* Before issuing a final determination in any dispute in which informal resolution has not been achieved, the Contracting Officer shall suggest that the other party consider the use of voluntary consensual methods of dispute resolution, such as mediation. The DOE dispute resolution specialist is available to provide assistance for such disputes, as are trained mediators of other federal agencies. ADR may be used at any stage of a dispute.

(c) *Final determination.* Whenever a dispute is not resolved informally or through an alternative dispute resolution process, DOE shall mail (by certified mail) a brief written determination signed by a Contracting Officer, setting forth DOE's final disposition of such dispute. Such determination shall contain the following information:

(1) A summary of the dispute, including a statement of the issues and of the positions taken by DOE and the party or parties to the dispute; and

(2) The factual, legal and, if appropriate, policy reasons for DOE's disposition of the dispute.

(d) *Right of appeal.* Except as provided in paragraph (f)(1) of this section, the final determination under paragraph (c) of this section may be appealed to the cognizant Senior Procurement Executive (SPE) for either DOE or the National Nuclear Security Administration (NNSA). The appeal must be received by DOE within 90 days of the receipt of the final determination. The mailing address for the DOE SPE is Office of Acquisition and Project Management, 1000 Independence Ave., SW., Washington, DC 20585. The mailing address for the NNSA SPE is Office of Acquisition Management, National Nuclear Security Administration (NNSA), 1000 Independence Ave. SW., Washington, DC 20585.

(e) *Effect of appeal.* The filing of an appeal with the SPE shall not stay any determination or action taken by DOE which is the subject of the appeal. Consistent with its obligation to protect the interests of the Federal Government, DOE may take such authorized actions as may be necessary to preserve the status quo pending decision by the SPE, or to preserve its ability to provide relief in the event the SPE decides in favor of the appellant.

(f) *Review on appeal.* (1) The SPE shall have no jurisdiction to review:

(i) Any preaward dispute (except as provided in paragraph (f)(2)(ii) of this section), including use of any special restrictive condition pursuant to 2 CFR 200.208 Specific Conditions;

(ii) DOE denial of a request for an Exception under 2 CFR 200.102;

(iii) DOE denial of a request for a budget revision or other change in the approved project under 2 CFR 200.308 or 200.403 or under another term or condition of the award;

(iv) Any DOE action authorized under 2 CFR 200.339, Remedies for Noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under 2 CFR 200.325 or under another term or condition of the award;

(2) In addition to any right of appeal established by program rule, or by the terms and conditions (not inconsistent with paragraph (f)(1) of this section) of an award, the SPE shall have jurisdiction to review:

(i) A DOE determination that the recipient has failed to comply with the applicable requirements of this part, the program statute or rules, or other terms and conditions of the award;

(ii) A DOE decision not to make a continuation award based on any of the determinations described in paragraph (f)(2)(i) of this section;

(iii) Termination of an award, in whole or in part, by DOE under 2 CFR 200.340(a)(1) and (2);

(iv) A DOE determination that an award is void or invalid;

(v) The application by DOE of an indirect cost rate; and

(vi) DOE disallowance of costs.

(3) In reviewing disputes authorized under paragraph (f)(2) of this section, the SPE shall be bound by the applicable law, statutes, and rules, including the requirements of this part, and by the terms and conditions of the award.

(4) The decision of the SPE shall be the final decision of DOE.

[79 FR 76024, Dec. 19, 2014, as amended at 87 FR 15320, Mar. 18, 2022]

### § 910.130 Cost sharing (EPACT).

In addition to the requirements of 2 CFR 200.306 the following requirements apply to research, development, demonstration and commercial application activities:

(a) Cost sharing is required for most financial assistance awards for research, development, demonstration and commercial applications activities initiated after the enactment of the Energy Policy Act of 2005 on August 8, 2005. This requirement does not apply to:

(1) An award under the small business innovation research program (SBIR) or the small business technology transfer program (STTR); or

(2) A program with cost sharing requirements defined by other than Section 988 of the Energy Policy Act of 2005 including other sections of the 2005 Act and the Energy Policy Act of 1992.

(b) A cost share of at least 20 percent of the cost of the activity is required for research and development except where:

(1) A research or development activity of a basic or fundamental nature has been excluded by an appropriate officer of DOE, generally an Under Secretary; or

(2) The Secretary has determined it is necessary and appropriate to reduce or eliminate the cost sharing requirement for a research and development activity of an applied nature.

(c) A cost share of at least 50 percent of the cost of a demonstration or commercial application activity is required unless the Secretary has determined it is necessary and appropriate to reduce the cost sharing requirements, taking into consideration any technological risk relating to the activity.

(d) Cost share shall be provided by non-Federal funds unless otherwise authorized by statute. In calculating the amount of the non-Federal contribution:

(1) Base the non-Federal contribution on total project costs, including the cost of work where funds are provided directly to a partner, consortium member or subrecipient, such as a Federally Funded Research and Development Center;

(2) Include the following costs as allowable in accordance with the applicable cost principles:

(i) Cash;

(ii) Personnel costs;

(iii) The value of a service, other resource, or third party in-kind contribution determined in accordance with Subpart E—Cost Principles—of 2 CFR part 200. For recipients that are for-profit organizations as defined by 2 CFR 910.122, the Cost Principles which apply are contained in 48 CFR 31.2. See § 910.352 for further information;

(iv) Indirect costs or facilities and administrative costs; and/or

(v) Any funds received under the power program of the Tennessee Valley Authority (except to the extent that such funds are made available under an annual appropriation Act);

(3) Exclude the following costs:

(i) Revenues or royalties from the prospective operation of an activity beyond the time considered in the award;

(ii) Proceeds from the prospective sale of an asset of an activity; or

(iii) Other appropriated Federal funds.

(iv) Repayment of the Federal share of a cost-shared activity under Section 988 of the Energy Policy Act of 2005 shall not be a condition of the award.

(e) For purposes of this section, the following definitions are applicable:

*Demonstration* means a project designed to determine the technical feasibility and economic potential of a technology on either a pilot or prototype scale.

*Development* is defined in 2 CFR 200.1.

*Research* is also defined in 2 CFR 200.1.

[79 FR 76024, Dec. 19, 2014, as amended at 84 FR 12049, Apr. 1, 2019; 87 FR 15320, Mar. 18, 2022]

### § 910.132 Research misconduct.

(a) A recipient is responsible for maintaining the integrity of research of any kind under an award from DOE including the prevention, detection, and remediation of research misconduct, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this section.

(b) For purposes of this section, the following definitions are applicable:

*Adjudication* means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

*Fabrication* means making up data or results and recording or reporting them.

*Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

*Finding of Research Misconduct* means a determination, based on a preponderance of the evidence, that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

*Inquiry* means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

*Investigation* means the formal examination and evaluation of the relevant facts.

*Plagiarism* means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

*Research misconduct* means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

*Research record* means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

(c) Unless otherwise instructed by the Contracting Officer, the recipient must conduct an initial inquiry into any allegation of research misconduct. If the recipient determines that there is sufficient evidence to proceed to an investigation, it must notify the Contracting Officer and, unless otherwise instructed, the recipient must:

(1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted;

(2) Inform the Contracting Officer if an initial inquiry supports an investigation and, if requested by the Contracting Officer thereafter, keep the Contracting Officer informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the recipient will forward to the Contracting Officer a copy of the evidentiary record, the investigative report, any recommendations made to the recipient's adjudicating official, and the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response to the recommendations (if any).

(3) If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

(d) DOE may elect to act in lieu of the recipient in conducting an inquiry or investigation into an allegation of research misconduct if the Contracting Officer finds that:

(1) The research organization is not prepared to handle the allegation in a manner consistent with this section;

(2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(3) DOE involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or,

(4) The allegation involves possible criminal misconduct.

(e) DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the recipient's good faith administration of this section and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If DOE pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

(f) In conducting the activities in paragraph (c) of this section, the recipient and DOE, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:

(1) *Safeguards for information and subjects of allegations.* The recipient shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the recipient without suffering retribution. Safeguards include: Protection against retaliation;

fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The recipient shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.

(2) *Objectivity and expertise.* The recipient shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.

(3) *Timeliness.* The recipient shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.

(4) *Confidentiality.* To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.

(5) *Remediation and sanction.* If the recipient finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The recipient must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The recipient must coordinate remedial actions with the Contracting Officer. The recipient must also consider whether personnel sanctions are appropriate. Any such sanction must be consistent with any applicable personnel laws, policies, and procedures, and must take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

(g) By executing this agreement, the recipient provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements and definitions of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of allegations of research misconduct.

(h) The recipient must insert or have inserted the substance of this section, including paragraph (g), in subawards at all tiers that involve research.

### § 910.133 Deviation authority.

(a) *General.* (1) A deviation is the use of any policy, procedure, form, standard, term, or condition which varies from a requirement of this part, or the waiver of any such requirement, unless such use or waiver is authorized or precluded by Federal statute. The use of optional or discretionary provisions of this part, including special restrictive conditions used in accordance with § 910.372, exceptions under 2 CFR 200.102, and the waiver of the cost sharing requirements in § 910.130 are not deviations. Awards to foreign entities are not subject to this section.

(2) A single-case deviation is a deviation which applies to one financial assistance transaction and one applicant, recipient, or subrecipient only.

(3) A class deviation is a deviation which applies to more than one financial assistance transaction, applicant, recipient, or subrecipient.

(b) *Conditions for approval.* The DOE/NNSA officials specified in paragraph (c) of this section may authorize a deviation only upon a written determination that the deviation is—

(1) Necessary to achieve program objectives;

(2) Necessary to conserve public funds;

(3) Otherwise essential to the public interest; or

(4) Necessary to achieve equity.

(c) *Approval procedures.* (1) A deviation request must be in writing and must be submitted to the responsible DOE/NNSA Contracting Officer. An applicant for a subaward or a subrecipient shall submit any such request through the recipient.

(2) Except as provided in paragraph (c)(3) of this section—

(i) A single-case deviation may be authorized by the responsible HCA.

(ii) A class deviation may be authorized by the Director, Office of Acquisition Management, for DOE actions, and the Deputy Associate Administrator for the Office of Acquisition and Project Management for NNSA, for NNSA actions, or designee.

(3) Whenever the approval of OMB, other Federal agency, or other DOE/NNSA office is required to authorize a deviation, the proposed deviation must be submitted to the Director, Office of Acquisition Management, for DOE actions, and the Deputy Associate Administrator for the Office of Acquisition and Project Management for NNSA, for NNSA actions, or designee for concurrence prior to submission to the authorizing official.

(d) *Notice.* Whenever a request for a class deviation is approved, DOE/NNSA will identify this class deviation (as applicable) in the Notice of Funding Opportunity(s) that may be affected.

(e) *Subawards.* A recipient may use a deviation in a subaward only with the prior written approval of a DOE/NNSA Contracting Officer.

[85 FR 32979, June 1, 2020]

## Subpart C [Reserved]

## Subpart D—Post Award Federal Requirements for For-Profit Entities

### § 910.350 Applicability of 2 CFR part 200.

(a) As stated in 2 CFR 910.22, unless otherwise noted in this part, the definition of Non-Federal entity found in 2 CFR 200.1 is expanded for DOE to include for-profit organizations in addition to states, local governments, Indian tribes, institutions of higher education (IHE), and nonprofit organizations.

(b) A for-profit organization is defined as one that distributes any profit not reinvested into the business as profit or dividends to its employees or shareholders.

(c) Subpart D of 2 CFR part 910 contains specific changes to 2 CFR part 200 that apply only to For-Profit Recipients and, unless otherwise specified, subrecipients. In some cases, the coverage in Subpart D will replace the language in a specific section of 2 CFR part 200.

[79 FR 76024, Dec. 19, 2014, as amended at 87 FR 15320, Mar. 18, 2022]

### § 910.352 Cost Principles.

For For-Profit Entities, the Cost Principles contained in 48 CFR 31.2 (Contracts with Commercial Organizations) must be followed in lieu of the Cost principles contained in 2 CFR 200.400 through 200.476, except that patent prosecution costs are not allowable unless specifically authorized in the award document. This applies to For-Profit entities whether they are recipients or subrecipients.

[79 FR 76024, Dec. 19, 2014, as amended at 87 FR 15320, Mar. 18, 2022]

### § 910.354 Payment.

(a) For-Profit Recipients are an exception to 2 CFR 200.305(b)(1) which requires that non-Federal entities be paid in advance as long as certain conditions are met.

(b) For For-Profit Recipients who are paid directly by DOE, reimbursement is the preferred method of payment. Under the reimbursement method of payment, the Federal awarding agency must reimburse the non-Federal entity for its actual cash disbursements. When the reimbursement method is used, the Federal awarding agency must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency reasonably believes the request to be improper.

### § 910.356 Audits.

See Subpart F of this part (Sections 910.500 through 910.521) for specific DOE regulations which apply to audits of DOE's For-Profit Recipients. For-Profit entities are an exception to the Single Audit requirements contained in Subpart F of 2 CFR 200 and therefore the regulations contained in 2 CFR 910 Subpart F apply instead.

### § 910.358 Profit or fee for SBIR/STTR.

(a) As authorized by 2 CFR 200.400 (g), DOE may expressly allow non-federal entities to earn a profit or fee resulting from Federal financial assistance.

(b) DOE allows a profit or fee to be paid under two of its financial assistance programs only: Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR).

(c) Awards under these programs will contain a specific provision which allows a profit or fee to be paid.

(d) Profit or Fee is unallowable for all other DOE programs which award grants and cooperative agreements.

### § 910.360 Real property and equipment.

(a) *Prior approvals for acquisition with Federal funds.* Recipients may purchase real property or equipment with an acquisition cost per unit of $5,000 or more in whole or in part with Federal funds only with the prior written approval of the contracting officer or in accordance with express award terms.

(b) *Title.* Unless a statute specifically authorizes and the award specifies that title to property vests unconditionally in the recipient, title to real property or equipment vests in the recipient, subject to all terms and conditions of the award and that the recipient shall:

(1) Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the real property or equipment is no longer needed for the purposes of the project, as may be determined by the contracting officer;

(2) Not encumber or permit any encumbrance on the real property or equipment without the prior written approval of the contracting officer;

(3) Use and dispose of the real property or equipment in accordance with paragraphs (e), (f), and (g) of this section; and

(4) Properly record, and consent to the Department's ability to properly record if the recipient fails to do so, UCC financing statement(s) for all equipment purchased with Federal funds (Financial assistance awards made under the Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) program are exempt from this requirement unless otherwise specified within the grant agreement); such a filing is required when the Federal share of the financial assistance agreement is more than $1,000,000, and the Contracting Officer may require it in his or her discretion when the Federal share is less than $1,000,000. These financing statement(s) must be approved in writing by the contracting officer prior to the recording, and they shall provide notice that the recipient's title to all equipment (not real property) purchased with Federal funds under the financial assistance agreement is conditional pursuant to the terms of this section, and that the Government retains an undivided reversionary interest in the equipment. The UCC financing statement(s) must be filed before the contracting officer may reimburse the recipient for the Federal share of the equipment unless otherwise provided for in the relevant financial assistance agreement. The recipient shall further make any amendments to the financing statements or additional recordings, including appropriate continuation statements, as necessary or as the contracting officer may direct.

(c) *Remedies.* If the recipient fails at any time to comply with any of the conditions or requirements of paragraph (b) of this section, then the contracting officer may:

(1) Notify the recipient of noncompliance in accordance with 2 CFR 200.339, which may lead to suspension or termination of the award;

(2) Impose special award conditions pursuant to 2 CFR 200.206 and 200.208 as amended by 910.372;

(3) Issue instructions to the recipient for disposition of the property in accordance with paragraph (g) of this section;

(4) In the case of a failure to properly record UCC financing statement(s) in accordance with paragraph (b)(4) of this section, effect such a recording; and

(5) Apply other remedies that may be legally available.

(d) *Title to and Federal interest in real property or equipment offered as cost-share.* As provided in 2 CFR 200.306(h), depending upon the purpose of the Federal award, a recipient may offer the fair market value of real property or equipment that is purchased with recipient's funds or that is donated by a third party to meet a portion of any required cost sharing or matching. If a resulting award includes such property as a portion of the recipient's cost share, the recipient holds conditional title to the property and the Government has an undivided reversionary interest in the share of the property value equal to the Federal participation in the project. The property is treated as if it had been acquired in part with Federal funds, and is subject to the provisions of paragraph (b) of this section and to the provisions of 2 CFR 200.311 and 200.313.

(e) *Insurance.* Recipients must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient.

(f) *Additional uses during and after the project period.* Unless a statute and the award terms expressly provide for the vesting of unconditional title to real property or equipment with the recipient, the real property or equipment acquired wholly or in part with Federal funds is subject to the following:

(1) During the Project Period, the recipient must make real property and equipment available for use on other projects or programs, if such other use does not interfere with the work on the project or program for which the real property or equipment was originally acquired. Use of the real property or equipment on other projects is subject to the following order of priority:

(i) Activities sponsored by DOE grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts or activities not sponsored by any Federal agency. If so used, use charges must be assessed to those activities. For real property or equipment, the use charges must be at rates equivalent to those for which comparable real property or equipment may be leased.

(2) After Federal funding for the project ceases, or if, as may be determined by the contracting officer, the real property or equipment is no longer needed for the purposes of the project, or if the recipient suspends work on the project, the recipient may use the real property or equipment for other projects, if:

(i) There are Federally sponsored projects for which the real property or equipment may be used;

(ii) The recipient obtains written approval from the contracting officer to do so. The contracting officer must ensure that there is a formal change of accountability for the real property or equipment to a currently funded Federal award; and

(iii) The recipient's use of the real property or equipment for other projects is in the same order of priority as described in paragraph (e)(1) of this section.

(iv) If the only use for the real property or equipment is for projects that have no Federal sponsorship, the recipient must proceed with disposition of the real property or equipment in accordance with paragraph (g) of this section.

(g) *Disposition.* (1) If, as determined by the contracting officer, an item of real property or equipment is no longer needed for Federally sponsored projects, or if the recipient has suspended work on the project, the recipient has the following options:

(i) If the property is equipment with a current per unit fair market value of less than $5,000, it may be retained, sold, or otherwise disposed of with no further obligation to DOE.

(ii) If the property is equipment (rather than real property) and with the written approval of the contracting officer, the recipient may replace it with an item that is needed currently

for the project by trading in or selling to offset the costs of the replacement equipment.

(iii) The recipient may elect to retain title, without further obligation to the Federal Government, by compensating the Federal Government for that percentage of the current fair market value of the real property or equipment that is attributable to the Federal participation in the project.

(iv) If the recipient does not elect to retain title to real property or equipment or does not request approval to use equipment as trade-in or offset for replacement equipment, the recipient must request disposition instructions from the responsible agency.

(2) If a recipient requests disposition instructions, the contracting officer must:

(i) For either real property or equipment, issue instructions to the recipient for disposition of the property no later than 120 calendar days after the recipient's request. The contracting officer's options for disposition are to direct the recipient to:

(A) Transfer title to the real property or equipment to the Federal Government or to a third party designated by the contracting officer provided that, in such cases, the recipient is entitled to compensation for its attributable percentage of the current fair market value of the real property or equipment, plus any reasonable shipping or interim storage costs incurred; or

(B) Sell the real property or equipment and pay the Federal Government for that percentage of the current fair market value of the property that is attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). If the recipient is authorized or required to sell the real property or equipment, the recipient must use competitive procedures that result in the highest practicable return.

(3) If the contracting officer fails to issue disposition instructions within 120 calendar days of the recipient's request, the recipient must dispose of the real property or equipment through the option described in paragraph (g)(2)(i)(B) of this section.

[80 FR 53237, Sept. 3, 2015, as amended at 87 FR 15320, Mar. 18, 2022]

### § 910.362 Intellectual property.

(a) *Scope.* This section sets forth the policies with regard to disposition of rights to data and to inventions conceived or first actually reduced to practice in the course of, or under, a grant or cooperative agreement made to a For-Profit entity by DOE.

(b) *Patents right—small business concerns.* In accordance with 35 U.S.C. 202, if the recipient is a small business concern and receives a grant, cooperative agreement, subaward, or contract for research, developmental, or demonstration activities, then, unless there are ''exceptional circumstances'' as described in 35 U.S.C. 202(e), the award must contain the standard clause in appendix A to this subpart, entitled ''Patents Rights (Small Business Firms and Nonprofit Organizations'' which provides to the recipient the right to elect ownership of inventions made under the award.

(c) *Patent rights—other than small business concerns, e.g., large businesses—*

(1) *No Patent Waiver.* Except as provided by paragraph (c)(2) of this section, if the recipient is a for-profit organization other than a small business concern, as defined in 35 U.S.C. 201(h) and receives an award or a subaward for research, development, and demonstration activities, then, pursuant to statute, the award must contain the standard clause in appendix A to this subpart, entitled ''Patent Rights (Large Business Firms)—No Waiver'' which provides that DOE owns the patent rights to inventions made under the award.

(2) *Patent Waiver Granted.* Paragraph (c)(1) of this section does not apply if:

(i) DOE grants a class waiver for a particular program under 10 CFR part 784;

(ii) The applicant requests and receives an advance patent waiver under 10 CFR part 784; or

(iii) A subaward is covered by a waiver granted under the prime award.

(3) *Special Provision.* Normally, an award will not include a background patent and data provision. However,

under special circumstances, in order to provide heightened assurance of commercialization, a provision providing for a right to require licensing of third parties to background inventions, limited rights data and/or restricted computer software, may be included. Inclusion of a background patent and/or a data provision to assure commercialization will be done only with the written concurrence of the DOE program official setting forth the need for such assurance. An award may include the right to license the Government and third party contractors for special Government purposes when future availability of the technology would also benefit the government, *e.g.*, clean-up of DOE facilities. The scope of any such background patent and/or data licensing provision is subject to negotiation.

(d) *Rights in data—general rule.* (1) Subject to paragraphs (d)(2) and (3) of this section, and except as otherwise provided by paragraphs (e) and (f) of this section or other law, any award under this subpart must contain the standard clause in appendix A to this subpart, entitled ''Rights in Data—General''.

(2) Normally, an award will not require the delivery of limited rights data or restricted computer software. However, if the contracting officer, in consultation with DOE patent counsel and the DOE program official, determines that delivery of limited rights data or restricted computer software is necessary, the contracting officer, after negotiation with the applicant, may insert in the award the standard clause as modified by Alternates I and/or II set forth in appendix A to this subpart.

(3) If software is specified for delivery to DOE, or if other special circumstances exist, *e.g.*, DOE specifying ''open-source'' treatment of software, then the contracting officer, after negotiation with the recipient, may include in the award special provisions requiring the recipient to obtain written approval of the contracting officer prior to asserting copyright in the software, modifying the retained Government license, and/or otherwise altering the copyright provisions.

(e) *Rights in data—programs covered under special protected data statutes.* (1) If a statute, other than those providing for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR) programs, provides for a period of time, typically up to five years, during which data produced under an award for research, development, and demonstration may be protected from public disclosure, then the contracting officer must insert in the award the standard clause in appendix A to this subpart entitled ''Rights in Data—Programs Covered Under Special Protected Data Statutes'' or, as determined in consultation with DOE patent counsel and the DOE program official, a modified version of such clause which may identify data or categories of data that the recipient must make available to the public.

(2) An award under paragraph (e)(1) of this section is subject to the provisions of paragraphs (d)(2) and (3) of this section.

(f) *Rights in data—SBIR/STTR programs.* If an applicant receives an award under the SBIR or STTR program, then the contracting officer must insert in the award the standard data clause in the General Terms and Conditions for SBIR Grants, entitled ''Rights in Data—SBIR Program''.

(g) *Authorization and consent.* (1) Work performed by a recipient under a grant is not subject to authorization and consent to the use of a patented invention, and the Government assumes no liability for patent infringement by the recipient under 28 U.S.C. 1498.

(2) Work performed by a recipient under a cooperative agreement is subject to authorization and consent to the use of a patented invention consistent with the principles set forth in 48 CFR 27.201–1.

(3) The contracting officer, in consultation with patent counsel, may also include clauses in the cooperative agreement addressing other patent matters related to authorization and consent, such as patent indemnification of the Government by recipient and notice and assistance regarding patent and copyright infringement. The policies and clauses for these other

patent matters will be the same or consistent with those in 48 CFR part 927.

### § 910.364 Reporting on utilization of subject inventions.

(a) Unless otherwise instructed, a recipient that obtains title to an invention made under an award shall submit annual reports on the utilization or efforts to obtain utilization of the invention for at least 10 years from the date the invention was first disclosed to DOE (Utilization Reports). Utilization Reports shall include at least the following information:

(1) Status of development;

(2) Date of first commercial sale or use;

(3) Gross royalties received by the recipient;

(4) The location of any manufacture of products embodying the subject invention; and

(5) Any such other data and information as DOE may reasonably specify.

(b) To the extent data or information supplied in a Utilization Report is considered by the recipient to be privileged and confidential and is so marked by the recipient, DOE agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

[80 FR 53238, Sept. 3, 2015]

### § 910.366 Export Control and U.S. Manufacturing and Competitiveness.

(a) *Export Control.* Any recipient of any award for research, development and/or demonstration must comply with all applicable U.S. laws regarding export control.

(b) *U.S. Manufacturing and Competitiveness.* It is the policy of DOE to ensure that DOE-funded research, development, and/or demonstration projects foster domestic manufacturing. Funding opportunity announcements (FOAs), therefore, may require that applicants submit a ''U.S. Manufacturing Plan'' in their applications. Such FOAs may encourage U.S. Manufacturing Plans to include proposals by recipients and any sub-recipients to manufacture DOE-funded technologies in the United States; however, the FOAs will also state that these plans should not include requirements regarding the source of inputs used during the manufacturing process. Regardless of whether such plans will be part of the merit review criteria or a program policy factor, and to the extent legally permissible, all awards subject to this subpart, including subawards, for research, development, and/or demonstration, must include a provision that provides plans by the recipient and any subrecipients to support manufacturing in the United States of technology developed under the award. The recipient and any subrecipients must agree to make those plans binding on any assignee or licensee or any entity otherwise acquiring rights to any subject invention or developed technology covered under the award. A recipient, subrecipient, assignee, licensee, or any entity otherwise acquiring the rights to any subject invention or developed technology may request a waiver or modification of U.S. manufacturing plans from DOE. DOE will determine whether to approve such a waiver in light of equitable considerations, including, for example, whether the requester satisfactorily shows that the planned support is not economically feasible and whether there is a satisfactory alternative net benefit to the U.S. economy if the requested waiver or modification is approved.

[80 FR 53239, Sept. 3, 2015]

### § 910.368 Change of control.

(a) Change of control is defined as any of the following:

(1) Any event by which any individual or entity other than the recipient becomes the beneficial owner of more than 50% of the total voting power of the voting stock of the recipient;

(2) The recipient merges with or into any entity other than in a transaction in which the shares of the recipient's voting stock are converted into a majority of the voting stock of the surviving entity;

(3) The sale, lease or transfer of all or substantially all of the assets of the recipient to any individual or entity other than the recipient in one or a series of related transactions;

(4) The adoption of a plan relating to the liquidation or dissolution of the recipient; or

(5) Where the recipient is a wholly-owned subsidiary at the time of award or novation, and the recipient's parent entity undergoes a change of control as defined in this section.

(b) When the Federal share of the financial assistance agreement is more than $10,000,000 or DOE requests the information in writing, the recipient must provide the contracting officer with documentation identifying all parties who exercise control in the recipient at the time of award.

(c) When there is a change of control of a recipient, or the recipient has reason to know a change of control is likely, the recipient must notify the contracting officer within 30 days of its knowledge of such change of control. Such notification must include, at a minimum, copies of documents necessary to reflect the transaction that resulted or will result in the change of control, and identification of all entities, individuals or other parties to such transaction. Failure to notify the contracting officer of a change of control is grounds for suspension or termination of the award for failure to comply with the terms and conditions of the award.

(d) The contracting officer must authorize a change of control for the purposes of the award. Failure to receive the contracting officer's authorization for a change of control may lead to a suspension of the award, termination for failure to comply with the terms and conditions of the award, or imposition of special award conditions pursuant to 2 CFR 910.372. Special award conditions may include but are not limited to:

(1) Additional reporting requirements related to the change of control; and

(2) Suspension of payments due to the recipient.

[80 FR 53239, Sept. 3, 2015]

### § 910.370 Novation of financial assistance agreements.

(a) Financial assistance agreements are not assignable absent written consent from the contracting officer. At his or her sole discretion, the contracting officer may, through novation, recognize a third party as the successor in interest to a financial assistance agreement if such recognition is in the Government's interest, conforms with all applicable laws and the third party's interest in the agreement arises out of the transfer of:

(1) All of the recipient's assets; or

(2) The entire portion of the assets necessary to perform the project described in the agreement.

(b) When the contracting officer determines that it is not in the Government's interest to consent to the novation of a financial assistance agreement from the original recipient to a third party, the original recipient remains subject to the terms of the financial assistance agreement, and the Department may exercise all legally available remedies under 2 CFR 200.339 through 200.343, or that may be otherwise available, should the original recipient not perform.

(c) The contracting officer may require submission of any documentation in support of a request for novation, including but not limited to documents identified in 48 CFR Subpart 42.12. The contracting officer may use the format in 48 CFR 42.1204 as guidance for novation agreements identified in paragraph (a) of this section.

[80 FR 53239, Sept. 3, 2015, as amended at 87 FR 15320, Mar. 18, 2022]

### § 910.372 Special award conditions.

(a) In addition to the requirements of 2 CFR 200.206, the following actions may require the use of Specific Conditions as identified in 2 CFR 200.208:

(1) Has not conformed to the terms and conditions of a previous award;

(2) Has a change of control as defined in § 910.368;

(3) Fails to comply with real property and equipment requirements at § 910.360; or

(4) Is not otherwise responsible.

[80 FR 53239, Sept. 3, 2015, as amended at 87 FR 15320, Mar. 18, 2022]

## APPENDIX A TO SUBPART D OF PART 910—PATENT AND DATA PROVISIONS

1. Patent Rights (Small Business Firms and Nonprofit Organizations)
2. Patent Rights (Large Business Firms)—No Waiver
3. Rights in Data—General
4. Rights in Data—Programs Covered Under Special Protected Data Statutes

1. Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions

*Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

*Made* when used in relation to any invention means the conception or first actual reduction to practice of such invention.

*Nonprofit organization* is defined in 2 CFR 200.1.

*Practical application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

*Small business firm* means a small business concern as defined at section 2 of Public Law 85–536 (16 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3 through 121.8 and 13 CFR 121.3 through 121.12, respectively, will be used.

*Subject invention* means any invention of the Recipient conceived or first actually reduced to practice in the performance of work under this award, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of award performance.

(b) Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patent Rights clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient

(1) The Recipient will disclose each subject invention to DOE within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient will promptly notify DOE of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying DOE within two years of disclosure to DOE. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the U.S., the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on an invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the U.S. after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to DOE, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of DOE, be granted.

(d) Conditions When the Government May Obtain Title

The Recipient will convey to DOE, upon written request, title to any subject invention:

(1) If the Recipient fails to disclose or elect the subject invention within the times specified in paragraph (c) of this patent rights clause, or elects not to retain title; provided that DOE may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times;

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this Patent Rights clause; provided, however,

that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this Patent Rights clause, but prior to its receipt of the written request of DOE, the Recipient shall continue to retain title in that country; or

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Recipient and Protection of the Recipient Right To File

(1) The Recipient will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the subject invention within the times specified in paragraph (c) of this Patent Rights clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope of the extent the Recipient was legally obligated to do so at the time the award was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the agency's licensing regulation, if any. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at discretion of the funding Federal agency to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and the agency's licensing regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Recipient Action To Protect Government's Interest

(1) The Recipient agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions for which the Recipient retains title; and

(ii) Convey title to DOE when requested under paragraph (d) of this Patent Rights clause, and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under this award in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this Patent Rights clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph (c)(1) of this Patent Rights clause. The Recipient shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify DOE of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a subject invention, the following statement: ''This invention was made with Government support under (identify the award) awarded by (identify DOE). The Government has certain rights in this invention.''

(g) Subaward/Contract

(1) The Recipient will include this Patent Rights clause, suitably modified to identify the parties, in all subawards/contracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or nonprofit organization. The subrecipient/contractor will retain all rights provided for the Recipient in this Patent Rights clause, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors' subject inventions.

(2) The Recipient will include in all other subawards/contracts, regardless of tier, for experimental, developmental or research work, the patent rights clause required by 2 CFR 910.362(c).

(3) In the case of subawards/contracts at any tier, DOE, the Recipient, and the subrecipient/contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by the clause.

(h) Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient and such other data and information as DOE may reasonably specify. The Recipient also agrees to provide additional reports in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this Patent Rights clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without the permission of the Recipient.

(i) Preference for United States Industry.

Notwithstanding any other provision of this Patent Rights clause, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U.S. unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the U.S. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U.S. or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in-Rights

The Recipient agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with procedures at 37 CFR 401.6 and any supplemental regulations of the Agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances and if the Recipient, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the Recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensee; or

(4) Such action is necessary because the agreement required by paragraph (i) of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U.S. is in breach of such agreement.

(k) Special Provisions for Awards With Nonprofit Organizations

If the Recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the U.S. may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific or engineering research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give preference to a small business firm if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review

the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures or practices with the Secretary when the Secretary's review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communications

All communications required by this Patent Rights clause should be sent to the DOE Patent Counsel address listed in the Award Document.

(m) Electronic Filing

Unless otherwise specified in the award, the information identified in paragraphs (f)(2) and (f)(3) may be electronically filed.

(End of clause)

2. Patent Rights (Large Business Firms)—No Waiver

(a) Definitions

*DOE patent waiver regulations*, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award. See 10 CFR part 784.

*Invention*, as used in this clause, means any invention or discovery which is or may be patentable of otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

*Patent Counsel*, as used in this clause, means the Department of Energy Patent Counsel assisting the awarding activity.

*Subject invention*, as used in this clause, means any invention of the Recipient conceived or first actually reduced to practice in the course of or under this agreement.

(b) Allocations of Principal Rights

(1) Assignment to the Government. The Recipient agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Recipient under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations. The Recipient, or an employee-inventor after consultation with the Recipient, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulation. Each determination of greater rights under this agreement shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(c) Minimum Rights Acquired by the Government

With respect to each subject invention to which the Department of Energy grants the Recipient principal or exclusive rights, the Recipient agrees to grant to the Government: A nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency); ''march-in rights'' as set forth in 37 CFR 401.14(a)(J)); preference for U.S. industry as set forth in 37 CFR 401.14(a)(I); periodic reports upon request, no more frequently than annually, on the utilization or intent of utilization of a subject invention in a manner consistent with 35 U.S.C. 202(c)(50); and such Government rights in any instrument transferring rights in a subject invention.

(d) Minimum Rights to the Recipient

(1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Recipient fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a part and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the minimum rights acquired by the Government similar to paragraph (c) of this clause. Such request must be made in writhing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(e) Invention Identification, Disclosures, and Reports

(1) The Recipient shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Recipient personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this agreement. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to

practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Recipient shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Recipient personnel responsible for patent matters or, if earlier, within 6 months after the Recipient becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to DOE shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Recipient contends in writing at the time the invention is disclosed that it was not so made.

(3) The Recipient shall furnish the Contracting Officer a final report, within 3 months after completion of the work listing all subject inventions or containing a statement that there were no such inventions, and listing all subawards/contracts at any tier containing a patent rights clause or containing a statement that there were no such subawards/contracts.

(4) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under subaward/contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Recipient agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of Records Relating to Inventions

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this agreement to determine whether—(i) Any such inventions are subject inventions; (ii) The Recipient has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause; (iii) The Recipient and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Recipient invention which the Contracting Officer believes may be a subject invention, the Recipient may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Subaward/Contract

(1) The recipient shall include the clause PATENT RIGHTS (SMALL BUSINESS FIRMS AND NONPROFIT ORGANIZATIONS) (suitably modified to identify the parties) in all subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subaward/contract is subject to an Exceptional Circumstances Determination by DOE. In all other subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Recipient shall include this clause (suitably modified to identify the parties), or an alternate clause as directed by the contracting officer. The Recipient shall not, as part of the consideration for awarding the subaward/contract, obtain rights in the subrecipient's/contractor's subject inventions.

(2) In the event of a refusal by a prospective subrecipient/contractor to accept such a

clause the Recipient: (i) Shall promptly submit a written notice to the Contracting Officer setting forth the subrecipient/contractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and (ii) Shall not proceed with such subaward/contract without the written authorization of the Contracting Officer.

(3) In the case of subawards/contracts at any tier, DOE, the subrecipient/contractor, and Recipient agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by this clause.

(4) The Recipient shall promptly notify the Contracting Officer in writing upon the award of any subaward/contract at any tier containing a patent rights clause by identifying the subrecipient/contractor, the applicable patent rights clause, the work to be performed under the subaward/contract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Recipient shall furnish a copy of such subaward/contract, and, no more frequently than annually, a listing of the subawards/contracts that have been awarded.

(5) The Recipient shall identify all subject inventions of a subrecipient/contractor of which it acquires knowledge in the performance of this agreement and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(h) Atomic Energy

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this agreement.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Recipient will obtain patent agreements to effectuate the provisions of subparagraph (h)(1) of this clause from all persons who perform any part of the work under this agreement, except nontechnical personnel, such as clerical employees and manual laborers.

(i) Publication

It is recognized that during the course of the work under this agreement, the Recipient or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this agreement. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Recipient, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(j) Forfeiture of Rights in Unreported Subject Inventions

(1) The Recipient shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Recipient fails to report to Patent Counsel within six months after the time the Recipient: (i) Files or causes to be filed a United States or foreign patent application thereon; or (ii) Submits the final report required by subparagraph (e)(3) of this clause, whichever is later.

(2) However, the Recipient shall not forfeit rights in a subject invention if, within the time specified in subparagraph (e)(2) of this clause, the Recipient: (i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the agreement and delivers the decision to Patent Counsel, with a copy to the Contracting Officer, or (ii) Contending that the invention is not a subject invention, the Recipient nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy of the Contracting Officer; or (iii) Establishes that the failure to disclose did not result from the Recipient's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this agreement), the Recipient shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (j) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

(End of clause)

3. Rights in Data—General

(a) Definitions

*Computer Data Bases*, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

*Computer software*, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

*Data*, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing, or management information.

*Form, fit, and function data*, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

*Limited rights*, as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

*Limited rights data*, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

*Restricted computer software*, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

*Restricted rights*, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

*Technical data*, as used in this clause, means data (other than computer software) which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

*Unlimited rights*, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocations of Rights

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this agreement;

(ii) Form, fit, and function data delivered under this agreement;

(iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

(iv) All other data delivered under this agreement unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Recipient shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take over appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in paragraph (c)(1) of this clause.

(c) Copyright

(1) Data first produced in the performance of this agreement. Unless provided otherwise in paragraph (d) of this clause, the Recipient may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in data first produced in the performance of this agreement. When claim to copyright is made, the Recipient shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data not first produced in the performance of this agreement and which contains the copyright

notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in paragraph (g)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated in or made part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data

(1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this agreement.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this award, which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(e) Unauthorized Marking of Data

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in paragraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or Incorrect Markings

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery or such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient:

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

(i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or

(ii) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software

When data other than that listed in paragraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and qualify as either limited rights data or restricted computer software, if the Recipient desires to continue protection of such data, the Recipient shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding, the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(h) Subaward/Contract

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with the subaward/contract award without further authorization.

(i) Additional Data Requirements

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at any time during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause, or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(j) The recipient agrees, except as may be otherwise specified in this award for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this award, inspect at the Recipient's facility any data withheld pursuant to paragraph (g) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

As prescribed in 2 CFR 910.362(d)(1), the following Alternate I and/or II may be inserted in the clause in the award instrument.

Alternate I:

(g)(2) Notwithstanding paragraph (g)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Recipient may affix the following ''Limited Rights Notice'' to the data and the Government will thereafter treat the data, in accordance with such Notice:

Limited Rights Notice

(a) These data are submitted with limited rights under Government agreement No. ____ (and subaward/contract No. _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use (except for manufacture) by Federal support services contractors within the scope of their contracts;

(2) This ''limited rights data'' may be disclosed for evaluation purposes under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(3) This ''limited rights data'' may be disclosed to other contractors participating in the Government's program of which this Recipient is a part for information or use (except for manufacture) in connection with the work performed under their awards and under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(4) This ''limited rights data'' may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed; and

(5) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate II:

(g)(3)(i) Notwithstanding paragraph (g)(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following ''Restricted Rights Notice'' to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice.

Restricted Rights Notice

(a) This computer software is submitted with restricted rights under Government Agreement No._____ (and subaward/contract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

(1) Used or copies for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer or which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Recipients in accordance with paragraph (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated, in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice

Use, reproduction, or disclosure is subject to restrictions set forth in agreement No. _____ (and subaward/contract_____, If appropriate) with _____(name of Recipient and subrecipient/contractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: ''Unpublished—rights reserved under the Copyright Laws of the United States.''

(End of clause)

4. Rights in Data—Programs Covered Under Special Data Statutes

(a) Definitions

*Computer Data Bases*, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

*Computer software*, as used in this clause, means

(i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and

(ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

*Data*, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer

software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing or management information.

*Form, fit, and function data,* as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

*Limited rights data,* as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

*Restricted computer software,* as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including modifications of such computer software.

*Protected data,* as used in this clause, means technical data or commercial or financial data first produced in the performance of the award which, if it had been obtained from and first produced by a non-federal party, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. 552(b)(4) and which data is marked as being protected data by a party to the award.

*Protected rights,* as used in this clause, mean the rights in protected data set forth in the Protected Rights Notice of paragraph (g) of this clause.

*Technical data,* as used in this clause, means that data which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

*Unlimited rights,* as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this agreement as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this agreement;

(iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

(iv) All other data delivered under this agreement unless provided otherwise for protected data in accordance with paragraph (g) of this clause or for limited rights data or restricted computer software in accordance with paragraph (h) of this clause.

(2) The Recipient shall have the right to—

(i) Protect rights in protected data delivered under this agreement in the manner and to the extent provided in paragraph (g) of this clause;

(ii) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (h) of this clause;

(iii) Substantiate use of, add, or correct protected rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in paragraph (c)(1) of this clause.

(c) Copyright

(1) Data first produced in the performance of this agreement. Except as otherwise specifically provided in this agreement, the Recipient may establish, without the prior approval of the Contracting Officer, claim to copyright subsisting in any data first produced in the performance of this agreement. If claim to copyright is made, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data that are not first produced in the performance of this agreement and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; provided,

however, that if such data are computer software, the Government shall acquire a copyright license as set forth in paragraph (h)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated or made a part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data

(1) The Receipt shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this agreement which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) Unauthorized Marking of Data

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in paragraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination become final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or Incorrect Markings

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (*g*) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

(i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) Rights to Protected Data

(1) The Recipient may, with the concurrence of DOE, claim and mark as protected data, any data first produced in the performance of this award that would have been treated as a trade secret if developed at private expense. Any such claimed ''protected data'' will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraphs (e) and (f) of this clause.

Protected Rights Notice

These protected data were produced under agreement no. _____ with the U.S. Department of Energy and may not be published, disseminated, or disclosed to others outside the Government until (Note:) The period of protection of such data is fully negotiable, but cannot exceed the applicable statutorily authorized maximum), unless express written authorization is obtained from the recipient. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

(2) Any such marked Protected Data may be disclosed under obligations of confidentiality for the following purposes:

(a) For evaluation purposes under the restriction that the ''Protected Data'' be retained in confidence and not be further disclosed; or

(b) To subcontractors or other team members performing work under the Government's (insert name of program or other applicable activity) program of which this award is a part, for information or use in connection with the work performed under their activity, and under the restriction that the Protected Data be retained in confidence and not be further disclosed.

(3) The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Data.

(a) At the end of the protected period;

(b) If the data becomes publicly known or available from other sources without a breach of the obligation of confidentiality with respect to the Protected Data;

(c) If the same data is independently developed by someone who did not have access to the Protected Data and such data is made available without obligations of confidentiality; or

(d) If the Recipient disseminates or authorizes another to disseminate such data without obligations of confidentiality.

(4) However, the Recipient agrees that the following types of data are not considered to be protected and shall be provided to the Government when required by this award without any claim that the data are Protected Data. The parties agree that notwithstanding the following lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with this award, or from making publicly available additional non-protected data, nor does the following list constitute any admission by the Government that technical data not on the list is Protected Data. (Note: It is expected that this paragraph will specify certain types of mutually agreed upon data that will be available to the public and will not be asserted by the recipient/contractor as limited rights or protected data).

(5) The Government's sole obligation with respect to any protected data shall be as set forth in this paragraph (g).

(h) Protection of Limited Rights Data

When data other than that listed in paragraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and such data qualify as either limited rights data or restricted computer software, the Recipient, if the Recipient desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(i) Subaward/Contract

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subaward/contract award without further authorization.

(j) Additional Data Requirements

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at any time during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(k) The Recipient agrees, except as may be otherwise specified in this agreement for

specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Recipient's facility any data withheld pursuant to paragraph (h) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

As prescribed in 2 CFR 910.362(e)(2), the following Alternate I and/or II may be inserted in the clause in the award instrument.

Alternate I

(h)(2) Notwithstanding paragraph (h)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Recipient may affix the following ''Limited Rights Notice'' to the data and the Government will thereafter treat the data, in accordance with such Notice:

Limited Rights Notice

(a) These data are submitted with limited rights under Government agreement No._____ (and subaward/contract No. _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use (except for manufacture) by Federal support services contractors within the scope of their contracts;

(2) This ''limited rights data'' may be disclosed for evaluation purposes under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(3) This ''limited rights data'' may be disclosed to other contractors participating in the Government's program of which this Recipient is a part for information or use (except for manufacture) in connection with the work performed under their awards and under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed;

(4) This ''limited rights data'' may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the ''limited rights data'' be retained in confidence and not be further disclosed; and

(5) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate II

(h)(3)(i) Notwithstanding paragraph (h)(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following ''Restricted Rights Notice'' to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (d) and (e) of this clause, in accordance with the Notice:

Restricted Rights Notice

(a) This computer software is submitted with restricted rights under Government Agreement No._____ (and subaward/contract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (c) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copies for use in a backup computer if any computer for which it was acquired is inoperative

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by Federal support service Contractors in accordance with paragraphs (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copies for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice

Use, reproduction, or disclosure is subject to restrictions set forth in Agreement No._____ (and subaward/contract_____, if appropriate) with_____ (name of Recipient and subrecipient/contractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: ''Unpublished—rights reserved under the Copyright Laws of the United States.''

(End of clause)

[79 FR 76024, Dec. 19, 2014, as amended at 87 FR 15320, Mar. 18, 2022]

## Subpart E—Cost Principles

### § 910.401 Application to M&O's.

In accordance with 48 CFR 970.3002–1 and 970.3101–00–70, a Federally Funded Research Center (FFRDC) which is also a designated DOE Management and Operating (M&O) contract must follow the cost accounting standards (CAS) contained in 48 CFR part 30 and must follow the appropriate Cost Principles contained in 48 CFR part 31.

## Subpart F—Audit Requirements for For-Profit Entities

GENERAL

### § 910.500 Purpose.

This Part follows the same format as 2 CFR 200.500. We purposely did not renumber the paragraphs within this part so that auditors and recipients can compare this to the single audit requirements contained in 2 CFR 200.500.

AUDITS

### § 910.501 Audit requirements.

(a) *Audit required.* A for–profit entity that expends $750,000 or more during the non-Federal entity's fiscal year in DOE awards must have a compliance audit conducted for that year in accordance with the provisions of this Part.

(b) *Compliance audit.* (1) If a for-profit entity has one or more DOE awards with expenditures of $750,000 or more during the for-profit entity's fiscal year, they must have a compliance audit for each of the awards with $750,000 or more in expenditures. A compliance audit should comply with the applicable provisions in § 910.514—Scope of Audit. The remaining awards do not require, individually or in the aggregate, a compliance audit.

(2) If a for-profit entity receives more than one award from DOE with a sum total of expenditures of $750,000 or more during the for-profit entity's fiscal year, but does not have any single award with expenditures of $750,000 or more; the entity must determine whether any or all of the awards have common compliance requirements (*i.e.*, are considered a cluster of awards) and determine the total expenditures of the awards with common compliance requirements. A compliance audit is required for the largest cluster of awards (if multiple clusters of awards exist) or the largest award not in a cluster of awards, whichever corresponding expenditure total is greater. A compliance audit should comply with the applicable provisions in § 910.514—Scope of Audit. The remaining awards do not require, individually or in the aggregate, a compliance audit;

(3) If a for-profit entity receives one or more awards from DOE with a sum total of expenditures less than $750,000, no compliance audit is required;

(4) If the for-profit entity is a sub-recipient, 2 CFR 200.501(h) requires that the pass-through entity establish appropriate monitoring and controls to ensure the sub-recipient complies with award requirements. These compliance audits must be conducted in accordance with 2 CFR 200.514 Scope of audit

(c) *Program-specific audit election.* Not applicable.

(d) *Exemption when Federal awards expended are less than $750,000.* A for-profit entity that expends less than $750,000 during the for-profit's fiscal year in DOE awards is exempt from DOE audit requirements for that year, except as noted in § 910.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) *Subrecipients and Contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. The provisions of 2 CFR 200.331, Subrecipient and contractor determinations should be considered in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients to DOE Federal award requirements. The agreement with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also 2 CFR 200.332, Requirements for pass- through entities.

[79 FR 76024, Dec. 19, 2014, as amended at 80 FR 57511, Sept. 24, 2015; 87 FR 15320, Mar. 18, 2022]

### § 910.502 Basis for determining DOE awards expended.

(a) *Determining Federal awards expended.* The determination of when a Federal award is expended must be based on when the activity related to the DOE award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of DOE awards, such as: Expenditure/expense transactions associated with awards including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the for-profit entity

to an interest subsidy; and the period when insurance is in force.

(b) *Loan and loan guarantees (loans).* Loan and loan guarantees issued by the DOE Loan Program Office corresponding to Title XVII of the Energy Policy Act of 2005, as amended, 42 U.S.C. 16511–16516 (''Title XVII'') are exempt from these provisions.

(1) Not applicable.

(2) Not applicable.

(3) Not applicable.

(c) Not applicable.

(d) *Prior loan and loan guarantees (loans).* See paragraph (b) of this section.

(e) *Endowment funds.* The cumulative balance of DOE awards for endowment funds that are federally restricted are considered DOE awards expended in each audit period in which the funds are still restricted.

(f) *Free rent.* Free rent received by itself is not considered a DOE award expended under this Part. However, free rent received as part of a DOE award to carry out a DOE program must be included in determining DOE awards expended and subject to audit under this part.

(g) *Valuing non-cash assistance.* DOE non-cash assistance, such as free rent, food commodities, donated property, or donated surplus property, must be valued at fair market value at the time of receipt or the assessed value provided by DOE.

(h) Not applicable.

(i) Not applicable.

(j) Not applicable.

[87 FR 15320, Mar. 18, 2022]

### § 910.503 Relation to other audit requirements.

(a) An audit conducted in accordance with this Part must be in lieu of any financial audit of DOE awards which a for-profit entity is required to undergo under any other Federal statute or regulation. To the extent that such audit provides DOE with the information it requires to carry out its responsibilities under Federal statute or regulation, DOE must rely upon and use that information.

(b) Notwithstanding paragraph (a) of this section, DOE, Inspectors General, or GAO may conduct or arrange for additional audits which are necessary to carry out its responsibilities under Federal statute or regulation. The provisions of this Part do not authorize any for-profit entity to constrain, in any manner, DOE from carrying out or arranging for such additional audits, except that DOE must plan such audits to not be duplicative of other audits of DOE. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.

(c) The provisions of this Part do not limit the authority of DOE to conduct, or arrange for the conduct of, audits and evaluations of DOE awards, nor limit the authority of any Federal agency Inspector General or other Federal official.

(d) DOE to pay for additional audits. If DOE conducts or arranges for additional audits it must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) Not applicable.

### § 910.504 Frequency of audits.

Audits required by this Part must be performed annually.

(a) Not applicable.

(b) Not applicable.

### § 910.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, DOE and pass-through entities must take appropriate action as provided in 2 CFR 200.339, Remedies for noncompliance.

[79 FR 76024, Dec. 19, 2014, as amended at 87 FR 15321, Mar. 18, 2022]

### § 910.506 Audit costs.

See 2 CFR 200.425 Audit services.

### § 910.507 Compliance audits.

(a) *Program-specific audit guide available.* In some cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found

on the OMB website in the compliance supplement, in part 8, appendix VI, Program-Specific Audit Guides, which includes a website where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow generally accepted government auditing standards (GAGAS) and the guide when performing a compliance audit.

(b) *Program-specific audit guide not available.* (1) When a program-specific audit guide is not available, the auditee and auditor must conduct the compliance audit in accordance with GAAS and GAGAS.

(2) If audited financial statements are available, for-profit recipients should submit audited financial statements to DOE as a part of the compliance audit. (If the recipient is a subsidiary for which separate financial statements are not available, the recipient may submit the financial statements of the consolidated group.)

(3) The auditor must:

(i) Not applicable;

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the DOE program consistent with the requirements of §910.514 Scope of audit;

(iii) Perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of DOE awards that could have a direct and material effect on the DOE program consistent with the requirements of §910.514 Scope of audit;

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of §910.511 Audit findings follow-up, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and

(v) Report any audit findings consistent with the requirements of §910.516 Audit findings.

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) (if available) of the DOE program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the DOE program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of DOE awards which could have a direct and material effect on the DOE program; and

(iv) A schedule of findings and questioned costs for the DOE program that includes a summary of the auditor's results relative to the DOE program in a format consistent with §910.515 Audit reporting, paragraph (d)(1) and findings and questioned costs consistent with the requirements of §910.515 Audit reporting, paragraph (d)(3).

(c) *Report submission for program-specific audits.* (1) The audit must be completed and the reporting required by paragraph (c)(2) or (3) of this section submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must make report copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(2) When a program-specific audit guide is available, the compliance audits must be submitted (along with audited financial statements if audited financial statements are available), to the appropriate DOE Contracting Officer as well as to the DOE Office of the Chief Financial Officer.

(3) When a program-specific audit guide is not available, the reporting

package for a program-specific audit must consist of, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The compliance audit must be submitted (along with audited financial statements if audited financial statements are available), to the appropriate DOE Contracting Officer as well as to the DOE Office of the Chief Financial Officer.

(d) *Other sections of this part may apply*. Compliance audits are subject to:

(1) Section 910.500 Purpose through §910.503 Relation to other audit requirements, paragraph (d);

(2) Section 910.504 Frequency of audits through §910.506 Audit costs;

(3) Section 910.508 Auditee responsibilities and §910.509 Auditor selection;

(4) Section 910.511 Audit findings follow-up;

(5) Section 910.512 Report submission, paragraphs (e) through (h);

(6) Section 910.513 Responsibilities;

(7) Section 910.516 Audit findings and §910.517 Audit documentation;

(8) Section 910.521 Management decision; and

(9) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

[87 FR 15321, Mar. 18, 2022]

AUDITEES

### §910.508 Auditee responsibilities.

The auditee must:

(a) Procure or otherwise arrange for the audit required by this Part in accordance with §910.509 Auditor selection, and ensure it is properly performed and submitted when due in accordance with §910.512 Report submission.

(b) Submit appropriate financial statements (if available).

(c) Submit the schedule of expenditures of DOE awards in accordance with §910.510 Financial statements.

(d) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with §910.511 Audit findings follow- up, paragraph (b) and §910.511 Audit findings follow-up, paragraph (c), respectively.

(e) Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this Part.

### §910.509 Auditor selection.

(a) *Auditor procurement*. When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the for-profit entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in 2 CFR 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms, or the FAR (48 CFR part 42), as applicable.

(b) *Restriction on auditor preparing indirect cost proposals*. An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this Part when the indirect costs recovered by the auditee during the prior year exceeded $1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) *Use of Federal auditors*. Federal auditors may perform all or part of the work required under this Part if they

comply fully with the requirements of this Part.

### §910.510 Financial statements.

(a) *Financial statements.* If available, the auditee must submit financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this Part. However, for-profit entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with §910.514 Scope of audit, paragraph (a) and prepare separate financial statements.

(b) *Schedule of expenditures of DOE awards.* The auditee must prepare a schedule of expenditures of DOE awards for the period covered by the auditee's fiscal year which must include the total DOE awards expended as determined in accordance with §910.502 Basis for determining DOE awards expended. While not required, the auditee may choose to provide information requested by DOE and pass-through entities to make the schedule easier to use. For example, when a DOE program has multiple DOE award years, the auditee may list the amount of DOE awards expended for each DOE award year separately. At a minimum, the schedule must:

(1) List individual DOE programs. For a cluster of programs, provide the cluster name, list individual DOE programs within the cluster of programs. For R&D, total DOE awards expended must be shown by individual DOE award and major subdivision within DOE. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) Not applicable.

(3) Provide total DOE awards expended for each individual DOE program and the CFDA number For a cluster of programs also provide the total for the cluster.

(4) Not applicable.

(5) Not applicable.

(6) Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the for-profit entity elected to use the 10% de minimis cost rate as covered in 2 CFR 200.414 Indirect (F&A) costs.

### §910.511 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under §910.516 Audit findings, paragraph (c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding's recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action

plan or in DOE's or pass-through entity's management decision, the summary schedule must provide an explanation.

(3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to DOE;

(ii) DOE is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan*. At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in §910.516 Audit findings, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

### §910.512 Report submission.

(a) *General*. (1) The audit must be completed and the reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

(2) Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) *Data collection*. See paragraph (b)(1) of this section:

(1) A senior level representative of the auditee (*e.g.*, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the reporting package that says that the auditee complied with the requirements of this Part, the reporting package does not include protected personally identifiable information, and the information included in its entirety is accurate and complete.

(2) Not applicable.

(3) Not applicable.

(c) *Reporting package*. The reporting package must include the:

(1) Financial statements (if available) and schedule of expenditures of DOE awards discussed in §910.510 Financial statements, paragraphs (a) and (b), respectively;

(2) Summary schedule of prior audit findings discussed in §910.511 Audit findings follow-up, paragraph (b);

(3) Auditor's report(s) discussed in §910.515 Audit reporting; and

(4) Corrective action plan discussed in §910.511 Audit findings follow-up, paragraph (c).

(d) *Submission to DOE*. The auditee must electronically submit the compliance reporting package described in paragraph (c) of this section compliance audits must be submitted (along with audited financial statements if audited financial statements are available), to the appropriate DOE Contracting Officer as well as to the DOE Office of the Chief Financial Officer.

(e) *Requests for management letters issued by the auditor*. In response to requests by a Federal agency, auditees must submit a copy of any management letters issued by the auditor.

(f) *Report retention requirements*. Auditees must keep one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to DOE.

(g) Not applicable.

(h) Not applicable.

## FEDERAL AGENCIES

### §910.513 Responsibilities.

(a)(1) Not applicable.

(2) Not applicable.

(3) Not applicable.

(i) Not applicable.
(ii) Not applicable.
(iii) Not applicable.
(iv) Not applicable.
(v) Not applicable.
(vi) Not applicable.
(vii) Not applicable.
(viii) Not applicable.
(ix) Not applicable.
(b) Not applicable.
(1) Not applicable.
(2) Not applicable.
(c) *DOE responsibilities.* DOE must perform the following for the awards it makes (See also the requirements of 2 CFR 200.211 Information contained in a Federal award):
(1) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this Part.
(2) Provide technical advice and counsel to auditees and auditors as requested.
(3) Follow-up on audit findings to ensure that the recipient takes appropriate and timely corrective action. As part of audit follow-up, the DOE must:
(i) Issue a management decision as prescribed in §910.521 Management decision;
(ii) Monitor the recipient taking appropriate and timely corrective action;
(iii) Use cooperative audit resolution mechanisms (see 2 CFR 200.1, Cooperative audit resolution) to improve DOE program outcomes through better audit resolution, follow-up, and corrective action; and
(iv) Develop a baseline, metrics, and targets to track, over time, the effectiveness of the DOE's process to follow-up on audit findings and on the effectiveness of Compliance Audits in improving non-Federal entity accountability and their use by DOE in making award decisions.
(4) Not applicable.
(5) Not applicable.
(i) Not applicable.
(ii) Not applicable.
(6) Not applicable.
(7) Not applicable.
(i) Not applicable.
(ii) Not applicable.
(iii) Not applicable.
(iv) Not applicable.
(v) Not applicable.
(vi) Not applicable.
(vii) Not applicable.
(viii) Not applicable.

[79 FR 76024, Dec. 19, 2014, as amended at 87 FR 15321, Mar. 18, 2022]

AUDITORS

### §910.514 Scope of audit.

(a) *General.* The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered DOE awards during such audit period, provided that each such audit must encompass the schedule of expenditures of DOE awards for each such department, agency, and other organizational unit, which must be considered to be a for-profit entity. The financial statements (if available) and schedule of expenditures of DOE awards must be for the same audit period.
(b) *Financial statements.* If financial statements are available, the auditor must determine whether the schedule of expenditures of DOE awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.
(c) *Internal control.* (1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
(2) In addition to the requirements of GAGAS the auditor must perform procedures to obtain an understanding of internal control over DOE programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.
(3) Except as provided in paragraph (c)(4) of this section, the auditor must:
(i) Plan the testing of internal control over compliance to support a low assessed level of control risk for the assertions relevant to the compliance requirements; and

(ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.

(4) When internal control over some or all of the compliance requirements are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with §910.516 Audit findings, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.* (1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should follow the compliance supplement's guidance for programs not included in the supplement.

(4) The compliance testing must include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient appropriate audit evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with §910.511 Audit findings follow-up paragraph (b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor must perform audit follow-up procedures.

(f) Not applicable.

[87 FR 15322, Mar. 18, 2022]

### §910.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements (if available) are presented fairly in all material respects in accordance with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of DOE awards is fairly stated in all material respects in relation to the financial statements (if available) as a whole.

(b) A report on internal control over financial reporting and compliance with Federal statutes, regulations, and the terms and conditions of the DOE award, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance and report and internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or modified opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of DOE awards which could have a direct and material effect and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the auditor's results, which must include:

(i) The type of report the auditor issued (if applicable) on whether the financial statements (if available) audited were prepared in accordance with GAAP (*i.e.*, unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements (if available);

(iii) A statement (if applicable) as to whether the audit disclosed any noncompliance that is material to the financial statements (if available) of the auditee;

(iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;

(v) The type of report the auditor issued on compliance (*i.e.*, unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under §910.516 Audit findings, paragraph (a);

(vii) Not applicable.

(viii) Not applicable.

(ix) Not applicable.

(2) Findings relating to the financial Statements (if available) which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for DOE awards which must include audit findings as defined in §910.516 Audit findings, paragraph (a).

(i) Audit findings (*e.g.*, internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue should be presented as a single audit finding.

(ii) Audit findings that relate to both the financial statements (if available) and DOE awards, as reported under paragraphs (d)(2) and (3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(e) Nothing in this part precludes combining of the audit reporting required by this section with the reporting required by §910.512 Report submission, paragraph (b), when allowed by GAGAS.

[87 FR 15322, Mar. 18, 2022]

### §910.516 Audit findings.

(a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of DOE awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of DOE awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(3) Known questioned costs that are greater than $25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than $25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information

to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs that are greater than $25,000 for a DOE program. which is not audited as a major program. Except for audit follow-up, the auditor is not required under this Part to perform audit procedures for such a DOE program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a DOE program that is not audited as a major program (*e.g.*, as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $25,000, then the auditor must report this as an audit finding.

(5) Not applicable.

(6) Known or likely fraud affecting a DOE award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for DOE awards. This paragraph does not require the auditor to report publicly information which could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with §910.511 Audit findings follow-up, paragraph (b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail and clarity.* Audit findings must be presented in sufficient detail and clarity for the auditee to prepare a corrective action plan and take corrective action, and for DOE to arrive at a management decision. The following specific information must be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, and Federal award identification number and year. When information, such as the CFDA title and number or DOE award identification number, is not available, the auditor must provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including the Federal statutes, regulations, or the terms and conditions of the DOE awards. Criteria generally identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding findings.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action.

(5) The possible asserted effect to provide sufficient information to the auditee and DOE to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) Identification of questioned costs and how they were computed. Known questioned costs must be identified by applicable CFDA number(s) and applicable DOE award identification number(s).

(7) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. The auditor should report whether the sampling was a statistically valid sample.

(8) Identification of whether the audit finding was a repeat of a finding in the immediately prior audit and if so any applicable prior year audit finding numbers.

(9) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(10) Views of responsible officials of the auditee.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission required by §910.512 Report submission, paragraph (b) to allow for easy referencing of the audit findings during follow-up.

### §910.517 Audit documentation.

(a) *Retention of audit documentation.* The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by DOE or the cognizant agency for indirect costs to extend the retention period. When the auditor is aware that the Federal agency or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to destruction of the audit documentation and reports.

(b) *Access to audit documentation.* Audit documentation must be made available upon request to the cognizant agency for indirect cost, DOE, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this Part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation, as is reasonable and necessary.

### §910.518 [Reserved]

### §910.519 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the DOE program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular DOE program with auditee management and DOE.

(b) *Current and prior audit experience.* (1) Weaknesses in internal control over DOE programs would indicate higher risk. Consideration should be given to the control environment over DOE programs and such factors as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of DOE awards and the competence and experience of personnel who administer the DOE programs.

(i) A DOE program administered under multiple internal control structures may have higher risk. The auditor must consider whether weaknesses are isolated in a single operating unit (*e.g.*, one college campus) or pervasive throughout the entity.

(ii) When significant parts of a DOE program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a DOE program or have not been corrected.

(3) DOE programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) *Oversight exercised by DOE.* (1) Oversight exercised by DOE could be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds

through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of 2 CFR 200.430 Compensation—personal services, but otherwise be at low risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or close-out of program activities and staff.

(4) Programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

[87 FR 15323, Mar. 18, 2022]

### § 910.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods may qualify as a low-risk auditee and be eligible for reduced audit coverage.

(a) Compliance audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form to DOE within the timeframe specified in §910.512 Report submission. A for-profit entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor's opinion on whether the financial statements (if available) were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of DOE awards were unmodified.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the DOE programs had audit findings from any of the following in either of the preceding two audit periods:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control as required under §910.515 Audit reporting, paragraph (c);

(2) Not applicable.

(3) Not applicable.

[87 FR 15323, Mar. 18, 2022]

## Management Decisions

### § 910.521 Management decision.

(a) *General.* The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, DOE agency may also issue a management decision on findings relating to the financial statements (if they were available) which are required to be reported in accordance with GAGAS.

(b) As provided in §910.513 Responsibilities, paragraph (c)(3), DOE is responsible for issuing a management decision for findings that relate to DOE awards it makes to for-profit entities.

(c) Not applicable.

(d) *Time requirements.* DOE must issue a management decision within six months of acceptance of the audit report. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(e) *Reference numbers.* Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with §910.516 Audit findings paragraph (c).

## PARTS 911–999 [RESERVED]

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# PART 1000—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

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1000.10 Applicable regulations.
1000.306 Cost sharing or matching.
1000.337 Access to records.

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 301; 2 CFR part 200.

SOURCE: 79 FR 76047, Dec. 19, 2014, unless otherwise noted.

## § 1000.10 Applicable regulations.

Except for the deviations set forth elsewhere in this Part, the Department of the Treasury adopts the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, set forth at 2 CFR part 200.

## § 1000.306 Cost sharing or matching.

Notwithstanding 2 CFR 200.306(e), Low Income Taxpayer Clinic grantees may use the rates found in 26 U.S.C. 7430 so long as:

(a) The grantee is funded to provide controversy representation;

(b) The services are provided by a qualified representative, which includes any individual, whether or not an attorney, who is authorized to represent taxpayers before the Internal Revenue Service or an applicable court;

(c) The qualified representative is not a student; and

(d) The qualified representative is acting in a representative capacity and is advocating for a taxpayer.

## § 1000.337 Access to records.

The right of access under 2 CFR 200.337 shall not extend to client information held by attorneys or federally authorized tax practitioners under the Low Income Taxpayer Clinic program.

[86 FR 29483, June 2, 2021]

# PARTS 1001–1099 [RESERVED]

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# SUBCHAPTER A—GENERAL MATTERS AND DEFINITIONS

SOURCE: 85 FR 51160, Aug. 19, 2020, unless otherwise noted.

## PARTS 1100–1103 [RESERVED]

## PART 1104—IMPLEMENTATION OF GOVERNMENTWIDE GUIDANCE FOR GRANTS AND COOPERATIVE AGREEMENTS

Sec.

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1104.105 Regulations governing DoD Components' general terms and conditions.
1104.110 Regulations governing DoD Components' award-specific terms and conditions.
1104.115 Regulations governing DoD Components' internal procedures.
1104.120 Definitions.

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 85 FR 51160, Aug. 19, 2020, unless otherwise noted.

### § 1104.1 Purpose of this part.

This part provides an update to the DoD interim implementation of Office of Management and Budget (OMB) guidance in 2 CFR part 200. It supersedes the initial interim implementation of that guidance that DoD adopted in 2 CFR part 1103 on December 19, 2014.

### § 1104.100 Award format for DoD Components' grants and cooperative agreements.

DoD Components must conform the format of new grants and cooperative agreements to the standard award format specified in part 1120 of the DoD Grant and Agreement Regulations (DoDGARS) (2 CFR part 1120). The standard format provides locations within the award for:

(a) General terms and conditions, including the administrative and national policy requirements discussed in §1104.105(a) and (b), respectively.

(b) Any award-specific terms and conditions discussed in §1104.110.

### § 1104.105 Regulations governing DoD Components' general terms and conditions.

(a) *Administrative requirements.* On an interim basis pending completion of the update of the DoDGARs to implement OMB guidance published in 2 CFR part 200, the following regulatory provisions govern the administrative requirements to be included in general terms and conditions of DoD Components' new grants and cooperative agreements:

(1) The provisions of parts 1126 through 1138 of the DoDGARs (2 CFR parts 1126 through 1138, which comprise subchapter D of this chapter) govern the administrative requirements to be included in the general terms and conditions of DoD Components' new grants and cooperative agreements awarded to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

(2) Part 34 of the DoDGARs (32 CFR part 34) governs the administrative requirements to be included in general terms and conditions of DoD Components' grants and cooperative agreements awarded to for-profit entities.

(b) *National policy requirements.* Part 1122 of the DoDGARs (2 CFR part 1122) governs the national policy requirements to be included in DoD Components' new grants and cooperative agreements awarded to all types of entities.

### § 1104.110 Regulations governing DoD Components' award-specific terms and conditions.

On an interim basis pending completion of the update of the DoDGARs to implement OMB guidance published in 2 CFR part 200:

(a) The guidance in 2 CFR part 200 governs administrative requirements to be included in any award-specific terms and conditions used to supplement the general terms and conditions of a new grant or cooperative agreement awarded to an institution of higher education, nonprofit organization, State, local government, or Indian tribe.

(b) Part 34 of the DoDGARs (32 CFR part 34) governs the administrative requirements to be included in any award-specific terms and conditions of DoD Components' grants and cooperative agreements awarded to for-profit entities.

### § 1104.115 Regulations governing DoD Components' internal procedures.

On an interim basis pending completion of the update of the DoDGARs to implement OMB guidance published in 2 CFR part 200, DoD Components' internal pre-award, time-of-award, and post-award procedures will continue to comply with requirements in parts 21 and 22 of the DoDGARs (32 CFR parts 21 and 22) and other applicable Defense Grant and Agreement Regulatory System (DGARS) policies.

### § 1104.120 Definitions.

(a) *DoD Grant and Agreement Regulations or DoDGARs* means the regulations in chapter I, subchapter C of title 32, Code of Federal Regulations, and chapter XI of title 2, Code of Federal Regulations.

(b) *Other terms.* See part 1108 of the DoDGARs for definitions of other terms used in this part.

## PARTS 1105–1107 [RESERVED]

## PART 1108—DEFINITIONS OF TERMS USED IN SUBCHAPTERS A THROUGH F OF THIS CHAPTER

### Subpart A—General

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APPENDIX A TO PART 1108—BACKGROUND ON ASSISTANCE, ACQUISITION, AND TERMS FOR TYPES OF LEGAL INSTRUMENTS

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 85 FR 51230, Aug. 19, 2020, unless otherwise noted.

## Subpart A—General

### § 1108.1 Purpose of this part.

(a) This part provides:

(1) Definitions of terms used in subchapters A through F of this chapter; and

(2) Background information as context for understanding terms related to assistance and acquisition purposes, legal instruments that DoD Components make at the prime tier, and lower-tier transactions into which recipients and subrecipients enter when carrying out programs at lower tiers under DoD awards.

(b) This part is, for DoD, the regulatory implementation of OMB guidance in subpart A of 2 CFR part 200.

### § 1108.2 Precedence of definitions of terms in national policy requirements.

(a) *General.* Some portions of the DoD Grant and Agreement Regulations (DoDGARs) may use a term in relation to compliance with a national policy requirement in a statute, Executive order, or other source that defines the term differently than it is defined in subpart B of this part. For purposes of that particular national policy requirement, the definition of a term provided by the source of the requirement and any regulation specifically implementing it takes precedence over the definition in subpart B of this part. Using the definition of a term that takes precedence for each national policy requirement is therefore important when determining the applicability and effect of that requirement.

(b) *Examples.* (1) Current portions of the DoDGARs that specifically implement national policy requirements, as described in paragraph (a) of this section, are:

(i) A Governmentwide regulation currently codified by DoD at 32 CFR part 26, which implements the Drug-Free Workplace Act of 1988 as it applies to grants (41 U.S.C. chapter 81, as amended);

(ii) A Government regulation currently codified by DoD at 32 CFR part 28, which implements restrictions on lobbying in 31 U.S.C. 1352;

(iii) A DoD regulation at part 1125 of this chapter, which implements Governmentwide guidance on nonprocurement debarment and suspension (2 CFR part 180) that has bases both in statute (section 2455 of Public Law 103–355, 108 Stat. 3327) and in Executive orders 12549 and 12689; and

(iv) Part 1122 of this chapter, which provides standard wording of terms and conditions related to a number of national policy requirements.

(2) To illustrate that a term may be defined differently in conjunction with specific national policy requirements than it is in this part, the term ''State'' is defined differently in the drug-free workplace requirements at 32 CFR part 26, the lobbying restrictions at 32 CFR part 28, and Subpart B of this part.

### § 1108.3 Definitions of terms used in the Governmentwide cost principles or single audit requirements.

(a) Some DoDGARs provisions state that DoD Components or recipients must comply with single audit or cost principles requirements in a Governmentwide issuance that contains defined terms and include the requirements by reference to the issuance without restating them.

(b) For any term in one of those issuances, this part includes the definition of the term only if the DoDGARs also use that term directly.

(c) If the DoDGARs only use the term indirectly, *i.e.,* through the DoDGARs' reference to the issuance, then this part will not include a definition and a user of the DoDGARs should consult definitions in the pertinent Governmentwide source, as follows:

(1) The Single Audit Act requirements for audits of recipients and subrecipients that are in subpart F of OMB guidance in 2 CFR part 200;

(2) The Governmentwide cost principles for institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes that are contained in subpart E of OMB guidance in 2 CFR part 200; and

(3) The cost principles for for-profit entities at Subpart 31.2 of the Federal Acquisition Regulation (FAR) at 48 CFR part 31, as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement at subpart 231.2 of 48 CFR part 231.

### § 1108.4 Definitions of terms that vary depending on context.

DoDGARs definitions of some terms related to types of legal instruments (*e.g.*, ''contract'') and purposes for which they are used (*e.g.*, ''procurement'' or ''acquisition'') may vary, depending on the context. Appendix A to this part provides additional information about those terms and their definitions.

## Subpart B—Definitions

### § 1108.10 Acquire.

*Acquire* means to:

(a) When the term is used in connection with a DoD Component action at the prime tier, obtain property or services by purchase, lease, or barter for the direct benefit or use of the United States Government.

(b) When the term is used in connection with a recipient action or a subrecipient action at a tier under a DoD Component's award:

(1) Purchase services;

(2) Obtain property under the award by:

(i) Purchase;

(ii) Construction;

(iii) Fabrication;

(iv) Development;

(v) The recipient's or subrecipient's donation of the property to the project or program under the award to meet a cost-sharing or matching requirement (*i.e.*, including within the entity's share of the award's project costs the value of the remaining life of the property or its fair market value, rather than charging depreciation); or

(vi) Otherwise.

### § 1108.15 Acquisition.

*Acquisition* means the process of acquiring as described in:

(a) Paragraph (a) of § 1108.10 when used in connection with DoD Component actions at the prime tier.

(b) Paragraph (b) of § 1108.10 when used in connection with recipient or subrecipient actions at a lower tier under a DoD Component's award.

### § 1108.20 Acquisition cost.

*Acquisition cost* means the cost of an asset to a recipient or subrecipient, including the cost to ready the asset for its intended use.

(a) For example, when used in conjunction with:

(1) The purchase of equipment, the term means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired.

(2) Equipment that a recipient or subrecipient constructs or fabricates—or software that it develops—under an award, the term includes, when capitalized in accordance with generally accepted accounting principles (GAAP):

(i) The construction and fabrication costs of that equipment; and

(ii) The development costs of that software.

(b) Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation may be included in, or excluded from, the acquisition cost in accordance with the recipient's or subrecipient's regular accounting practices.

### § 1108.25 Administrative offset.

*Administrative offset* means an action whereby money payable by the United States Government to, or held by the Government for, a recipient is withheld to satisfy a delinquent debt.

### § 1108.30 Advance payment.

*Advance payment* means a payment that DoD or a recipient or subrecipient makes by any appropriate payment mechanism, including a predetermined

payment schedule, before the recipient or subrecipient disburses the funds for project or program purposes.

### § 1108.35 Advanced research.

*Advanced research* means advanced technology development that creates new technology or demonstrates the viability of applying existing technology to new products and processes in a general way. Advanced research is most closely analogous to precompetitive technology development in the commercial sector (*i.e.*, early phases of research and development on which commercial competitors are willing to collaborate, because the work is not so coupled to specific products and processes that the results of the work must be proprietary). It does not include development of military systems and hardware where specific requirements have been defined. It is typically funded in Advanced Technology Development (Budget Activity 3) programs within DoD's Research, Development, Test and Evaluation (RDT&E) appropriations.

### § 1108.40 Agreements officer.

*Agreements officer* means a DoD official with the authority to enter into, administer, and/or terminate technology investment agreements.

### § 1108.45 Applied research.

*Applied research* means efforts that attempt to determine and exploit the potential of scientific discoveries or improvements in technology, such as new materials, devices, methods and processes. It typically is funded in Applied Research (Budget Activity 2) programs within DoD's Research, Development, Test and Evaluation (RDT&E) appropriations. Applied research often follows basic research but may not be fully distinguishable from the related basic research. The term does not include efforts whose principal aim is the design, development, or testing of specific products, systems or processes to be considered for sale or acquisition, efforts that are within the definition of ''development.''

### § 1108.50 Approved budget.

*Approved budget* means, in conjunction with a DoD Component award to a recipient, the most recent version of the budget the recipient submitted, and the DoD Component approved (either at the time of the initial award or subsequently), to summarize planned expenditures for the project or program under the award. It includes:

(a) All Federal funding made available to the recipient under the award to use for project or program purposes.

(b) Any cost sharing or matching that the recipient is required to provide under the award.

(c) Any options that have been exercised but not any options that have not yet been exercised.

### § 1108.55 Assistance.

*Assistance* means the transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States (see 31 U.S.C. 6101(3)). Grants, cooperative agreements, and technology investment agreements are examples of legal instruments that DoD Components use to provide assistance.

### § 1108.60 Award.

*Award* means a grant, cooperative agreement, technology investment agreement, or other nonprocurement instrument subject to one or more parts of the DoDGARs. Within each part of the regulations, the term includes only the types of instruments subject to that part.

### § 1108.65 Award administration office.

*Award administration office* means a DoD Component office that performs post-award functions related to the administration of grants, cooperative agreements, technology investment agreements, or other nonprocurement instruments subject to one or more parts of the DoDGARs.

### § 1108.70 Basic research.

*Basic research* means efforts directed toward increasing knowledge and understanding in science and engineering, rather than the practical application of that knowledge and understanding. It typically is funded within Basic Research (Budget Activity 1) programs within DoD's Research, Development,

Test and Evaluation (RDT&E) appropriations. For the purposes of the DoDGARs, basic research includes:

(a) Research-related, science and engineering education and training, including graduate fellowships and research traineeships; and

(b) Research instrumentation and other activities designed to enhance the infrastructure for science and engineering research.

### § 1108.75 Capital asset.

*Capital asset* means a tangible or intangible asset used in operations having a useful life of more than one year which is capitalized in accordance with GAAP. Capital assets include:

(a) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and

(b) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

### § 1108.80 Claim.

*Claim* means a written demand or written assertion by one of the parties to an award seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of an award term or condition, or other relief arising under or relating to the award. A routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by written notice to the grants or agreements officer if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

### § 1108.85 Cognizant agency for indirect costs.

*Cognizant agency for indirect costs* means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans and indirect cost proposals on behalf of all Federal agencies. The cognizant agency for indirect costs for a particular entity may be different than the cognizant agency for audit. The cognizant agency for indirect costs:

(a) For an institution of higher education, nonprofit organization, State, local government, or Indian tribe is assigned as described in the appendices to 2 CFR part 200. See 2 CFR 200.19 for specific citations to those appendices.

(b) For a for-profit entity, normally will be the agency with the largest dollar amount of pertinent business, as described in the Federal Acquisition Regulation at 48 CFR 42.003.

### § 1108.90 Contract.

*Contract* means a procurement transaction, as that term is defined in this subpart. A contract is a transaction into which a recipient or subrecipient enters. It is therefore distinct from the term ''procurement contract,'' which is a transaction that a DoD Component awards at the prime tier.

### § 1108.95 Contracting activity.

*Contracting activity* means an activity to which the Head of a DoD Component has delegated broad authority regarding acquisition functions pursuant to 48 CFR 1.601.

### § 1108.100 Contracting officer.

*Contracting officer* means a DoD official with the authority to enter into, administer, and/or terminate procurement contracts and make related determinations and findings.

### § 1108.105 Contractor.

*Contractor* means an entity to which a recipient or subrecipient awards a procurement transaction (also known as a contract).

### § 1108.110 Cooperative agreement.

*Cooperative agreement* means a legal instrument which, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of ''grant'' in this subpart), except that substantial involvement is expected between DoD and the recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include ''cooperative research and development agreements'' as defined in 15 U.S.C. 3710a.

**§ 1108.115 Co-principal investigator.**

*Co-principal investigator* means any one of a group of individuals whom an organization that is carrying out a research project with DoD support designates as sharing the authority and responsibility for leading and directing the research intellectually and logistically, other than the one among the group identified as the primary contact for scientific, technical, and related budgetary matters (see the definition of ''principal investigator'').

**§ 1108.120 Cost allocation plan.**

*Cost allocation plan* means either a:

(a) Central service cost allocation plan, as defined at 2 CFR 200.9 and described in Appendix V to 2 CFR part 200; or

(b) Public assistance cost allocation plan as described in Appendix VI to 2 CFR part 200.

**§ 1108.125 Cost sharing or matching.**

*Cost sharing or matching* means the portion of project costs not borne by the Federal Government, unless a Federal statute authorizes use of any Federal funds for cost sharing or matching.

**§ 1108.128 Cost type award.**

*Cost-type award* means an award that a DoD Component makes that provides for the recipient to be paid based on the actual, allowable costs it incurs in carrying out the award.

**§ 1108.130 Cost-type contract.**

*Cost-type contract* means a procurement transaction awarded by a recipient or a subrecipient at any tier under a DoD Component's grant or cooperative agreement that provides for the contractor to be paid on the basis of the actual, allowable costs it incurs (plus any fee or profit for which the contract provides).

**§ 1108.135 Cost-type subaward.**

*Cost-type subaward* means a subaward that:

(a) A recipient or subrecipient makes to another entity at the next lower tier; and

(b) Provides for payments to the entity that receives the cost-type subaward based on the actual, allowable costs it incurs in carrying out the subaward.

**§ 1108.140 Debarment.**

*Debarment* means an action taken by a Federal agency debarring official to exclude a person or entity from participating in covered Federal transactions, in accordance with debarment and suspension policies and procedures for:

(a) Nonprocurement instruments, which are in OMB guidance at 2 CFR part 180, as implemented by the DoD at 2 CFR part 1125; or

(b) Procurement contracts, which are in the Federal Acquisition Regulation at 48 CFR 9.4.

**§ 1108.145 Debt.**

*Debt* means any amount of money or any property owed to a Federal agency by any person, organization, or entity except another United States Federal agency. Debts include any amounts due from insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, or overpayments, penalties, damages, interest, fines and forfeitures, and all other claims and similar sources. For the purposes of this chapter, amounts due a non-appropriated fund instrumentality are not debts owed the United States.

**§ 1108.150 Delinquent debt.**

*Delinquent debt* means a debt:

(a) That the debtor fails to pay by the date specified in the initial written notice from the agency owed the debt, normally within 30 calendar days, unless the debtor makes satisfactory payment arrangements with the agency by that date; and

(b) With respect to which the debtor has elected not to exercise any available appeals or has exhausted all agency appeal processes.

**§ 1108.155 Development.**

*Development* means, when used in the context of ''research and development,'' the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of potential new products, processes, or services to meet specific performance requirements or objectives. It includes the functions of design engineering,

prototyping, and engineering testing. It typically is funded within programs in Budget Activities 4 through 7 of DoD's Research, Development, Test and Evaluation (RDT&E) appropriations.

### § 1108.160 Direct costs.

*Direct costs* means any costs that are identified specifically with a particular final cost objective, such as an award, in accordance with the applicable cost principles.

### § 1108.165 DoD Components.

*DoD Components* means the Office of the Secretary of Defense; the Military Departments; the National Guard Bureau (NGB); and all Defense Agencies, DoD Field Activities, and other organizational entities within the DoD that are authorized to award or administer grants, cooperative agreements, and other non-procurement instruments subject to the DoDGARs.

### § 1108.170 Equipment.

*Equipment* means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of:

(a) $5,000; or

(b) The recipient's or subrecipient's capitalization threshold for financial statement purposes.

### § 1108.175 Exempt property.

(a) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds under a DoD Component's awards, for which the DoD Component:

(1) Has statutory authority to vest title in recipients (or allow for vesting in subrecipients) without further obligation to the Federal Government or subject to conditions the DoD Component considers appropriate; and

(2) Elects to use that authority to do so.

(b) An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306) for tangible personal property acquired under an award to conduct basic or applied research by a nonprofit institution of higher education or nonprofit organization whose primary purpose is conducting scientific research.

### § 1108.180 Expenditures.

*Expenditures* mean charges made by a recipient or subrecipient to a project or program under an award.

(a) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

(b) For reports prepared on a cash basis, expenditures are the sum of:

(1) Cash disbursements for direct charges for property and services;

(2) The amount of indirect expense charged;

(3) The value of third-party in-kind contributions applied; and

(4) The amount of cash advance payments and payments made to subrecipients.

(c) For reports prepared on an accrual basis, expenditures are the sum of:

(1) Cash disbursements for direct charges for property and services;

(2) The amount of indirect expense incurred;

(3) The value of third-party in-kind contributions applied; and

(4) The net increase or decrease in the amounts owed by the recipient or subrecipient for:

(i) Goods and other property received;

(ii) Services performed by employees, contractors, subrecipients, and other payees; and

(iii) Programs for which no current services or performance are required, such as annuities, insurance claims, or other benefit payments.

### § 1108.185 Federal interest.

*Federal interest* means, in relation to real property, equipment, or supplies acquired or improved under an award or subaward, the dollar amount that is the product of the:

(a) Federal share of total project costs; and

(b) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

### § 1108.190 Federal share.

*Federal share* means the portion of the project costs under an award that is paid by Federal funds.

### § 1108.195 Fixed-amount award.

*Fixed-amount award* means a DoD Component grant or cooperative agreement that provides for the recipient to be paid on the basis of performance and results, rather than the actual, allowable costs the recipient incurs.

### § 1108.200 Fixed-amount subaward.

*Fixed-amount subaward* means a subaward:

(a) That a recipient or subrecipient makes to another entity at the next lower tier; and

(b) Under which the total amount to be paid to the other entity is based on performance and results, and not on the actual, allowable costs that entity incurs.

### § 1108.205 Foreign organization.

*Foreign organization* means an entity that is:

(a) A public or private organization that is located in a country other than the United States and its territories and is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

(b) A private nongovernmental organization located in a country other than the United States and its territories that solicits and receives cash contributions from the general public;

(c) A charitable organization located in a country other than the United States and its territories that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entity organized primarily for religious purposes; or

(d) An organization located in a country other than the United States and its territories that is not recognized as a foreign public entity.

### § 1108.210 Foreign public entity.

*Foreign public entity* means:

(a) A foreign government or foreign governmental entity;

(b) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f);

(c) An entity owned (in whole or in part) or controlled by a foreign government; or

(d) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

### § 1108.215 Grant.

*Grant* means a legal instrument which, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(a) Of which the principal purpose is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the DoD's direct benefit or use.

(b) In which substantial involvement is not expected between DoD and the recipient when carrying out the activity contemplated by the award.

### § 1108.220 Grants officer.

*Grants officer* means a DoD official with the authority to enter into, administer, and/or terminate grants or cooperative agreements.

### § 1108.225 Indian tribe.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See the annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

### § 1108.230 Indirect costs (also known as "Facilities and Administrative," or F&A, costs).

*Indirect costs* means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.

### § 1108.235 Institution of higher education.

*Institution of higher education* has the meaning specified at 20 U.S.C. 1001.

### § 1108.240 Intangible property.

*Intangible property* means:

(a) Property having no physical existence, such as trademarks, copyrights, patents and patent applications; and

(b) Property such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether the property is considered tangible or intangible.

### § 1108.245 Local government.

*Local government* means any unit of government within a State, including a:

(a) County;

(b) Borough;

(c) Municipality;

(d) City;

(e) Town;

(f) Township;

(g) Parish;

(h) Local public authority, including any public housing agency under the United States Housing Act of 1937;

(i) Special district;

(j) School district;

(k) Intrastate district;

(l) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and

(m) Any other agency or instrumentality of a multi-, regional, or intrastate or local government.

### § 1108.250 Management decision.

*Management decision* means a written decision issued to an audited entity by a DoD Component, another Federal agency that has audit or indirect cost cognizance or oversight responsibilities for the audited entity, or a recipient or subrecipient from which the audited entity received an award or subaward. The DoD Component, cognizant or oversight agency, recipient, or subrecipient issues the management decision to specify the corrective actions that are necessary after evaluating the audit findings and the audited entity's corrective action plan.

### § 1108.255 Nonprocurement instrument.

*Nonprocurement instrument* means a legal instrument other than a procurement contract that a DoD Component may award. Examples include an instrument of financial assistance, such as a grant or cooperative agreement, or an instrument of technical assistance, which provides services in lieu of money.

### § 1108.260 Nonprofit organization.

*Nonprofit organization* means any corporation, trust, association, cooperative, or other organization, not including an institution of higher education, that:

(a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(b) Is not organized primarily for profit; and

(c) Uses net proceeds to maintain, improve, or expand the operations of the organization.

### § 1108.265 Obligation.

*Obligation* means:

(a) When used in conjunction with a DoD Component's award, a legally binding agreement that will result in outlays, either immediately or in the future. Examples of actions through which a DoD Component incurs an obligation include the grants or agreements officer's signature of a grant, cooperative agreement, or technology investment agreement (or modification of such an award) authorizing the recipient to use funds under the award.

(b) When used in conjunction with a recipient's or subrecipient's use of funds under an award or subaward, an order placed for property and services, a contract or subaward made, or a

similar transaction, during a given period that requires payment during the same or a future period.

### § 1108.270 Office of Management and Budget.

*Office of Management and Budget* means the Executive Office of the President, United States Office of Management and Budget.

### § 1108.275 Outlays.

*Outlays* means ''expenditures,'' as defined in this subpart.

### § 1108.280 Participant support costs.

*Participant support costs* means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences or training projects.

### § 1108.285 Period of performance.

*Period of performance* means the time during which a recipient or subrecipient may incur new obligations to carry out the work authorized under an award or subaward, respectively.

### § 1108.290 Personal property.

*Personal property* means property other than real property. It may be tangible, having physical existence, or intangible, such as copyrights, patents, and securities.

### § 1108.295 Principal investigator.

*Principal investigator* means either:

(a) The single individual whom an organization that is carrying out a research project with DoD support designates as having an appropriate level of authority and responsibility for leading and directing the research intellectually and logistically, which includes the proper conduct of the research, the appropriate use of funds, and compliance with administrative requirements such as the submission of performance reports to DoD; or

(b) If the organization designates more than one individual as sharing that authority and responsibility, the individual within that group identified by the organization as the one with whom the DoD Component's program manager generally should communicate as the primary contact for scientific, technical, and related budgetary matters concerning the project (others within the group are ''co-principal investigators,'' as defined in this subpart).

### § 1108.298 Prior approval.

*Prior approval* means written or electronic approval by a DoD grants or agreements officer evidencing prior consent. When prior approval is required for an activity or expenditure that would result in a direct cost to a DoD award, the grants or agreements officer's signature on an award that includes the planned activity or expenditure in the scope of work or approved budget satisfies the requirement for prior approval. Otherwise, a recipient is required to obtain such approval after award.

### § 1108.300 Procurement contract.

*Procurement contract* means a legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a State, a local government, or other recipient when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal Government. A procurement contract is a prime-tier transaction and therefore distinct from a recipient's or subrecipient's ''procurement transaction'' or ''contract'' as defined in this subpart.

### § 1108.305 Procurement transaction.

*Procurement transaction* means a legal instrument by which a recipient or subrecipient purchases property or services it needs to carry out the project or program under its award or subaward, respectively. A procurement transaction is distinct both from ''subaward'' and ''procurement contract,'' as those terms are defined in this subpart.

### § 1108.310 Program income.

*Program income* means gross income earned by a recipient or subrecipient that is directly generated by a supported activity or earned as a result of an award or subaward (during the period of performance unless the award

or subaward specifies continuing requirements concerning disposition of program income after the end of that period).

(a) Program income includes, but is not limited to, income from:

(1) Fees for services performed;

(2) The use or rental of real or personal property for which the recipient or subrecipient is accountable under the award or subaward (whether acquired under the award or subaward, or other Federal awards from which accountability for the property was transferred);

(3) The sale of commodities or items fabricated under the award or subaward;

(4) License fees and royalties on patents and copyrights; and

(5) Payments of principal and interest on loans made with award or subaward funds.

(b) Program income does not include:

(1) Interest earned on advances of Federal funds;

(2) Proceeds from the sale of real property or equipment under the award; or

(3) Unless otherwise specified in Federal statute or regulation, or the terms and conditions of the award or subaward:

(i) Rebates, credits, discounts, and interest earned on any of them; or

(ii) Governmental revenues, taxes, special assessments, levies, fines, and similar revenues raised by the recipient or subrecipient.

### § 1108.315 Project costs.

*Project costs* means the total of:

(a) Allowable costs incurred under an award by the recipient, including costs of any subawards and contracts under the award; and

(b) Cost-sharing or matching contributions that are required under the award, which includes voluntary committed (but not voluntary uncommitted) contributions and the value of any third-party in-kind contributions.

### § 1108.320 Property.

*Property* means real property and personal property (equipment, supplies, intangible property, and debt instruments), unless stated otherwise.

### § 1108.325 Real property.

*Real property* means land, including land improvements, structures and appurtenances thereto, but excluding moveable machinery and equipment.

### § 1108.330 Recipient.

*Recipient* means an entity that receives an award directly from a DoD Component. The term does not include subrecipients.

### § 1108.335 Research.

*Research* means basic, applied, and advanced research.

### § 1108.340 Simplified acquisition threshold.

*Simplified acquisition threshold* means the dollar amount set by the Federal Acquisition Regulation at 48 CFR subpart 2.1, which is adjusted periodically for inflation in accordance with 41 U.S.C. 1908.

### § 1108.345 Small award.

*Small award* means a DoD grant or cooperative agreement or a subaward with a total value over the life of the award that does not exceed the simplified acquisition threshold.

### § 1108.350 State.

*State,* for purposes of applying the administrative requirements in these regulations, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

### § 1108.355 Subaward.

*Subaward* means a legal instrument by which a recipient or subrecipient at any tier transfers—for performance by an entity at the next lower tier—a portion of the substantive program for which the DoD Component made an award.

### § 1108.360 Subrecipient.

*Subrecipient* means an entity that receives a subaward.

**§ 1108.365 Supplies.**

*Supplies* means all tangible personal property, including computing devices, acquired under an award that does not meet the definition of equipment in this subpart.

**§ 1108.370 Suspension.**

*Suspension* means either:

(a) When used in the context of a specific award or subaward, the temporary withdrawal of authority for that recipient or subrecipient to obligate funds under the award or subaward, pending its taking corrective action or a decision to terminate the award or subaward.

(b) When used in the context of an entity, an action by a DoD Component's suspending official under 2 CFR part 1125, DoD's regulation implementing OMB guidance on nonprocurement debarment and suspension in 2 CFR part 180, to immediately exclude the entity from participating in covered Federal Government transactions, pending completion of an investigation and any legal or debarment proceedings that ensue.

**§ 1108.375 Technology investment agreement.**

*Technology investment agreement* means one of a special class of assistance instruments used to increase involvement of commercial firms in defense research programs and for other purposes related to integration of the commercial and defense sectors of the nation's technology and industrial base. Technology investment agreements include one kind of cooperative agreement with provisions tailored for involving commercial firms, as well as one kind of assistance transaction other than a grant or cooperative agreement. Technology investment agreements are subject to, and described more fully in, 32 CFR part 37.

**§ 1108.380 Termination.**

*Termination* means the ending of an award or subaward, in whole or in part, at any time prior to the planned end of period of performance.

**§ 1108.385 Third-party in-kind contribution.**

*Third-party in-kind contribution* means the value of a non-cash contribution (*i.e.*, property or services) that:

(a) A non-Federal third party contributes, without charge, either to a recipient or subrecipient at any tier under a DoD Component's award; and

(b) Is identified and included in the approved budget of the DoD Component's award, as a contribution being used toward meeting the award's cost-sharing or matching requirement (which includes voluntary committed, but not voluntary uncommitted, contributions).

**§ 1108.390 Total value.**

*Total value* of a DoD grant, cooperative agreement, or TIA means the total amount of costs that are currently expected to be charged to the award over its life, which includes amounts for:

(a) The Federal share and any non-Federal cost sharing or matching required under the award; and

(b) Any options, even if not yet exercised, for which the costs have been established in the award.

**§ 1108.395 Unique entity identifier.**

*Unique entity identifier* means the identifier required for System for Award Management registration to uniquely identify entities with which the Federal Government does business (currently the Dun and Bradstreet Data Universal Numbering System, or DUNS, number).

**§ 1108.400 Unobligated balance.**

*Unobligated balance* means the amount of funds under an award or subaward that the recipient or subrecipient has not obligated. The amount is computed by subtracting the cumulative amount of the recipient's or subrecipient's unliquidated obligations and expenditures of funds from the cumulative amount of funds that it was authorized to obligate under the award or subaward.

**§ 1108.405 Voluntary (committed or uncommitted) cost sharing.**

(a) *Voluntary cost sharing* means cost sharing that an entity pledges voluntarily in its application (*i.e.*, not due to

a stated cost-sharing requirement in the notice of funding opportunity to which the entity's application responds).

(b) *Voluntary committed cost sharing* means voluntary cost sharing that a DoD Component accepts through inclusion in the approved budget for the project or program and as a binding requirement of the terms and conditions of the award made to the entity in response to its application.

(c) *Voluntary uncommitted cost sharing* means voluntary cost sharing that does not meet the criteria in paragraph (b) of this section.

### § 1108.410 Working capital advance.

*Working capital advance* means a payment method under which funds are advanced to a recipient or subrecipient to cover its estimated disbursement needs for a given initial period, after which the DoD component making the award makes payment to the recipient or subrecipient by way of reimbursement.

## APPENDIX A TO PART 1108—BACKGROUND ON ASSISTANCE, ACQUISITION, AND TERMS FOR TYPES OF LEGAL INSTRUMENTS

### I. PURPOSE OF THIS APPENDIX

This appendix provides background intended to clarify some terms:

A. That are used in this chapter to describe either types of legal instruments that DoD Components, recipients, and subrecipients issue, or the purposes for which those types of instruments are used; and

B. For which this part provides definitions that vary depending on the context within which the terms are used.

### II. WHY DEFINITIONS OF SOME TERMS ARE CONTEXT-DEPENDENT

A. The DoDGARs contain both:

1. Direction to DoD Components concerning their award of grants and cooperative agreements at the prime tier; and

2. Terms and conditions that DoD Components include in their grants and cooperative agreements to specify the Government's and recipients' rights and responsibilities, including post-award requirements with which recipients' actions must comply.

B. In some cases, the same defined term or two closely related terms are used in relation to both DoD Component actions at the prime tier and recipient or subrecipient actions at lower tiers under DoD Components' awards. But a given defined term may have meanings that differ at the two tiers. For example, in part because the Federal Grant and Cooperative Agreement Act applies to DoD Component actions at the prime tier but not to recipient or subrecipient actions at lower tiers (see sections III and IV of this appendix):

1. The terms ''acquire'' and ''acquisition'' do not have precisely the same meaning in conjunction with actions at the prime and lower tiers.

2. The meaning of the term ''procurement contract'' used to describe DoD Component prime-tier actions is not precisely the same as the meaning of ''procurement transaction'' or ''contract'' used to describe recipient or subrecipient actions at lower tiers.

### III. BACKGROUND: DISTINGUISHING PRIME-TIER RELATIONSHIPS AND LEGAL INSTRUMENTS

A. The Federal Grant and Cooperative Agreement Act (31 U.S.C. chapter 63) specifies that the type of legal instrument a DoD Component is to use is based on the nature of the relationship between the DoD Component and the recipient.

B. Specifically, except where another statute authorizes DoD to do otherwise, 31 U.S.C. chapter 63 specifies use of:

1. A procurement contract as the legal instrument reflecting a relationship between a DoD Component and a recipient when the principal purpose of the relationship is to acquire property or services for the direct benefit or use of the Federal Government.

2. A grant or cooperative agreement as the legal instrument reflecting a relationship between those two parties when the principal purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by Federal statute.

C. The terms ''acquisition'' and ''assistance'' are defined in this part to correspond to the principal purposes described in paragraphs III.B.1 and 2 of this section, respectively. Using those terms, paragraphs III.B.1 and B.2 may be restated to say that grants and cooperative agreements are assistance instruments that DoD Components use, as distinct from procurement contracts they use for acquisition.

### IV. BACKGROUND: DISTINGUISHING TYPES OF RECIPIENTS' AND SUBRECIPIENTS' INSTRUMENTS

A. While the Federal Grant and Cooperative Agreement Act applies to Federal agencies, it does not govern types of instruments that recipients and subrecipients of any tier use. That statute does not require a recipient or subrecipient to:

1. Consider any instrument it makes at a lower tier under a Federal assistance award to be a grant or cooperative agreement.

Therefore, at its option, a recipient or subrecipient may consider all of its lower-tier instruments to be ''contracts.''

2. Associate an ''assistance'' relationship, as that term is defined in this part and used in this chapter, with any lower-tier transaction that it makes.

B. However, the DoDGARs in this chapter do distinguish between two classes of lower-tier transactions that recipients and subrecipients make: Subawards and procurement transactions. The distinction promotes uniformity in requirements for lower-tier transactions under DoD grants and cooperative agreements. It is based on a long-standing distinction in OMB guidance to Federal agencies, currently at 2 CFR part 200, which DoD implements in this chapter.

C. The distinction between a subaward and procurement transaction is based on the primary purpose of that transaction.

1. The transaction is a subaward if a recipient or subrecipient enters into it with another entity at the next lower tier in order to transfer—for performance by that lower-tier entity—a portion of the substantive program for which the DoD grant or cooperative agreement provided financial assistance to the recipient. Because the Federal Grant and Cooperative Agreement Act does not apply to the recipient or subrecipient, it may make a subaward as defined in this part using an instrument that it considers a contract.

2. The transaction is a procurement transaction if the recipient or subrecipient enters into it in order to purchase goods or services from the lower-tier entity that the recipient or subrecipient needs to perform its portion of the substantive program supported by the DoD award.

## PART 1109 [RESERVED]

# SUBCHAPTER B [Reserved]

## PARTS 1110–1119 [RESERVED]

# SUBCHAPTER C—AWARD FORMAT AND NATIONAL POLICY TERMS AND CONDITIONS FOR ALL GRANTS AND COOPERATIVE AGREEMENTS

SOURCE: 85 FR 51160, Aug. 19, 2020, unless otherwise noted.

## PART 1120—AWARD FORMAT FOR DOD GRANTS AND COOPERATIVE AGREEMENTS

Sec.


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1120.700 Scope of programmatic requirements.
1120.705 Location of programmatic requirements in the standard award format.
1120.710 Examples of programmatic requirements.


AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 85 FR 51163, Aug. 19, 2020, unless otherwise noted.

### § 1120.1 Purpose of this part.

This part of the DoD Grant and Agreement Regulations (DoDGARs) establishes a standard award format for DoD Components' grants and cooperative agreements. It thereby makes the content easier for a recipient to locate in different DoD Components' awards.

### § 1120.2 Applicability of this part.

(a) *To whom it applies.* This part:

(1) Sets forth requirements for DoD Components that award grants and cooperative agreements.

(2) Does not impose requirements on recipients of DoD Components' awards.

(b) *To what awards it applies.* This part applies to grants and cooperative agreements, other than technology investment agreements (TIAs), awarded to any type of recipient entity.

### § 1120.3 DoD Component implementation.

Each DoD Component that awards grants or cooperative agreements must:

(a) Conform the format of its awards to the standard format established by this part no later than [18 months after the effective date of the final rule].

(b) Update electronic systems it maintains for generating awards within 18 months of the issuance of a new or updated DoD form for the award cover pages, in order to implement that form in those systems, unless it has an approved deviation in accordance with §1120.110.

### §1120.4 Elements and subelements of the standard award format in relation to the organization of this part.

(a) The standard award format has three major elements that are designated as Divisions I through III of the award.

(1) The first major element of the standard award format is comprised of the award cover pages. It is designated as Division I of the award.

(2) The second major element is comprised of any award-specific terms and conditions. That element is designated as Division II of the award.

(3) The last of the three major elements of the standard award format is comprised of the general terms and conditions. That element is designated as Division III of the award. It has four subelements that are designated as Subdivisions A through D of the general terms and conditions.

(i) The first subelement of the general terms and conditions is the preamble, which is designated as Subdivision A.

(ii) The second subelement of the general terms and conditions is comprised of terms and conditions addressing administrative requirements. That subelement is designated as Subdivision B of the general terms and conditions.

(iii) The third subelement of the general terms and conditions is comprised of terms and conditions addressing national policy requirements. That subelement is designated as Subdivision C of the general terms and conditions.

(iv) The last of the four subelements of the general terms and conditions is comprised of any programmatic requirements that apply to awards using those general terms and conditions. That subelement is designated as Subdivision D of the general terms and conditions.

(b) This part has seven subparts. Each subpart addresses one major element or subelement of the standard award format, as shown in Table 1:

TABLE 1 TO PARAGRAPH (b)

| Major element or subelement of the standard award format | Subpart of this part |
|---|---|
| (1) Division I—Award cover pages | Subpart A. |
| (2) Division II—Award-specific terms and conditions, if any | Subpart B. |
| (3) Division III—General terms and conditions, comprised of four subelements: | Subpart C. |
| (i) Subdivision A—The preamble to the general terms and conditions | Subpart D. |
| (ii) Subdivision B—General terms and conditions for administrative requirements | Subpart E. |
| (iii) Subdivision C of the—General terms and conditions for national policy requirements | Subpart F. |
| (iv) Subdivision D—General terms and conditions for programmatic requirements, if any | Subpart G. |

## Subpart A—Award Cover Pages

### §1120.100 Purpose of the award cover pages.

The award cover pages comprise the portion of each DoD Component award of a grant or cooperative agreement or modification to an award that the DoD Component transmits to the recipient when it makes the award or modification. It:

(a) Contains basic information about the award or modification and the recipient, as described in §1120.105;

(b) Is signed by a DoD grants officer; and

(c) Also is signed by the recipient's authorized organizational representative if the award or modification is a bilateral action that is to be signed on behalf of both the DoD Component and recipient.

### §1120.105 Content of the award cover pages.

The award cover pages of each DoD Component grant or cooperative agreement or modification:

(a) Must include, as a minimum, the following information about the award or modification:

(1) The name of the DoD Component awarding office that made the award or modification.

(2) The award number (Federal Award Identification Number or FAIN) and, if the action is a modification, the modification number.

(3) The type of award—*i.e.*, grant or cooperative agreement.

(4) The type of award action—*e.g.*, new award, funding modification, or administrative (non-funding) modification. For an administrative modification, the award cover pages should include a brief description of the purpose of the modification (*e.g.*, a no-cost extension of the end date of the period of performance).

(5) For a new award or funding modification:

(i) A brief description of the project or program supported by the award.

(ii) The amount of the obligation or deobligation of Federal funds due to the current action and any accompanying change in the total amount of cost sharing or matching required under the award.

(iii) The cumulative amounts of Federal funds and any corresponding non-Federal share obligated to date (*i.e.*, the sums of the amounts of the current action and the cumulative amounts of prior obligations and deobligations).

(iv) The total amount of the project costs in the currently approved budget through the end of the period of performance, the Federal share of that amount, and the non-Federal share even if that share is ''zero.''

(v) The total value of the award; the Federal share of that total value (which includes Federal funding obligated to date; future incremental funding actions; and options for which amounts have been predetermined, whether or not they have been exercised yet); and the non-Federal share of that total value (*i.e.*, total cost sharing or matching required under the award).

(vi) A table such as the following may be helpful in clearly presenting the information described in paragraphs (a)(5)(ii) through (vi) of this section:

| | Federal funds | Corresponding non-Federal share | Total amount |
|---|---|---|---|
| (A) Obligated or deobligated this action | | | |
| (B) Cumulative obligations to date, including this and previous actions | | | |
| (C) Planned project costs in the currently approved budget through the end of the period of performance, to include any future incremental funding obligations | | | |
| (D) Total value, which includes any unexercised options for which amounts were established in the award | | | |

(6) The obligation date (*i.e.*, the date of the grants officer's signature) and, if different, the effective date.

(7) The start date and current end date of the period of performance.

(8) The statutory authority or authorities under which the award or modification was made.

(9) The number and title of the program listed in the Catalog of Federal Domestic Assistance under which the award or modification was made.

(10) For a new award (or, as needed, in a modification that amends any of the following information):

(i) Whether the project or program under the award is research and development (R&D). This information is needed by auditors performing single audits of recipients because the OMB guidance to the auditors treats all Federal agencies' R&D programs as a single group (or ''cluster'') of programs for audit sampling purposes (see the Single Audit Act requirements implemented in subpart E of 2 CFR part 1128 and FMS Article V in appendix E to part 1128).

(ii) What the award includes in addition to the cover pages—*i.e.*, the:

(A) Scope of work or other appropriate content to specify the goals and objectives of the project or program supported by the award;

(B) Approved budget; and

(C) General, and any award specific, terms and conditions of the award.

(iii) Where the portions of the award listed in paragraph (a)(10)(ii) of this section are located, which content the DoD Component generally should incorporate into the award by reference. When incorporating that content into the award by reference, the DoD Component must both:

(A) Indicate in the award cover pages that the award incorporates those items into the award by reference, thereby making them an integral part of the award; and

(B) Specify their location (see §1120.315), rather than transmit them in their entirety with each award.

(iv) The order of precedence in the event of conflict among the general and any award-specific terms and conditions and other potential sources of requirements (*e.g.*, Federal statutes).

(v) The name of, and contact information for, the individual or office in the DoD responsible for post-award administration of the award. If there are multiple individuals and offices for different post-award functions (*e.g.*, payments and property administration), the award cover pages should provide information about each.

(vi) The name of, and contact information for, the DoD Component's program manager or other point of contact for programmatic matters.

(b) Must include, as a minimum, the following information about the recipient entity:

(1) The recipient's unique entity identifier required for its registration in the System for Award Management (SAM). Currently, that is the Dun and Bradstreet Data Universal Numbering System (DUNS) number.

(2) The recipient's business name and address, which must be the legal business or ''doing business as'' name and physical address in SAM at the time of award corresponding to the recipient's unique entity identifier.

(3) The name and title of the recipient's authorized representative, either the individual who signed the application or proposal on behalf of the recipient entity or another individual designated by that entity.

(4) The name of the recipient's Project or Program Director (PD) or Principal Investigator (PI) and his or her organization, if different from the name of the recipient organization. If there are multiple PDs or co-PIs, the name and organization of each should be included.

(5) The indirect cost rate in effect at the start of the performance period for the award, which generally is a Governmentwide rate negotiated by the recipient's cognizant agency for indirect costs. However, this requirement does not apply—*i.e.*, the award cover pages need not include the recipient's indirect cost rate—if the recipient entity affirms that it treats its indirect cost rate as proprietary information.

(c) May also include, as applicable, elements such as:

(1) A statement that the award can be amended only by a grants officer. The statement might also explain how amendments are issued.

(2) Information about any planned, future incremental funding or options for which amounts were pre-determined.

### §1120.110 Use of alternative to DoD form.

(a) A DoD Component may use something other than a DoD form as its award cover pages only if:

(1) There is not currently any DoD form for the award cover pages; or

(2) The DoD Component obtains approval for a deviation from the requirement to use a DoD form from the Office of the Assistant Secretary of Defense for Research and Engineering, in accordance with the procedures specified in 32 CFR 21.340.

(b) If a DoD Component does not use a DoD form for its award cover pages, as described in paragraph (a) of this section, its award cover pages must include all information specified in §1120.105.

## Subpart B—Award-specific Terms and Conditions

### § 1120.200 Purpose and inclusion of award-specific terms and conditions.

A DoD Component must include with each award, for transmission to the recipient, any terms and conditions needed to communicate requirements specific to the individual award as distinct from the more broadly applicable requirements in the general terms and conditions. For a modification to an award, only changes to previously transmitted terms and conditions must be included.

### § 1120.205 Organization and wording of award-specific terms and conditions.

DoD Components should organize and word award-specific terms and conditions to make them as clear and easy to understand as possible for the benefit of recipients, award administrators, auditors, and others who may need to use them. The DoDGARs specify neither a standard organization nor standard wording for award-specific terms and conditions.

## Subpart C—General Terms and Conditions

### § 1120.300 Purpose of general terms and conditions.

The general terms and conditions comprise the portion of the award with requirements that apply to a class of awards (*e.g.*, awards under a particular program or type of program activity, such as research or education, or for a class of recipients, such as for-profit entities).

### § 1120.305 Requirement for general terms and conditions.

Each DoD Component must establish at least one set of general terms and conditions. A DoD Component may have more than one set, as it deems appropriate to reflect differences in its award terms and conditions across different programs, classes of recipients, or types of activity.

### § 1120.310 Use of plain language.

(a) DoD Components must use plain language in:

(1) General terms and conditions of grants and cooperative agreements to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. Those awards are subject to the DoDGARs provisions in:

(i) 2 CFR parts 1128 through 1138, the appendices to which provide standard wording for general terms and conditions addressing administrative requirements. That standard wording uses personal pronouns.

(ii) 2 CFR part 1122, the appendices to which provide standard wording for general terms and conditions addressing commonly applicable national policy requirements. That standard wording also uses personal pronouns.

(2) The national policy requirements in Subdivision B of general terms and conditions of grants and cooperative agreements to for-profit entities, which also are subject to 2 CFR part 1122.

(b) Although the DoDGARs currently do not provide standard wording for terms and conditions addressing administrative requirements for use in awards to for-profit entities, DoD Components are strongly encouraged to use plain language and personal pronouns in their terms and conditions of those other awards. The DoDGARs provisions that specify the administrative requirements to incorporate into those terms and conditions are listed in § 1120.510(b).

### § 1120.315 Availability of general terms and conditions.

(a) A DoD Component that issues a funding opportunity announcement under which grants or cooperative agreements may be awarded must maintain on the internet the general terms and conditions for those awards if:

(1) The distribution of the funding opportunity announcement is unlimited; and

(2) The DoD Component anticipates making 10 or more awards per year using those general terms and conditions.

(b) Each DoD Component that maintains a set of general terms and conditions on the internet must also maintain an archive of previous versions of that set at the same internet location, for use by recipients, post-award administrators, auditors, and others. Each version must be labeled with its effective dates.

(c) If a DoD Component has a set of general terms and conditions that is not subject to the requirement in paragraph (a) of this section and the DoD Component chooses not to maintain that set on the internet:

(1) It must tell potential applicants or proposers in the funding opportunity announcement, if there is one, how they may view or obtain a copy of the general terms and conditions; or

(2) If there is no funding opportunity announcement (*e.g.*, if it is a non-competitive program for which all recipients are known in advance), the DoD Component must provide the general terms and conditions to each recipient no later than the time of award.

## Subpart D—Preamble to the General Terms and Conditions

### § 1120.400 Requirement to include a preamble.

Each DoD Component must include a preamble as Subdivision A of each set of general terms and conditions it maintains, to provide information to help recipients understand how to use those terms and conditions.

### § 1120.405 Content of the preamble.

The preamble for each set of general terms and conditions must include at least the following information elements, organized in the order shown:

(a) *Table of contents.* This should show the articles within each other subdivision of the general terms and conditions (Subdivisions B and C for administrative and national policy requirements and, if needed, Subdivision D for programmatic requirements).

(b) *Scope.* This element identifies the programs, types of awards, and types of recipient entities that are subject to the set of general terms and conditions.

(c) *Effective date.* This is the date on which the particular version of the set of general terms and conditions became effective, which enables a recipient to easily distinguish it from any earlier or subsequent versions. The version date of each article within the general terms and conditions must be indicated in parentheses following the title of the article, to help a recipient identify the articles that changed from previous versions of the general terms and conditions.

(d) *English language.* The purpose of this element of the preamble is to implement OMB guidance in 2 CFR 200.111(b) by informing each recipient that:

(1) It must translate any of the award content (including attachments to it and any material incorporated into the award by reference) into another language to the extent that the recipient's compliance with the award's terms and conditions depends upon a significant number of its employees who are not fluent in English being able to read and comprehend that content.

(2) If it does translate any award content into another language, either as required by paragraph (d)(1) of this section or at its own initiative, the original award content in the English language will take precedence in the event of an inconsistency between the award requirements in the English and translated versions.

(e) *Plain language.* This section of the preamble is required when the general terms and conditions use personal pronouns, in accordance with § 1120.310. Its purpose is to inform recipients about the meanings of those personal pronouns.

(f) *Definitions.* Providing the definitions of words and phrases that are used in the general terms and conditions and defined in the DoDGARs is more helpful to recipients than referring them to the DoDGARs to find the definitions.

## Subpart E—Administrative Requirements Portion of the General Terms and Conditions

### § 1120.500 Scope of administrative requirements.

The administrative requirements in an award are post-award and after-the-award requirements for recipients in the following subject matter areas:

(a) Financial and program management, to include financial management system standards, payment, allowable costs, program and budget revisions, audits, cost sharing or matching, and program income.

(b) Property administration, to include title vesting, property management system standards, and use and disposition of tangible and intangible property.

(c) Recipient procurement procedures.

(d) Financial, programmatic, property, and other reporting.

(e) Records retention and access, remedies, claims and disputes, and closeout.

### § 1120.505 Location of administrative requirements in the standard award format.

As shown in the table in §1120.4(b), the standard award format includes administrative requirements as Subdivision B of the general terms and conditions.

### § 1120.510 Sources of administrative requirements.

The source of administrative requirements is:

(a) Subchapter D of this chapter for cost-type grant and cooperative agreement awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. Subchapter D provides a standard set of articles into which a DoD Component organizes the administrative requirements. It also provides standard wording for the general terms and conditions in those articles, as explained in the overview of subchapter D in 2 CFR part 1126.

(b) 32 CFR part 34 for grant and cooperative agreement awards to for-profit entities. That part of the DoDGARs specifies the administrative requirements for awards to those entities but does not provide standard articles or terms and conditions.

### § 1120.515 Incorporation of administrative requirements into general terms and conditions by reference.

(a) For cost-type awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, DoD Components are strongly encouraged to construct the portion of their general terms and conditions addressing administrative requirements by:

(1) Incorporating the standard wording of each article of administrative requirements provided in subchapter D of this chapter (the standard wording of the articles is in the appendices to 2 CFR parts 1128 through 1138) into those general terms and conditions by reference; and

(2) Stating any variations from that standard wording (*e.g.*, any sections or paragraphs that the DoD Component adds, revises, or omits, consistent with the DoDGARs prescription for use of the standard wording).

(b) Incorporating that standard wording into general terms and conditions by reference, rather than including the full text of each article of the general terms and conditions, will make it easier for those who must use terms and conditions of multiple DoD Components' awards (*e.g.*, recipients, DoD Components' post-award administrators, and auditors) to quickly identify how each Component's general terms and conditions differ from the DoD standard wording.

## Subpart F—National Policy Requirements Portion of the General Terms and Conditions

### § 1120.600 Scope of national policy requirements.

National policy requirements, as defined in 2 CFR 1122.2, are requirements:

(a) That are prescribed by a statute, Executive order, policy guidance issued by the Executive Office of the President, or regulation that specifically

refer to grants, cooperative agreements, or financial assistance in general;

(b) With which a recipient of a grant or cooperative agreement must comply during the period of performance; and

(c) That are outside subject matter areas covered by administrative requirements, as described in §1120.500.

### §1120.605 Location of national policy requirements in the standard award format.

As shown in the table in §1120.4(b), the standard award format includes national policy requirements as Subdivision C of the general terms and conditions.

### §1120.610 Source of national policy requirements.

The source of national policy requirements to be included in a grant or cooperative agreement is 2 CFR part 1122.

### §1120.615 Incorporation of national policy requirements into general terms and conditions by reference.

For the same reason given in §1120.515(b), DoD Components are strongly encouraged to construct the portion of their general terms and conditions addressing national policy requirements for awards to all types of recipient entities, including for-profit entities, by:

(a) Incorporating the standard wording of each article of national policy requirements provided in the appendices to 2 CFR part 1122 into those general terms and conditions by reference; and

(b) Stating any variations from that standard wording (*e.g.*, any added, omitted, or revised paragraphs, based on which national policy requirements apply to programs and recipients for which the general terms and conditions are used).

## Subpart G—Programmatic Requirements Portion of the General Terms and Conditions

### §1120.700 Scope of programmatic requirements.

A requirement is most appropriately included in the programmatic requirements portion of the general terms and conditions if it:

(a) Is not in one of the subject matter areas covered by the administrative requirements in Subdivision B of the general terms and conditions, as described in §1120.500.

(b) Does not meet the criteria in §1120.600 for a national policy requirement.

(c) Broadly applies to awards using the general terms and conditions. Requirements that apply to relatively few of those awards are more appropriately included in the award-specific terms and conditions of the individual awards to which they apply.

(d) Is expected to be in effect for the foreseeable future, rather than for a limited period of time. For example, a requirement in an annual appropriations act that applies specifically to funding made available by that act is better addressed through the award-specific terms and conditions of awards or modifications to which it applies.

### §1120.705 Location of programmatic requirements in the standard award format.

As shown in the table in §1120.4(b), the standard award format includes programmatic requirements as Subdivision D of the general terms and conditions.

### §1120.710 Examples of programmatic requirements.

Examples of provisions appropriately included as programmatic requirements in Subdivision D of the general terms and conditions include:

(a) Requirements for recipients to acknowledge the DoD Component's support in publications of results of the projects or programs performed under awards.

(b) Requirements for recipients to promptly alert the DoD Component if they develop any information in the course of performing the projects or programs under their awards that, in their judgment, might adversely affect national security if disclosed.

(c) Reservation of the Government's right to use non-Federal personnel in any aspect of post-award administration of awards, with appropriate non-disclosure requirements placed on

those personnel to protect sensitive information about recipients or the projects or programs supported by their awards.

## PART 1121 [RESERVED]

# PART 1122—NATIONAL POLICY REQUIREMENTS: GENERAL AWARD TERMS AND CONDITIONS

Sec.

### Subpart A—General

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1122.120 Other national policy requirements.
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Appendix C Terms and conditions for NP Article III, ''National Policy Requirements Concerning Live Organisms.''
Appendix D Terms and conditions for NP Article IV, ''Other National Policy Requirements.''

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 85 FR 51225, Aug. 19, 2020, unless otherwise noted.

## Subpart A—General

### § 1122.1 Purpose of this part.

(a) This part specifies a standard format and standard wording of general terms and conditions for Subdivision B of the general terms and conditions of DoD grants and cooperative agreements, which concerns national policy requirements.

(b) It thereby implements:

(1) Office of Management and Budget (OMB) guidance in 2 CFR 200.210(b)(ii) and 200.300, as those paragraphs of 2 CFR part 200 relate to national policy requirements for general terms and conditions of DoD grants and cooperative agreements to institutions of higher education and other nonprofit organizations, States, local governments, and Indian tribes.

(2) National policy requirements, to the extent they apply, for general terms and conditions of DoD awards to for-profit firms, foreign organizations, and foreign public entities.

### § 1122.2 Definition of "national policy requirement."

For the purposes of this chapter, a national policy requirement is a requirement:

(a) That is prescribed by a statute, Executive order, policy guidance issued by the Executive Office of the President, or regulation that specifically refers to grants, cooperative agreements, or financial assistance in general;

(b) With which a recipient of a grant or cooperative agreement must comply during the period of performance; and

(c) That is outside subject matter areas covered by administrative requirements in subchapters D or E of this chapter.

### § 1122.3 Definition of other terms as they are used in this part.

Because the meaning of some terms used in this part derive from their definitions in the statutes, Executive orders, or other sources of national policy requirements that this part implements, the meanings of those terms may vary from their meanings in other parts of the DoD Grant and Agreement Regulations. For example, some statutes define ''State'' in ways that differ from each other and from the definition provided in 2 CFR part B. In each case, the definition in the source of the pertinent national policy requirement takes precedence over the definition in 2 CFR part B for the purposes of complying with that requirement.

## Subpart B—Terms and Conditions

### § 1122.100 Purpose of this subpart.

This subpart provides:

(a) Direction to DoD Components on how to construct the four articles of

national policy requirements for inclusion in the general terms and conditions of grants and cooperative agreements.

(b) Standard wording for national policy requirements that are more commonly applicable to DoD Components' grants and cooperative agreements.

### § 1122.105 Where to find the terms and conditions.

(a) Appendices A through D of this part provide standard wording of terms and conditions for the four articles of national policy requirements. The articles address the rights and responsibilities of the Government and the recipient related to those national policy requirements.

(b) The following table shows which national policy terms and conditions may be found in each appendix to this part:

| In . . . | You will find terms and conditions specifying recipients' rights and responsibilities related to . . . | That would appear in an award within NP Article . . . |
|---|---|---|
| Appendix A | Non-discrimination national policy requirements | I. |
| Appendix B | Environmental national policy requirements | II. |
| Appendix C | National policy requirements concerning live organisms | III. |
| Appendix D | Other national policy requirements | IV. |

### § 1122.110 Organization of each article of national policy requirements.

Each of NP Articles I through IV includes two sections.

(a) Section A of each article includes national policy requirements that are cross-cutting in that their applicability extends to many or all DoD awards. Appendices A through D to this part provide standard wording for each of those requirements.

(b) Section B of each article is the location in the award for program-specific national policy requirements. Section B is reserved in the standard wording of the articles provided in appendices A through D to this part.

### § 1122.115 Cross-cutting national policy requirements.

(a) *General requirement to include applicable cross-cutting requirements.* A DoD Component's general terms and conditions must include the standard wording provided in appendices A through D to this part for each national policy requirement addressed in Section A of NP Articles I, II, III, and IV, respectively, that may apply either to:

(1) A recipient of an award using those general terms and conditions; or

(2) A subrecipient of a subaward under an award using those general terms and conditions.

(b) *Authority to reserve or omit inapplicable paragraphs.* A DoD Component may reserve or omit any paragraph appendices A through D to this part provide for Section A of NP Articles I, II, III, and IV of its general terms and conditions if it determines that the national policy requirement addressed in that paragraph will not apply to any awards using those terms and conditions nor to any subawards under them.

(c) *Authority to use alternate wording.* (1) A DoD Component may use different wording for a national policy requirement than is provided in appendices A through D to this part if it is authorized or required to do so by a statute or a regulation published in the Code of Federal Regulations after opportunity for public comment.

(2) A DoD Component in that case:

(i) Must include the wording required by the statute or regulation in Section B of the appropriate article. This will help a recipient recognize the wording as a variation of the usual DoD wording for the requirement.

(ii) May either reserve the paragraph of Section A of the article in which that national policy requirement otherwise would appear or insert in that paragraph wording to refer the recipient to the paragraph in Section B of the article in which the requirement does appear.

### § 1122.120 Other national policy requirements.

If a DoD Component determines that awards using its general terms and conditions, or subawards under them, are subject to a national policy requirement that is not addressed in the standard wording appendices A through D to this part provide for cross-cutting requirements, the DoD Component must include the requirement in its general terms and conditions. It should add the requirement in Section B of NP Article I, II, III, or IV, as most appropriate to the subject matter of the requirement.

## APPENDIX A TO PART 1122—TERMS AND CONDITIONS FOR NP ARTICLE I, ''NONDISCRIMINATION NATIONAL POLICY REQUIREMENTS''

A DoD Component must use the following wording for NP Article I of its general terms and conditions in accordance with the provisions of Subpart B of this part.

NP ARTICLE I. NONDISCRIMINATION NATIONAL POLICY REQUIREMENTS. (DECEMBER 2014)

*Section A. Cross-cutting nondiscrimination requirements.* By signing this award or accepting funds under this award, you assure that you will comply with applicable provisions of the national policies prohibiting discrimination:

1. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), as implemented by Department of Defense (DoD) regulations at 32 CFR part 195.

2. On the basis of gender, blindness, or visual impairment, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), as implemented by DoD regulations at 32 CFR part 196.

3. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

4. On the basis of disability, in the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

5. On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) related to physically handicapped persons' ready access to, and use of, buildings and facilities for which Federal funds are used in design, construction, or alteration.

*Section B.* [Reserved]

## APPENDIX B TO PART 1122—TERMS AND CONDITIONS FOR NP ARTICLE II, ''ENVIRONMENTAL NATIONAL POLICY REQUIREMENTS''

A DoD Component must use the following wording for NP Article II of its general terms and conditions in accordance with the provisions of Subpart B of this part.

NP ARTICLE II. ENVIRONMENTAL NATIONAL POLICY REQUIREMENTS. (DECEMBER 2014)

*Section A. Cross-cutting environmental requirements.* You must:

1. You must comply with all applicable Federal environmental laws and regulations. The laws and regulations identified in this section are not intended to be a complete list.

2. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, *et seq.*) and Clean Water Act (33 U.S.C. 1251, *et seq.*).

3. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in buildings owned by the Federal Government or housing receiving Federal assistance.

4. Immediately identify to us, as the Federal awarding agency, any potential impact that you find this award may have on:

a. The quality of the ''human environment'', as defined in 40 CFR 1508.14, including wetlands; and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 *et seq.*), the regulations at 40 CFR 1500–1508, and E.O. 12114, if applicable; and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an environmental impact (*e.g.*, physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives to the proposed action until we provide written notification of Federal compliance with NEPA or E.O. 12114.

b. Flood-prone areas and provide any help we may need to comply with the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

c. A land or water use or natural resource of a coastal zone that is part of a federally approved State coastal zone management plan and provide any help we may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, *et seq.*) including preparation of a Federal agency Coastal Consistency Determination.

d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores and provide help we may need to comply with the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*), concerning preservation of barrier resources.

e. Any existing or proposed component of the National Wild and Scenic Rivers system and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*).

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source and in wellhead protection areas, and provide any help we may need to comply with the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*).

5. You must comply fully with the Endangered Species Act of 1973, as amended (ESA, at 16 U.S.C. 1531 *et seq.*), and implementing regulations of the Departments of the Interior (50 CFR parts 10–24) and Commerce (50 CFR parts 217–227). You also must provide any help we may need in complying with the consultation requirements of ESA section 7 (16 U.S.C. 1536) applicable to Federal agencies or any regulatory authorization we may need based on the award of this grant. This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

6. You must fully comply with the Marine Mammal Protection Act of 1972, as amended (MMPA, at 16 U.S.C. 1361 *et seq.*) and provide any assistance we may need in obtaining any required MMPA permit based on an award of this grant.

*Section B.* [Reserved]

## APPENDIX C TO PART 1122—TERMS AND CONDITIONS FOR NP ARTICLE III, ''NATIONAL POLICY REQUIREMENTS CONCERNING LIVE ORGANISMS''

A DoD Component must use the following wording for NP Article III of its general terms and conditions in accordance with the provisions of Subpart B of this part.

### NP ARTICLE III. NATIONAL POLICY REQUIREMENTS CONCERNING LIVE ORGANISMS. (DECEMBER 2014)

*Section A. Cross-cutting requirements concerning live organisms.*

1. *Human subjects.*

a. You must protect the rights and welfare of individuals who participate as human subjects in research under this award and comply with the requirements at 32 CFR part 219, DoD Instruction (DoDI) 3216.02, 10 U.S.C. 980, and when applicable, Food and Drug Administration (FDA) regulations.

b. You must not begin performance of research involving human subjects, also known as human subjects research (HSR), that is covered under 32 CFR part 219, or that meets exemption criteria under 32 CFR 219.101(b), until you receive a formal notification of approval from a DoD Human Research Protection Official (HRPO). Approval to perform HSR under this award is received after the HRPO has performed a review of your documentation of planned HSR activities and has officially furnished a concurrence with your determination as presented in the documentation.

c. In order for the HRPO to accomplish this concurrence review, you must provide sufficient documentation to enable his or her assessment as follows:

i. If the HSR meets an exemption criterion under 32 CFR 219.101(b), the documentation must include a citation of the exemption category under 32 CFR 219.101(b) and a rationale statement.

ii. If your activity is determined as ''nonexempt research involving human subjects'', the documentation must include:

(A) Assurance of Compliance (*i.e.,* Department of Health and Human Services Office for Human Research Protections (OHRP) Federalwide Assurance (FWA)) appropriate for the scope of work or program plan; and

(B) Institutional Review Board (IRB) approval, as well as all documentation reviewed by the IRB to make their determination.

d. The HRPO retains final judgment on what activities constitute HSR, whether an exempt category applies, whether the risk determination is appropriate, and whether the planned HSR activities comply with the requirements in paragraph 1.a of this section.

e. You must notify the HRPO immediately of any suspensions or terminations of the Assurance of Compliance.

f. DoD staff, consultants, and advisory groups may independently review and inspect your research and research procedures involving human subjects and, based on such findings, DoD may prohibit research that presents unacceptable hazards or otherwise fails to comply with DoD requirements.

g. Definitions for terms used in paragraph 1 of this article are found in DoDI 3216.02.

2. *Animals.*

a. Prior to initiating any animal work under the award, you must:

i. Register your research, development, test, and evaluation or training facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2136 and 9 CFR 2.30, unless otherwise exempt from this requirement by meeting the conditions in 7 U.S.C. 2136 and 9 CFR parts 1–4 for the duration of the activity.

ii. Have your proposed animal use approved in accordance with Department of Defense Instruction (DoDI) 3216.01, Use of Animals in DoD Programs by a DoD Component Headquarters Oversight Office.

iii. Furnish evidence of such registration and approval to the grants officer.

b. You must make the animals on which the research is being conducted, and all premises, facilities, vehicles, equipment, and records that support animal care and use available during business hours and at other times mutually agreeable to you, the United States Department of Agriculture Office of Animal and Plant Health Inspection Service (USDA/APHIS) representative, personnel representing the DoD component oversight offices, as well as the grants officer, to ascertain that you are compliant with 7 U.S.C. 2131 *et seq.*, 9 CFR parts 1–4, and DoDI 3216.01.

c. Your care and use of animals must conform with the pertinent laws of the United States, regulations of the Department of Agriculture, and regulations, policies, and procedures of the Department of Defense (see 7 U.S.C. 2131 *et seq.*, 9 CFR parts 1–4, and DoDI 3216.01).

d. You must acquire animals in accordance with DoDI 3216.01.

3. *Use of Remedies*.

Failure to comply with the applicable requirements in paragraphs 1–2 of this section may result in the DoD Component's use of remedies, *e.g.*, wholly or partially terminating or suspending the award, temporarily withholding payment under the award pending correction of the deficiency, or disallowing all or part of the cost of the activity or action (including the federal share and any required cost sharing or matching) that is not in compliance. See OAR Article III.

*Section B*. [Reserved]

## APPENDIX D TO PART 1122—TERMS AND CONDITIONS FOR NP ARTICLE IV, ''OTHER NATIONAL POLICY REQUIREMENTS''

A DoD Component must use the following wording for NP Article IV of its general terms and conditions in accordance with the provisions of Subpart B of this part.

### NP ARTICLE IV. OTHER NATIONAL POLICY REQUIREMENTS. (DECEMBER 2014)

*Section A. Cross-cutting requirements.*

1. *Debarment and suspension*. You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR part 180, as adopted by DoD at 2 CFR part 1125. This includes requirements concerning your principals under this award, as well as requirements concerning your procurement transactions and subawards that are implemented in PROC Articles I through III and SUB Article II.

2. *Drug-free workplace*. You must comply with drug-free workplace requirements in Subpart B of 2 CFR part 26, which is the DoD implementation of 41 U.S.C. chapter 81, ''Drug-Free Workplace.''

3. *Lobbying*.

a. You must comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DoD at 32 CFR part 28, and submit all disclosures required by that statute and regulation.

b. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

c. If you are a nonprofit organization described in section 501(c)(4) of title 26, United States Code (the Internal Revenue Code of 1968), you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions.

4. *Officials not to benefit*. You must comply with the requirement that no member of Congress shall be admitted to any share or part of this award, or to any benefit arising from it, in accordance with 41 U.S.C. 6306.

5. *Hatch Act*. If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508) concerning political activities of certain State and local government employees, as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

6. *Native American graves protection and repatriation*. If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

7. *Fly America Act*. You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the ''Fly America Act,'' and implementing regulations at 41 CFR 301–10.131 through 301–10.143. The law and regulations require that U.S. Government financed international air travel of passengers and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost sharing arrangement with a U.S. carrier, if such service is available.

8. *Use of United States-flag vessels*. You must comply with the following requirements of

the Department of Transportation at 46 CFR 381.7, in regulations implementing the Cargo Preference Act of 1954:

a. Pursuant to Public Law 83–664 (46 U.S.C. 55305), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ''on-board'' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 8.a of this section must be furnished to both our award administrator (through you in the case of your contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9. *Research misconduct.* You must comply with requirements concerning research misconduct in Enclosure 4 to DoD Instruction 3210.7, ''Research Integrity and Misconduct.'' The Instruction implements the Governmentwide research misconduct policy that the Office of Science and Technology Policy published in the FEDERAL REGISTER (65 FR 76260, December 6, 2000, available through the U.S. Government Printing Office website: *https://www.federalregister.gov/documents/2000/12/06/00-30852/executive-office-of-the-president-federal-policy-on-research-misconduct-preamble-for-research*).

10. *Requirements for an Institution of Higher Education Concerning Military Recruiters and Reserve Officers Training Corps (ROTC).*

a. As a condition for receiving funds available to the DoD under this award, you agree that you are not an institution of higher education (as defined in 32 CFR part 216) that has a policy or practice that either prohibits, or in effect prevents:

i. The Secretary of a Military Department from maintaining, establishing, or operating a unit of the Senior Reserve Officers Training Corps (ROTC)—in accordance with 10 U.S.C. 654 and other applicable Federal laws—at that institution (or any subelement of that institution);

ii. Any student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education.

iii. The Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

iv. Access by military recruiters for purposes of military recruiting to the names of students (who are 17 years of age or older and enrolled at that institution or any subelement of that institution); their addresses, telephone listings, dates and places of birth, levels of education, academic majors, and degrees received; and the most recent educational institutions in which they were enrolled.

b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:

i. Will cease all payments to you of DoD funds under this award and all other DoD grants and cooperative agreements; and

ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. *Historic preservation.* You must identify to us any:

a. Property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, ''Identification and Protection of Historic Properties,'' [3 CFR, 1971–1975 Comp., p. 559]. Impacts to historical properties are included in the definition of ''human environment'' that require impact assessment under NEPA (See NP Article II, Section A).

b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (54 U.S.C. chapter 3125).

12. *Relocation and real property acquisition.* You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, *et seq.*) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13. *Confidentiality of patient records.* You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd–2.

14. *Pro-Children Act.*

You must comply with applicable restrictions in the Pro-Children Act of 1994 (Title 20, Chapter 68, subchapter X, Part B of the U.S. Code) on smoking in any indoor facility:

a. Constructed, operated, or maintained under this award and used for routine or regular provision of kindergarten, elementary, or secondary education or library services to children under the age of 18.

b. Owned, leased, or contracted for and used under this award for the routine provision of federally funded health care, day care, or early childhood development (Head Start) services to children under the age of 18.

15. *Constitution Day.* You must comply with Public Law 108–447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

16. *Trafficking in persons.* You must comply with requirements concerning trafficking in persons specified in the award term at 2 CFR 175.15(b), as applicable.

17. *Whistleblower protections.* You must comply with 10 U.S.C. 2409, including the:

a. Prohibition on reprisals against employees disclosing certain types of information to specified persons or bodies; and

b. Requirement to notify your employees in writing, in the predominant native language of the workforce, of their rights and protections under that statute.

*Section B.* [Reserved]

# PARTS 1123–1124 [RESERVED]

# PART 1125—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

1125.10 What does this part do?
1125.20 Does this part implement the OMB guidance in 2 CFR part 180 for all DoD nonprocurement transactions?
1125.30 Does this part apply to me?
1125.40 What policies and procedures must I follow?

## Subpart A—General

1125.137 Who in the Department of Defense may grant an exception to let an excluded person participate in a covered transaction?

## Subpart B—Covered Transactions

1125.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

## Subpart C—Responsibilities of Participants Regarding Transactions

1125.332 What method must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

## Subpart D—Responsibilities of DoD Officials Regarding Transactions

1125.425 When do I check to see if a person is excluded or disqualified?
1125.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

## Subparts E–H [Reserved]

## Subpart I—Definitions

1125.930 Debarring official (DoD supplement to Governmentwide definition at 2 CFR 180.930).
1125.937 DoD Component.
1125.1010 Suspending official (DoD supplement to Governmentwide definition at 2 CFR 180.1010).

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 72 FR 34984, June 26, 2007. Redesignated at 85 FR 51161, Aug. 19, 2020.

### § 1125.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Defense (DoD) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Department of Defense to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

### § 1125.20 Does this part implement the OMB guidance in 2 CFR part 180 for all DoD nonprocurement transactions?

This part implements the OMB guidelines in 2 CFR part 180 for most DoD

nonprocurement transactions. However, it does not implement the guidelines as they apply to prototype projects under the authority of Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160), as amended. The Director of Defense Procurement and Acquisition Policy maintains a DoD issuance separate from this part that addresses section 845 transactions.

### § 1125.30 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970, as supplemented by subpart B of this part), other than a section 845 transaction described in § 1125.20;

(b) Respondent in a DoD Component's nonprocurement suspension or debarment action;

(c) DoD Component's debarment or suspension official; or

(d) DoD Component's grants officer, agreements officer, or other official authorized to enter into a nonprocurement transaction that is a covered transaction.

### § 1125.40 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in subparts A through I of 2 CFR part 180, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 180, this part supplements eight sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| (1) 2 CFR 180.135 | § 1125.137 | Who in DoD may grant an exception for an excluded person to participate in a covered transaction. |
| (2) 2 CFR 180.220 | § 1125.220 | Which lower-tier contracts under a nonprocurement transaction are covered transactions. |
| (3) 2 CFR 180.330 | § 1125.332 | What method a participant must use to communicate requirements to a lower-tier participant. |
| (4) 2 CFR 180.425 | § 1125.425 | When a DoD awarding official must check to see if a person is excluded or disqualified. |
| (5) 2 CFR 180.435 | § 1125.437 | What method a DoD official must use to communicate requirements to a participant. |
| (6) 2 CFR 180.930 | § 1125.930 | Which DoD officials are debarring officials. |
| (7) 2 CFR 180.1010 | § 1125.1010 | Which DoD officials are suspending officials. |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in subparts A through I of 2 CFR 180 that is not listed in paragraph (b) of this section, DoD policies and procedures are the same as those in the OMB guidance.

## Subpart A—General

### § 1125.137 Who in the Department of Defense may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Defense, the Secretary of Defense, Secretary of a Military Department, Head of a Defense Agency, Head of the Office of Economic Adjustment, and Head of the Special Operations Command have the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

## Subpart B—Covered Transactions

### § 1125.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do

so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), the Department of Defense does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 1125.332 What method must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant in a covered transaction must include a term or condition in any lower-tier covered transaction into which you enter, to require the participant of that transaction to—

(a) Comply with subpart C of the OMB guidance in 2 CFR part 180; and

(b) Include a similar term or condition in any covered transaction into which it enters at the next lower tier.

## Subpart D—Responsibilities of DoD Officials Regarding Transactions

### § 1125.425 When do I check to see if a person is excluded or disqualified?

In addition to the four instances identified in the OMB guidance at 2 CFR 180.425, you as a DoD Component official must check to see if a person is excluded or disqualified before you obligate additional funding (*e.g.*, through an incremental funding action) for a pre-existing grant or cooperative agreement with an institution of higher education, as provided in 32 CFR 22.520(e)(5).

### § 1125.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

You as a DoD Component official must include a term or condition in each covered transaction into which you enter, to communicate to the participant the requirements to—

(a) Comply with subpart C of 2 CFR part 180, as supplemented by subpart C of this part; and

(b) Include a similar term or condition in any lower-tier covered transactions into which the participant enters.

## Subparts E–H [Reserved]

## Subpart I—Definitions

### § 1125.930 Debarring official (DoD supplement to Governmentwide definition at 2 CFR 180.930).

DoD Components' debarring officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4, as debarring officials for procurement contracts.

### § 1125.937 DoD Component.

In this part, DoD Component means the Office of the Secretary of Defense, a Military Department, a Defense Agency, a DoD Field Activity, or any other organizational entity of the Department of Defense that is authorized to award or administer grants, cooperative agreements, or other nonprocurement transactions.

### § 1125.1010 Suspending official (DoD supplement to Governmentwide definition at 2 CFR 180.1010).

DoD Components' suspending officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4, as suspending officials for procurement contracts.

# SUBCHAPTER D—ADMINISTRATIVE REQUIREMENTS TERMS AND CONDITIONS FOR COST-TYPE GRANTS AND COOPERATIVE AGREEMENTS TO NONPROFIT AND GOVERNMENTAL ENTITIES

SOURCE: 85 FR 51161, Aug. 19, 2020, unless otherwise noted.

## PART 1126—SUBCHAPTER D OVERVIEW

Sec.

1126.1 Purposes of this subchapter.
1126.2 Applicability of this subchapter.
1126.3 Exceptions from requirements in this subchapter.
1126.4 Relationship to other portions of the DoD grant and agreement regulations.
1126.5 Organization of this subchapter.
1126.6 Organization of the other parts of this subchapter.

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 85 FR 51171, Aug. 19, 2020, unless otherwise noted.

### § 1126.1 Purposes of this subchapter.

This subchapter of the DoD Grant and Agreement Regulations:

(a) Addresses general terms and conditions governing administrative requirements for use by DoD Components when awarding cost-type grants and cooperative agreements to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. It does so by providing:

(1) A standard organization of the administrative requirements into articles of general terms and conditions, each of which is in a specific subject area.

(2) Standard wording for those articles; and

(3) Associated prescriptions for DoD Component's use of the standard wording to construct their general terms and conditions, which allow for adding, omitting, or varying in other ways from the standard wording in certain situations.

(b) Thereby implements OMB guidance in 2 CFR part 200 as it relates to general terms and conditions of grants and cooperative agreements to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

### § 1126.2 Applicability of this subchapter.

(a) *Entities.* This subchapter:

(1) Applies to DoD Components that award cost-type grants and cooperative agreements to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

(2) Does not directly impose requirements on a recipient of a DoD Component's award but does do so indirectly, through the DoD Component's compliance with this subchapter when it constructs its general award terms and conditions. The terms and conditions delineate the rights and responsibilities of the recipient and the Federal Government under the award.

(b) *Awards.* This subchapter applies to DoD Components' cost-type grants and cooperative agreements to types of entities identified in paragraph (a)(1) of this section, other than Technology Investment Agreements that are addressed in 32 CFR part 37.

### § 1126.3 Exceptions from requirements in this subchapter.

(a) *Exceptions that are not permitted.* A DoD Component may not grant any exception to the requirements in this subchapter if the exception is:

(1) Prohibited by statute, executive order, or regulation;

(2) Inconsistent with the OMB implementation of the Single Audit Act in Subpart F of 2 CFR part 200.

(b) *Other exceptions.* Other exceptions are permitted from requirements in this subchapter for institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes as follows:

(1) *Statutory or regulatory exceptions.* A DoD Component's general terms and conditions may incorporate a requirement that is inconsistent with the requirements in this subchapter if that requirement is specifically authorized or required by a statute or regulation

adopted in the Code of Federal Regulations after opportunity for public comment.

(2) *Individual exceptions*. The Head of the DoD Component or his or her designee may approve an individual exception affecting only one award in accordance with procedures stated in 32 CFR 21.340.

(3) *Small awards*. A DoD Component's terms and conditions for small awards may apply less restrictive requirements than those specified in this subchapter (a small award is an award for which the total value of obligated funding through the life of the award is not expected to exceed the simplified acquisition threshold).

(4) *Other class exceptions*. The Assistant Secretary of Defense for Research and Engineering or his or her designee may approve any class exception affecting multiple awards other than small awards, with OMB concurrence if the class exception is for a requirement that is inconsistent with OMB guidance in 2 CFR part 200. Procedures for DoD Components' requests for class exceptions are stated in 32 CFR 21.340.

### § 1126.4 Relationship to other portions of the DoD grant and agreement regulations.

The administrative requirements specified in this subchapter complement:

(a) Provisions of 32 CFR part 34 that address administrative requirements for DoD Components' grants and cooperative agreements to for-profit entities; and

(b) Requirements in 32 CFR part 37 for technology investment agreements.

### § 1126.5 Organization of this subchapter.

This subchapter is organized into six parts in addition to this overview part. Each part provides standard wording and prescriptions for articles of general terms and conditions that address administrative requirements in a particular subject area. Table 1 shows the subject area and articles corresponding to each part:

TABLE 1 TO § 1126.5

| In . . . | Of this subchapter, you will find terms and conditions with associated prescriptions for the following articles related to . . . |
|---|---|
| Part 1128 | Recipient financial and program management (designated as ''FMS'' when referring to articles prescribed by this part):<br>—FMS Article I—Financial management system standards.<br>—FMS Article II—Payments.<br>—FMS Article III—Allowable costs, period of availability of funds, and fee or profit.<br>—FMS Article IV—Revision of budget and program plans.<br>—FMS Article V—Non-Federal audits.<br>—FMS Article VI—Cost sharing or matching.<br>—FMS Article VII—Program income. |
| Part 1130 | Property administration (designated as ''PROP'' when referring to articles prescribed by this part):<br>—PROP Article I—Title to property.<br>—PROP Article II—Property management system.<br>—PROP Article III—Use and disposition of real property.<br>—PROP Article IV—Use and disposition of equipment and supplies.<br>—PROP Article V—Use and disposition of federally owned property.<br>—PROP Article VI—Intangible property. |
| Part 1132 | Recipient procurement procedures (designated as ''PROC'' when referring to articles prescribed by this part):<br>—PROC Article I—Procurement standards for States.<br>—PROC Article II—Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes.<br>—PROC Article III—Contract provisions for recipient procurements. |
| Part 1134 | Financial, programmatic, and property reporting (designated as ''REP'' when referring to articles prescribed by this part):<br>—REP Article I—Performance management, monitoring, and reporting.<br>—REP Article II—Financial reporting.<br>—REP Article III—Reporting on property.<br>—REP Article IV—Reporting on subawards and executive compensation.<br>—REP Article V—Other reporting. |
| Part 1136 | Other administrative requirements (designated as ''OAR'' when referring to articles prescribed by this part):<br>—OAR Article I—Submitting and maintaining recipient information.<br>—OAR Article II—Records retention and access.<br>—OAR Article III—Remedies and termination.<br>—OAR Article IV—Claims, disputes, and appeals. |

TABLE 1 TO § 1126.5—Continued

| In . . . | Of this subchapter, you will find terms and conditions with associated prescriptions for the following articles related to . . . |
|---|---|
| | —OAR Article V—Collection of amounts due.<br>—OAR Article VI—Closeout.<br>—OAR Article VII—Post-closeout adjustments and continuing responsibilities. |
| Part 1138 | Requirements related to subawards (designated as ''SUB'' when referring to articles prescribed by this part):<br>—SUB Article I—Distinguishing subawards and procurements.<br>—SUB Article II—Pre-award and time of award responsibilities.<br>—SUB Article III—Informational content of subawards.<br>—SUB Article IV—Financial and program management requirements for subawards.<br>—SUB Article V—Property requirements for subawards.<br>—SUB Article VI—Procurement procedures to include in subawards.<br>—SUB Article VII—Financial, programmatic, and property reporting requirements for subawards.<br>—SUB Article VIII—Other administrative requirements for subawards.<br>—SUB Article IX—National Policy Requirements for Subawards.<br>—SUB Article X—Subrecipient monitoring and other post-award administration.<br>—SUB Article XI—Requirements concerning subrecipients' lower-tier subawards.<br>—SUB Article XII—Fixed-amount subawards. |

### § 1126.6 Organization of the other parts of this subchapter.

(a) Each of parts 1128 through 1138 of this subchapter is organized into subparts and appendices.

(1) Each appendix provides the standard wording of general terms and conditions for one of the articles of general terms and conditions that the part addresses.

(2) For each appendix addressing a particular article, the part has an associated subpart that provides the prescription for DoD Components' use of the standard wording for that article.

(b) For example, Table 1 to § 1126.5 indicates that 2 CFR part 1128 provides the standard wording of general terms and conditions for FMS Articles I through VII and the prescriptions for DoD Components' use of that standard wording.

(1) FMS Article I on financial management system standards is the first of the articles that 2 CFR part 1128 covers. Appendix A to 2 CFR part 1128 provides the standard wording of general terms and conditions for FMS Article I. The associated subpart of 2 CFR part 1128, subpart A, provides the prescription for DoD Components' use of the standard wording of that article.

(2) Appendices B through G of 2 CFR part 1128 provide the standard wording of general terms and conditions for FMS Articles II through VII, respectively. The associated subparts, Subparts B through G, provide the corresponding prescriptions for DoD Components.

## PART 1128—RECIPIENT FINANCIAL AND PROGRAM MANAGEMENT: GENERAL AWARD TERMS AND CONDITIONS

Sec.

1128.1 Purpose of this part.
1128.2 Applicability of this part.
1128.3 Exceptions from requirements of this part.
1128.4 Organization of this part.

**Subpart A—Financial Management System Standards (FMS Article I)**

1128.100 Purpose of FMS Article I.
1128.105 Content of FMS Article I.

**Subpart B—Payments (FMS Article II)**

1128.200 Purpose of FMS Article II.
1128.205 Content of FMS Article II.
1128.210 Payment requirements for States.
1128.215 Payment requirements for institutions of higher education, nonprofit organizations, local governments, and Indian tribes.
1128.220 Electronic funds transfer and other payment procedural instructions or information.

**Subpart C—Allowable Costs, Period of Availability of Funds, and Fee or Profit (FMS Article III)**

1128.300 Purpose of FMS Article III.
1128.305 Content of FMS Article III.
1128.310 Cost principles.

1128.315 Clarification concerning allowability of publication costs.
1128.320 Period of availability of funds.
1128.325 Fee or profit.

**Subpart D—Revision of Budget and Program Plans (FMS Article IV)**

1128.400 Purpose of FMS Article IV.
1128.405 Content of FMS Article IV.
1128.410 Approved budget.
1128.415 Prior approvals for non-construction activities.
1128.420 Prior approvals for construction activities.
1128.425 Additional prior approval for awards that support both non-construction and construction activities.
1128.430 Procedures for prior approvals.

**Subpart E—Non-Federal audits (FMS Article V)**

1128.500 Purpose of FMS Article V.
1128.505 Content of FMS Article V.

**Subpart F—Cost Sharing or Matching (FMS Article VI)**

1128.600 Purpose of FMS Article VI.
1128.605 Content of FMS Article VI.
1128.610 General requirement for cost sharing or matching.
1128.615 General criteria for determining allowability as cost sharing or matching.
1128.620 Allowability of unrecovered indirect costs as cost sharing or matching.
1128.625 Allowability of program income as cost sharing or matching.
1128.630 Valuation of services or property contributed or donated by recipients or subrecipients.
1128.635 Valuation of third-party in-kind contributions.

**Subpart G—Program Income (FMS Article VII)**

1128.700 Purpose of FMS Article VII.
1128.705 Content of FMS Article VII.
1128.710 What program income includes.
1128.715 Recipient obligations for license fees and royalties.
1128.720 Program income use.
1128.725 Program income after the period of performance.

APPENDIX A TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE I, ''FINANCIAL MANAGEMENT SYSTEM STANDARDS''
APPENDIX B TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE II, ''PAYMENTS''
APPENDIX C TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE III, ''ALLOWABLE COSTS, PERIOD OF AVAILABILITY OF FUNDS, AND FEE OR PROFIT''
APPENDIX D TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE IV, ''REVISION OF BUDGET AND PROGRAM PLANS''
APPENDIX E TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE V, ''NON-FEDERAL AUDITS''
APPENDIX F TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE VI, ''COST SHARING OR MATCHING''
APPENDIX G TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE VII, ''PROGRAM INCOME''

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 85 FR 51171, Aug. 19, 2020, unless otherwise noted.

### § 1128.1 Purpose of this part.

(a) This part specifies standard wording of general terms and conditions concerning financial and program management, including recipients' financial management systems, payments, cost sharing or matching, program income, budget and program revisions, audits, allowable costs, and periods of availability of funds.

(b) It thereby implements OMB guidance in the following portions of 2 CFR part 200, as they apply to general terms and conditions of grants and cooperative agreements:

(1) Sections 200.80, 200.209, and 200.302 through 200.309;

(2) Sections 200.301 and 200.328, as they relate to associations between financial data and performance accomplishments and reporting; and

(3) Subparts E and F.

### § 1128.2 Applicability of this part.

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

### § 1128.3 Exceptions from requirements of this part.

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

### § 1128.4 Organization of this part.

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Federal Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) Table 1 shows which article of general terms and conditions may be found in each of appendices A through G to this part (with the associated direction to DoD Components in Subparts A through G, respectively):

TABLE 1 TO PARAGRAPH (c)

| In . . . | You will find terms and conditions specifying recipients' rights and responsibilities related to . . . | That would appear in an award within FMS Article . . . |
|---|---|---|
| Appendix A | Financial management system standards | I. |
| Appendix B | Payments | II. |
| Appendix C | Allowable costs, period of availability of funds, and fee or profit | III. |
| Appendix D | Revision of budget and program plans | IV. |
| Appendix E | Non-Federal audits | V. |
| Appendix F | Cost sharing or matching | VI. |
| Appendix G | Program income | VII. |

## Subpart A—Financial Management System Standards (FMS Article I)

### § 1128.100 Purpose of FMS Article I.

FMS Article I specifies standards for recipients' financial management systems. It thereby implements OMB guidance in:

(a) 2 CFR 200.302, 200.303, and 200.328; and

(b) 2 CFR 200.301 and 200.328, as they relate to associations between financial data and performance accomplishments and reporting.

### § 1128.105 Content of FMS Article I.

(a) *Requirement.* A DoD Component's general terms and conditions must address requirements for recipients' financial management systems.

(b) *Award terms and conditions*—(1) *General.* Except as provided in paragraph (b)(2) of this section, a DoD Component's general terms and conditions must include the wording appendix A to this part provides for FMS Article I.

(2) *Exceptions.* A DoD Component's general terms and conditions may:

(i) Reserve Section A of FMS Article I if the DoD Component determines that it is not possible that any States will receive:

(A) DoD Component awards using those general terms and conditions; or

(B) Subawards from recipients of DoD Component awards using those general terms and conditions.

(ii) Reserve paragraph B.6 of FMS Article I if the DoD Component determines that it will not require recipients of awards using those general terms and conditions to relate financial data to performance accomplishments (*e.g.*, through unit costs). Because the nature of research makes the use of unit costs and other relationships between financial data and performance accomplishments generally inappropriate, DoD Components should reserve paragraph B.6 in general terms and conditions for awards supporting research.

## Subpart B—Payments (FMS Article II)

### § 1128.200 Purpose of FMS Article II.

FMS Article II contains requirements related to payments under an award. It thereby implements OMB guidance in 2 CFR 200.305.

### § 1128.205 Content of FMS Article II.

(a) *Requirement.* A DoD Component's general terms and conditions must address payment method; payment timing and amounts, which relate to cash

management; frequency of payment requests; and matters related to recipients' depositories, including interest earned on advance payments.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must include the wording appendix B to this part provides for FMS Article II with appropriate additions, deletions, and substitutions as described in §§ 1128.210 through 1128.220.

### § 1128.210 Payment requirements for States.

(a) *Policy.* Payments to States are subject to requirements in Department of the Treasury regulations at 31 CFR part 205 that implement the Cash Management Improvement Act. Those regulations are in two subparts with distinct requirements that apply to different programs:

(1) Subpart A of 31 CFR part 205 contains requirements for payments to States under ''major programs,'' as defined in that part. The Department of the Treasury negotiates Treasury-State agreements for major programs. Those agreements specify the appropriate timing and amounts of payments. They further specify a State's interest liability if it receives an advance payment too many days before it disburses the funds for program purposes, as well as the Federal Government's interest liability if it reimburses the State too many days after the State disburses the funds. Most DoD awards to States are not under major programs, so Subpart A applies relatively infrequently.

(2) Subpart B of 31 CFR part 205 applies to all other DoD grants and cooperative agreements to States—*i.e.*, awards that are not under major programs.

(b) *Award terms and conditions*—(1) *General.* Because few DoD awards to States are under major programs, appendix B to this part includes wording for Section A of FMS Article II that specifies the requirements of Subpart B of 31 CFR part 205. A DoD Component's general terms and conditions must include this wording for Section A of FMS Article II if no award using those terms and conditions will be made to a State under a program designated as a major program in the applicable Treasury-State agreement.

(2) *Exception for awards under major programs.* If a DoD Component is establishing general terms and conditions that will be used for awards to States, only some of which are subject to requirements for major programs in Subpart A of 31 CFR part 205, then the DoD Component should:

(i) Use appendix B's wording for Section A of FMS Article II in its general terms and conditions; and

(ii) In each award subject to Subpart A of 31 CFR part 205, include award-specific terms and conditions that make payments to the recipient subject to the requirements in Subpart A of 31 CFR part 205 and the applicable Treasury-State agreement, thereby overriding the wording of Section A of FMS Article II.

### § 1128.215 Payment requirements for institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

(a) *Policy.* OMB guidance in 2 CFR 200.305 addresses the use of three payment methods for grants and cooperative agreements—advance payments, reimbursement, and working capital advances. Two of the methods pertain to a DoD Component's general terms and conditions, as described in paragraphs (a)(1) and (2) of this section.

(1) *Advance payments.* With the possible exception of construction awards, as provided in paragraph (a)(2) of this section, a DoD Component's general terms and conditions must authorize each recipient to request payments in advance as long as the recipient maintains, or demonstrates the willingness to maintain, both:

(i) Written procedures that minimize the time elapsing between its receipt of funds from the Federal Government and its disbursement of the funds for project or program purposes; and

(ii) Financial management systems that meet the standards for fund control and accountability specified in the wording of FMS Article I (see Subpart A and appendix A to this part).

(2) *Reimbursement.* A DoD Component's general terms and conditions may specify the reimbursement method if the awards using those terms and

conditions will support construction projects financed in whole or in part by the Federal Government.

(b) *Award terms and conditions*—(1) *General.* Appendix B provides wording for Section B of FMS Article II that a DoD Component:

(i) Must use in general terms and conditions for non-construction awards to authorize recipients to request advance payments; and

(ii) May use in general terms and conditions for construction awards if it elects to authorize recipients of those awards to request advance payments.

(2) *Alternative award terms and conditions.* A DoD Component may develop an alternative to appendix B's wording for Section B of FMS Article II to use in general terms and conditions for construction awards, if it elects to specify reimbursement as the payment method for those awards. The alternative:

(i) Would replace appendix B's wording for paragraph B.1 with wording to specify the reimbursement method of payment;

(ii) Must include appendix B's wording for paragraphs B.2.b and c, B.4, and B.5, which may be renumbered as appropriate, because those paragraphs apply to reimbursements as well as advance payments;

(iii) Should omit appendix B's wording for paragraphs B.2.a, B.3, and B.6 because those paragraphs apply specifically to advance payments; and

(iv) Must inform recipients that the DoD payment office generally makes payment within 30 calendar days after receipt of the request for reimbursement by the award administration office, unless the request is reasonably believed to be improper.

### § 1128.220 Electronic funds transfer and other payment procedural instructions or information.

(a) *Policy.* A DoD Component's general terms and conditions must specify that payments will be made by electronic funds transfer (EFT) unless a recipient is excepted in accordance with Department of the Treasury regulations at 31 CFR part 208 from the Governmentwide requirement to use EFT.

(b) *Award terms and conditions*—(1) *Electronic funds transfer.* Appendix B provides wording for Section C of FMS Article II that a DoD Component must use to specify payment by EFT, when awards are not excepted from the Governmentwide requirement.

(2) *Other payment procedures or instructions.* A DoD Component may insert one or more paragraphs in its general terms and conditions in lieu of the reserved paragraph C.2 in appendix B, to provide procedural instructions or information regarding payments that is common to awards using those terms and conditions. For example, it may insert wording to give detailed instructions on where and how recipients are to submit payment requests. All forms, formats, and data elements for payment requests must be OMB-approved information collections.

## Subpart C—Allowable Costs, Period of Availability of Funds, and Fee or Profit (FMS Article III)

### § 1128.300 Purpose of FMS Article III.

FMS Article III of the general terms and conditions specifies what costs are allowable as charges to awards and when they are allowable. It also specifies restrictions on payment of fee or profit. It thereby implements OMB guidance in §§ 200.209 and 200.309 and Subpart E of 2 CFR part 200. It also partially implements 2 CFR 200.201(b)(1) and 200.323(c), as those sections apply to the cost principles to be used in relation to subawards and contracts, respectively.

### § 1128.305 Content of FMS Article III.

(a) *Requirement.* A DoD Component's general terms and conditions must address allowability of costs and permissibility of fee or profit.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must include the wording appendix C to this part provides for FMS Article III with appropriate reservations as described in §§ 1128.310 through 1128.325.

### § 1128.310 Cost principles.

(a) *Policy*. The set of Governmentwide cost principles applicable to a particular entity type governs the allowability of costs that may be:

(1) Charged to each cost-type:

(i) DoD grant or cooperative agreement to a recipient of that entity type;

(ii) Subaward to a subrecipient of that entity type at any tier below a DoD grant or cooperative agreement; and

(iii) Procurement transaction with a contractor of that entity type awarded by a recipient of a DoD grant or cooperative agreement or a subrecipient that received a subaward at any tier below that grant or cooperative agreement.

(2) Considered in establishing the amount of any:

(i) Fixed-amount subaward, at any tier under a grant or cooperative agreement, to a subrecipient of that entity type; or

(ii) Fixed-price procurement transaction with a contractor of that entity type that is awarded by either a recipient of a DoD grant or cooperative agreement or a subrecipient that received a subaward at any tier below that grant or cooperative agreement.

(b) *Award terms and conditions*—(1) *General*. Because almost all DoD grants and cooperative agreements are cost-type awards, appendix C includes wording for Section A of FMS Article III that specifies use of the applicable Governmentwide cost principles in the determination of the allowability of costs.

(2) *Exception*. A DoD Component may reserve any paragraph of appendix C's wording for Section A of FMS Article III in its general terms and conditions if the Component is certain that no entities of the type to which the paragraph applies could be recipients of awards using those general terms and conditions or recipients of subawards or procurement transactions at any tier under those awards.

### § 1128.315 Clarification concerning allowability of publication costs.

(a) *Requirement*. A DoD Component's general terms and conditions must clarify that a recipient must charge publication costs consistently as either direct or indirect costs in order for those costs to be allowable charges to DoD grants and cooperative agreements.

(b) *Award terms and conditions*—(1) *General*. To clarify the allowability of publication costs, a DoD Component's general terms and conditions must include the wording appendix C to this part provides for Section B of FMS Article III.

(2) *Exception*. A DoD Component may instead reserve Section B of FMS Article III in its general terms and conditions if the DoD Component determines that there will be no publication costs under any of the awards using those general terms and conditions.

### § 1128.320 Period of availability of funds.

(a) *Requirement*. A DoD Component's general terms and conditions must specify the period during which Federal funds are available for obligation by recipients for project or program purposes.

(b) *Award terms and conditions*. A DoD Component's general terms and conditions must include the wording appendix C to this part provides for Section C of FMS Article III to specify the period of availability of funds.

### § 1128.325 Fee or profit.

(a) *Requirement*. A DoD Component's general terms and conditions must specify that recipients may neither receive fee or profit nor pay fee or profit to subrecipients.

(b) *Award terms and conditions*. A DoD Component must use the wording appendix C to this part provides for Section D of FMS Article III to specify the limitation on payment of fee or profit.

## Subpart D—Revision of Budget and Program Plans (FMS Article IV)

### § 1128.400 Purpose of FMS Article IV.

FMS Article IV of the general terms and conditions specifies requirements related to changes in recipients' budget and program plans. It thereby implements OMB guidance in §200.308 of 2 CFR part 200 and partially implements §200.209 and Subpart E of that part.

### § 1128.405 Content of FMS Article IV.

(a) *Requirement.* A DoD Component's general terms and conditions must specify the changes in budget and program plans for which a recipient is required to request DoD Component prior approval and the procedures for submitting those requests.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must include as FMS Article IV the § wording appendix D to this part provides, with any revisions to the wording that are authorized by §§ 1128.410 through 1128.430.

### § 1128.410 Approved budget.

(a) *OMB guidance.* As described in 2 CFR 200.308(a), the approved budget for a grant or cooperative agreement may include both the Federal and non-Federal shares of funding under the award or only the Federal share.

(b) *DoD implementation.* For DoD grants and cooperative agreements, the approved budget includes the Federal share and any cost sharing or matching that the recipient is required to provide under the award.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must include the wording appendix D to this part provides for Section A of FMS Article IV.

### § 1128.415 Prior approvals for non-construction activities.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.308(c) through (e) addresses prior approval requirements for revisions of a recipient's budget and program plans under a non-construction grant or cooperative agreement, which includes, for the purposes of this section, non-construction activities under an award that supports both construction and non-construction.

(b) *DoD implementation of the guidance.* The following paragraphs (c) through (g) of this section provide details of the DoD implementation of the guidance in 2 CFR 200.308(c) through (e) and paragraph (h) specifies the corresponding award terms and conditions. A DoD Component's general terms and conditions for non-construction awards may require additional prior approvals for budget and program revisions (*i.e.*, prior approvals other than those authorized by this subpart) only in accordance with the exceptions provisions of 2 CFR 1126.3.

(c) *Scope or objective, cost sharing or matching, and additional Federal funds.* A DoD Component's general terms and conditions for non-construction awards must require that a recipient obtain DoD Component prior approval:

(1) For a change in scope or objective of the project or program, as described in 2 CFR 200.308(c)(1)(i).

(2) For any change in the cost sharing or matching included in the approved budget for which FMS Article VI requires prior approval, as described in OMB guidance at 2 CFR 200.308(c)(1)(vii).

(3) If the need arises for additional Federal funds to complete the project or program, as described in 2 CFR 200.308(c)(1)(viii).

(d) *Personnel changes, disengagements, or reductions in time.* A DoD Component must include the following prior approval requirements in general terms and conditions of research awards and may include them in general terms and conditions of other non-construction awards:

(1) A change in a key person, as described in 2 CFR 200.308(c)(1)(ii).

(2) A principal investigator's or project director's disengagement from, or reduction in time devoted to, the project or program, as described in 2 CFR 200.308(c)(1)(iii).

(e) *Costs requiring prior approval under the cost principles.* With respect to waivers of prior approvals required by the cost principles, as described in 2 CFR 200.308(c)(1)(iv):

(1) Any waiver of a cost principles requirement for prior approval by a recipient entity's cognizant agency for indirect costs is appropriately addressed in award-specific terms and conditions, rather than general terms and conditions, because the general terms and conditions must be appropriate for use in awards to multiple recipient entities.

(2) A DoD Component may waive requirements in the cost principles for recipients to request prior approval before charging certain costs as direct costs to awards. However, the DoD Component should carefully consider

each prior approval requirement individually and decide:

(i) Which, if any, to waive; and

(ii) Whether to make the waiver of the prior approval requirement contingent on specified conditions (*e.g.*, a DoD Component might waive the prior approval required for direct charging of special purpose equipment purchases under an award but elect to waive it only up to a certain dollar value).

(f) *Transfers of funds and subawards.* A DoD Component's general terms and conditions for non-construction awards may include prior approval requirements for:

(1) Transfers of funds for participant support costs, as described in 2 CFR 200.308(c)(1)(v).

(2) Subawarding of work under an award, as described in 2 CFR 200.308(c)(1)(vi).

(3) Transfers of funds among direct cost categories, as described in 2 CFR 200.308(e), but the wording in the general terms and conditions must make clear that the prior approval requirement applies only to awards using those terms and conditions if the Federal share of the total value is in excess of the simplified acquisition threshold. As a matter of DoD policy, requiring prior approvals for transfers among direct cost categories generally is not appropriate for the general terms and conditions of grants and cooperative agreements that support research.

(g) *Pre-award costs, carry forward of unobligated balances, and no-cost extensions.* (1) A DoD Component's general terms and conditions may authorize recipients to incur project costs up to 90 calendar days prior to the beginning date of the period of performance, at their own risk, as described in 2 CFR 200.308(d)(1). OMB guidance in 2 CFR 200.308(d)(4) makes that authorization the default policy for research awards. Therefore, a DoD Component must use this policy in general terms and conditions for research awards unless exceptional circumstances provide the basis for overriding that policy.

(2) If a DoD Component's general terms and conditions are used for awards that have multiple periods of performance, the DoD Component should authorize recipients to carry forward unobligated balances to subsequent periods of performance, as described in 2 CFR 200.308(d)(3), unless there are compelling reasons not to do so.

(3) A DoD Component's general terms and conditions may authorize recipients to initiate one-time extensions in the periods of performance of their awards by up to 12 months, subject to the conditions described in 2 CFR 200.308(d)(2), but only if the DoD Component judges that authorizing no-cost extensions for awards using the general terms and conditions will not cause the DoD Component to fail to comply with DoD funding policies (*e.g.*, the incremental program budgeting and execution policy for research funding) contained in Volume 2A of the DoD Financial Management Regulation, DoD 7000.14–R.

(h) *Award terms and conditions.* Appendix D to this part provides wording for inclusion in Section B of a DoD Component's general terms and conditions in accordance with paragraphs (c) through (g) of this section. Specifically:

(1) In accordance with paragraph (c) of this section, a DoD Component's general terms and conditions for non-construction awards must include the wording that appendix D provides for paragraphs B.1.a and B.1.i of FMS Article IV and, if there will be cost sharing or matching required under any awards using the general terms and conditions, paragraph B.1.g.

(2) In accordance with paragraph (d) of this section, a DoD Component's general terms and conditions for research awards must include the wording that appendix D provides for paragraphs B.1.b and B.1.c of FMS Article IV. A DoD Component also may include paragraphs B.1.b and B.1.c in general terms and conditions for other non-construction awards.

(3) In accordance with paragraph (e) of this section, a DoD Component's general terms and conditions for non-construction awards must include the wording that appendix D provides for paragraph B.1.d of FMS Article IV unless the DoD Component decides to waive any requirements in the applicable cost principles for recipients to obtain prior approval before including

certain types of costs as direct charges to awards. If a DoD Component elects to waive any of those prior approval requirements, it must add wording to paragraph B.1.d to identify the specific types of costs for which recipients need not obtain DoD Component prior approval (thereby leaving in place the other prior approval requirements in the cost principles).

(4) In accordance with paragraphs (f) and (g) of this section, a DoD Component's general terms and conditions for non-construction awards may include the wording that appendix D provides for paragraphs B.1.e, B.1.f, and B.1.h (except as noted for research awards in paragraph (f)(3) of this section) and Section C of FMS Article IV. A DoD Component may modify the wording as specified in paragraphs (f) and (g) of this section (*e.g.*, to limit the authorization for pre-award costs in non-construction awards other than research to a period of less than 90 calendar days prior to the beginning date of the period of performance).

(5) If no awards using a DoD Component's general terms and conditions will support non-construction activities, the DoD Component may reserve section B.1 of the wording that appendix D provides for FMS Article IV.

### § 1128.420 Prior approvals for construction activities.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.308(g)(1) through (4) addresses prior approval requirements for revisions of a recipient's budget and program plans under a construction grant or cooperative agreement or construction activities under an award that supports both construction and non-construction activities.

(b) *DoD implementation of the guidance.* DoD implements the guidance in 2 CFR 200.308(g)(1) through (4) through terms and conditions of awards for construction. A DoD Component's general terms and conditions for construction awards may require additional prior approvals for budget and program revisions (*i.e.*, prior approvals other than those authorized by this subpart) only in accordance with the exceptions provisions of 2 CFR 1126.3.

(c) *Award terms and conditions.* In a DoD Component's general terms and conditions for construction awards or awards supporting construction activities, the DoD Component:

(1) Must include the wording that appendix D to this part provides for paragraph B.2 of FMS Article IV.

(2) May reserve or remove the wording appendix D to this part provides for paragraph B.1 and Section C of FMS Article IV unless some awards using the general terms and conditions will also support non-construction activities (if the DoD Component elects to remove Section C, it should redesignate Section D in the article as Section C).

### § 1128.425 Additional prior approval for awards that support both non-construction and construction activities.

(a) *OMB guidance.* Guidance on an additional prior approval requirement for grants or cooperative agreements that support both construction and non-construction activities is contained in 2 CFR 200.308(g)(5).

(b) *DoD implementation of the guidance.* DoD implements the guidance in 2 CFR 200.308(g)(5) through terms and conditions for awards that support both non-construction and construction activities.

(c) *Award terms and conditions.* If a DoD Component establishes general terms and conditions for awards that support both non-construction and construction activities, the DoD Component may add the prior approval requirement for funding or budget transfers between construction and non-construction activities that is described in OMB guidance in 2 CFR 200.308(g)(5). The wording that appendix D to this part provides for Section B of FMS Article IV includes a reserved paragraph B.3 in which the DoD Component may add appropriate wording to include that prior approval requirement.

### § 1128.430 Procedures for prior approvals.

(a) *OMB guidance.* Guidance on procedures related to recipient requests for prior approval is contained in 2 CFR 200.308(h) and (i).

(b) *DoD implementation of the guidance.* DoD implements the guidance in

2 CFR 200.308(h) and (i) for prior approval requests through award terms and conditions.

(c) *Award terms and conditions.* A DoD Component must:

(1) Include the wording appendix D to this part provides for paragraph D.1 of FMS Article IV of its general terms and conditions.

(2) Insert appropriate wording in lieu of the reserved paragraph D.2 that appendix D to this part includes in FMS Article IV to specify:

(i) The format the recipient must use when it requests approval for budget revisions. As described in 2 CFR 200.308(h), the award term may allow the recipient to submit a letter of request or otherwise must specify that the recipient use the same format it used for budget information in its application or proposal.

(ii) Any other procedural instructions related to requests for prior approvals for budget or program revisions (*e.g.*, to whom requests must be submitted) that are common to the awards using the general terms and conditions. For procedural instructions that will vary from one award to another, it is appropriate to include wording that points to the award-specific terms and conditions as the source of the information.

## Subpart E—Non-Federal Audits (FMS Article V)

### § 1128.500 Purpose of FMS Article V.

FMS Article V of the general terms and conditions specifies requirements related to audits required under the Single Audit Act, as amended (31 U.S.C., chapter 75). The article thereby implements for grants and cooperative agreements the OMB guidance in Subpart F of 2 CFR part 200.

### § 1128.505 Content of FMS Article V.

(a) *Requirement.* A DoD Component's general terms and conditions must address audit requirements.

(b) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must include the wording appendix E to this part provides for FMS Article V.

(2) *Exception.* A DoD Component may reserve Section B of the wording in appendix E if there will be no subawards to for-profit entities under any award using those terms and conditions.

## Subpart F–Cost Sharing or Matching (FMS Article VI)

### § 1128.600 Purpose of FMS Article VI.

FMS Article VI sets forth requirements concerning recipients' cost sharing or matching under awards. It thereby implements OMB guidance in:

(a) 2 CFR 200.306 and 200.308(c)(1)(vii); and

(b) 2 CFR 200.434, in conjunction with FMS Article III in appendix C to this part.

### § 1128.605 Content of FMS Article VI.

(a) *Requirement.* A DoD Component's general terms and conditions for awards under which there may be required cost sharing or matching must specify the criteria for determining allowability, methods for valuation, and requirements for documentation of cost sharing or matching.

(b) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must include as FMS Article VI the wording appendix F to this part provides, with any revisions to the wording that are authorized by §§ 1128.610 through 1128.635.

(2) *Exception.* A DoD Component may reserve FMS Article VI of its general terms and conditions if it determines that there will be no cost sharing or matching required under any of the awards using those terms and conditions.

### § 1128.610 General requirement for cost sharing or matching.

(a) *Requirement.* (1) FMS Article VI of the general terms and conditions must tell a recipient that:

(i) It may find the amount or percentage of cost sharing or matching required under its award in the award cover pages.

(ii) The cost sharing or matching amount or percentage identified in the award includes all required (but not voluntary uncommitted) contributions to the project or program by the recipient and its subrecipients, including any that involve third-party contributions

or donations to the recipient and subrecipients.

(iii) It must obtain the DoD Component's prior approval for any change in the required amount or percentage of cost share or match.

(2) At a DoD Component's option, FMS Article VI also may require a recipient to obtain the DoD Component's prior approval if it wishes to substitute alternative cost sharing or matching contributions in lieu of specific contributions included in the approved budget (*e.g.*, to use a third-party in-kind contribution not included in the approved budget).

(b) *Award terms and conditions.* To implement paragraph (a) of this section, a DoD Component's general terms and conditions must include the wording appendix F to this part provides as Section A of FMS Article VI. A DoD Component may insert wording in lieu of the reserved paragraph A.2.b if it elects to require recipients to obtain prior approval before substituting alternative cost sharing or matching contributions, as described in paragraph (a)(2) of this section.

### § 1128.615 General criteria for determining allowability as cost sharing or matching.

(a) *OMB guidance.* The OMB guidance in 2 CFR 200.306(b) lists the basic criteria for the allowability of cost sharing or matching under grants and cooperative agreements.

(b) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must include the wording appendix F to this part provides as Section B of FMS Article VI to specify the allowability of cash or third-party in-kind contributions as cost sharing or matching.

(2) *Exception.* A DoD Component may reserve paragraph B.4 of Section B of FMS Article VI in its general terms and conditions, or replace it with appropriate alternative wording, if the DoD Component has statutory authority to accept costs reimbursed by other Federal awards as cost sharing or matching under the awards using its general terms and conditions.

### § 1128.620 Allowability of unrecovered indirect costs as cost sharing or matching.

(a) *OMB guidance.* The OMB guidance in 2 CFR 200.306(c) provides that unrecovered indirect costs may only be included as part of cost sharing and matching with the prior approval of the Federal awarding agency.

(b) *DoD implementation.* DoD Components must allow any recipient that either has an approved negotiated indirect cost rate or is using the de minimis rate described in 2 CFR 200.414(f) to count unrecovered indirect costs toward any required cost sharing or matching under awards. The basis for this policy is that recipients' indirect costs that are allowable and allocable to DoD projects and programs are legitimate costs of carrying out those projects and programs.

(c) *Award terms and conditions.* To implement the policy in paragraph (b) of this section, a DoD Component's general terms and conditions must include the wording appendix F to this part provides as Section C of FMS Article VI unless a statute requires otherwise.

### § 1128.625 Allowability of program income as cost sharing or matching.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.307(e)(3) specifies that, with the prior approval of the Federal awarding agency, recipients may use program income to meet cost sharing or matching requirements of their awards.

(b) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must include the wording appendix F to this part provides as Section D of FMS Article VI if, in FMS Article VII of those terms and conditions, the DoD Component specifies that recipients dispose of program income using either:

(i) The cost sharing or matching alternative described in paragraph (b)(1)(iii) of § 1128.720; or

(ii) A combination alternative, as described in paragraph (b)(1)(iv) of § 1128.720, that includes use of at least some program income as cost sharing or matching.

(2) *Exception.* A DoD Component may reserve Section D of FMS Article VI if FMS Article VII of those terms and

conditions does not provide that recipients will use any program income as cost sharing or matching.

### § 1128.630 Valuation of services or property contributed or donated by recipients or subrecipients.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.306(d) specifies:

(1) That values for recipients' and subrecipients' contributions of services or property toward cost sharing or matching must be established in accordance with the cost principles in Subpart E of 2 CFR part 200; and

(2) Types of projects or programs under which recipients' or subrecipients' donations of buildings or land are allowable as cost sharing or matching, with the prior approval of the Federal awarding agency, and how the donations are to be valued in those cases.

(b) *DoD implementation.* DoD implements the guidance in 2 CFR 200.306(d) through award terms and conditions, with the following clarifications:

(1) *Cost principles to be used for valuation.* (i) Values for recipients' and subrecipients' contributions of services or property toward cost sharing or matching must be established in accordance with the cost principles applicable to the entity making the contribution.

(ii) Consistent with the cost principles, what generally should be charged to awards for real property and equipment is depreciation rather than allowing a recipient's or subrecipient's donation of the property (*i.e.*, counting the full value of the property toward cost sharing or matching). However, depreciation included in a recipient's or subrecipient's indirect costs is not appropriate for counting as cost sharing or matching under an individual award.

(2) *Donations of property to projects or programs under awards.* (i) In addition to donations of buildings or land described in 2 CFR 200.306(d), recipients and subrecipients may, with the prior approval of the DoD Component, donate other capital assets described in the cost principles in 2 CFR 200.439(b)(1) through (3). The basis for clarifying that recipients may donate other capital assets to projects or programs under awards is that, with the DoD Component's approval:

(A) Capital expenditures to acquire those types of capital assets are allowable as direct charges to awards; and

(B) The costs therefore satisfy the allowability criterion in 2 CFR 200.306(b)(4) and can qualify as cost sharing or matching if they meet the other criteria listed in 2 CFR 200.306(b).

(ii) However, when there are alternative ways for recipients to meet requirements for cost sharing or matching, DoD Components should not approve donations of capital assets to projects or programs under awards. Inclusion of the full value of a donated asset as project costs in the approved budget of an award is analogous to inclusion of the acquisition cost for an asset that is purchased under the award. Through the donation, the Federal Government acquires an interest in the donated asset that must be resolved at time of disposition of the asset, which is best avoided if possible.

(iii) Whenever a DoD Component permits a recipient to donate a capital asset to a project or program under an award, the DoD Component should inform the cognizant Federal agency that negotiates the indirect cost rate for that recipient. Doing so enables the cognizant agency to take the donation into account when it establishes the recipient's indirect cost rate, given that the recipient may not include depreciation for the donated asset as indirect costs that enter into the computation of that rate.

(c) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must use the wording appendix F to this part provides as Section E of FMS Article VI.

(2) *Exception.* A DoD Component's general terms and conditions may reserve paragraph E.2 of the wording appendix F to this part provides if the DoD Component does not allow recipients to donate buildings, land, or other capital assets to projects or programs under awards using those terms and conditions.

### § 1128.635 Valuation of third-party in-kind contributions.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.306(e) through (j) and 2 CFR 200.434(b) through (g) specifies how to value and document various types of

third-party in-kind contributions for cost sharing or matching purposes.

(b) *Award terms and conditions*—(1) *General.* To implement the OMB guidance described in paragraph (a) of this section as it applies to valuation and documentation of third-party in-kind contributions, a DoD Component's general terms and conditions must use the wording Section VI of appendix F to this part provides as Section F of FMS Article VI.

(2) *Exception.* A DoD Component's general terms and conditions may reserve any paragraph of the wording appendix F to this part provides for Section F of FMS Article VI if the DoD Component determines that there will be no possibility of third-party in-kind contributions under awards using those terms and conditions.

## Subpart G–Program Income (FMS Article VII)

### § 1128.700 Purpose of FMS Article VII.

FMS Article VII of the general terms and conditions specifies requirements for program income that recipients earn. The article thereby implements OMB guidance in 2 CFR 200.80 and 200.307.

### § 1128.705 Content of FMS Article VII.

(a) *Requirement.* A DoD Component's general terms and conditions must address the kinds of income included as program income, the way or ways in which a recipient may use it, the duration of the recipient's accountability for it, and related matters.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must include as FMS Article VII the wording appendix G to this part provides, unless, as authorized by §§ 1128.710 through 1128.725, there are revisions to the wording of Sections A and E of the article or Section D is reserved.

### § 1128.710 What program income includes.

(a) *OMB guidance.* Under the definition of ''program income'' at 2 CFR 200.80 and related OMB guidance at 2 CFR 200.307, an agency's regulations or terms and conditions of grants and cooperative agreements may include as program income:

(1) Rebates, credits, discounts, and interest earned on any of them; and

(2) Taxes, special assessments, levies, fines and other similar revenue raised by a governmental recipient.

(b) *DoD implementation.* Unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment specifies otherwise, each DoD Component must exclude the types of income listed in paragraphs (a)(1) and (2) of this section from program income for which recipients are accountable to the Federal Government.

(c) *Award terms and conditions* — (1) *General.* Except as provided in paragraph (c)(2) of this section, a DoD Component must use the wording provided in appendix G to this part as Section A of FMS Article VII in its general terms and conditions. Doing so excludes the types of income listed in paragraphs (a)(1) and (2) of this section from program income for which recipients are accountable to the Federal Government.

(2) *Exceptions.* If a DoD Component has a statutory or regulatory basis for including either or both types of income described in paragraphs (a)(1) and (2) of this section, it may do so by appropriately revising the wording appendix G provides for Section A of FMS Article VII. For example, to include as program income:

(i) Rebates, credits, discounts, and interest earned on them, a DoD Component would reserve paragraph A.3.c and insert the wording of that paragraph as a new paragraph at the end of section A.2, thereby adding them to the list of items included as program income subject to FMS Article VII.

(ii) Taxes, special assessments, levies, fines and other similar revenue raised by a governmental recipient, a DoD Component would reserve paragraph A.3.d and insert that wording as a new paragraph at the end of section A.2, thereby adding them to the list of items included as program income subject to FMS Article VII.

### § 1128.715 Recipient obligations for license fees and royalties.

(a) *Policy.* Unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment provides otherwise, a DoD Component's general terms and conditions may not specify that recipients have obligations to the Federal Government with respect to program income from license fees and royalties for patents or patent applications, copyrights, trademarks, or inventions produced under DoD awards.

(b) *Award terms and conditions*—(1) *General.* Except as provided in paragraph (b)(2) of this section, a DoD Component's general terms and conditions must implement the policy in paragraph (a) of this section by including the wording provided in appendix G to this part as Section D of FMS Article VII.

(2) *Exception.* If a DoD Component has a statutory or regulatory basis for establishing recipient obligations for the license fees and royalties described in paragraph (a) of this section, it may reserve Section D of FMS Article VII in its general terms and conditions.

### § 1128.720 Program income use.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.307(e) identifies alternative ways that a Federal agency might specify that recipients use program income they earn.

(b) *DoD implementation.* A DoD Component's general terms and conditions must specify how recipients are to use program income under awards using those terms and conditions.

(1) The terms and conditions may specify one of the following ways for recipients to use program income:

(i) *Addition.* A recipient under this alternative adds program income to the total amount of the approved budget, which consists of the Federal share of funding and any required matching or cost sharing.

(ii) *Deduction.* A recipient using this alternative subtracts program income from total allowable costs to determine net allowable costs for purposes of determining the Federal share of funding and any required cost sharing or matching.

(iii) *Cost sharing or matching.* Under this alternative, a recipient counts program income toward its required cost sharing or matching.

(iv) *Combination.* The fourth alternative is a combination of any of the three alternatives described in paragraphs (b)(1)(i) through (iii) of this section. For example, an agency might specify one alternative to be used for program income up to a dollar limit and a second alternative for any program income beyond that amount.

(2) For research awards, absent compelling reasons to do otherwise for a specific set of general terms and conditions, a DoD Component must specify the addition alternative described in paragraph (b)(1)(i) of this section.

(3) For general terms and conditions of other awards, a Component may specify any of the alternatives described in paragraph (a) of this section. However, the cost sharing or matching alternative is best used as part of a combination alternative, as described in paragraph (b)(1)(iv) of this section, unless the DoD Component knows at the time awards are made how much program income recipients will earn in relation to the amounts of their required cost sharing or matching.

(c) *Award terms and conditions.* (1) *Default—addition alternative.* In accordance with the DoD implementation in paragraph (b) of this section, a DoD Component must use the wording provided in appendix G to this part as Section E of FMS Article VII in:

(i) Research awards; and

(ii) Other awards for which it elects to specify the addition alternative for use of program income.

(2) *Deduction alternative.* A DoD Component electing to specify the deduction alternative for use of program income must modify the wording appendix G to this part provides for Section E by:

(i) Substituting the following wording for the wording of paragraph E.1: ''1. You must use any program income that you earn during the period of performance under this award as a deduction from the total approved budget of this award. The program income must be used for the purposes and in accordance with the terms and conditions of the award.''

(ii) Including an additional paragraph E.4, such as the following, to inform recipients how the award will change if program income is deducted: ''If you report program income on the Federal Financial Report (SF–425), we will recalculate the Federal share of the budget and the non-Federal share if there is one. We also will modify the award to reflect the recalculated share or shares and the amount of program income you must spend on the project, which is the difference between the originally approved and recalculated budget amounts.''

(3) *Cost-sharing or matching alternative.* A DoD Component electing to specify the cost-sharing or matching alternative for use of program income must replace the wording appendix G to this part provides for Section E with the following wording: ''You must use any program income that you earn during the period of performance under this award to meet any cost-sharing or matching requirement under this award. The program income must be used for the purposes and in accordance with the terms and conditions of the award.''

(4) *A combination of alternatives.* A DoD Component electing to specify some combination of addition, deduction, and cost-sharing or matching alternatives must use wording in Section E of FMS Article VII that specifies requirements for each alternative in the combination that is consistent with the requirements specified for that alternative in paragraphs (c)(1), (2), or (3) of this section.

### § 1128.725 Program income after the period of performance.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.307(f) provides that an agency may specify in agency regulations, grant or cooperative agreement terms and conditions, or agreements negotiated with recipients during the closeout process that a recipient is accountable to the Federal Government for program income earned after the end of the period of performance.

(b) *DoD implementation.* A DoD Component should rarely, if ever, establish a requirement for a recipient to be accountable to the Federal Government for program income earned after the end of the period of performance.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include as Section F of FMS Article VII the wording for that section that is provided in appendix G to this part. That wording specifies that recipients are not accountable to the Federal Government for program income earned after the end of the performance period. If an exception is warranted for an individual award, the exception is properly addressed at the time of award in the award-specific terms and conditions.

## APPENDIX A TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE I, ''FINANCIAL MANAGEMENT SYSTEM STANDARDS''

Unless any part of this appendix is reserved, as provided in §1128.105, a DoD Component's general terms and conditions must include the following wording for FMS Article I.

FMS ARTICLE I. FINANCIAL MANAGEMENT SYSTEM STANDARDS. (DECEMBER 2014)

*Section A. System standard for States.* As a State, you must expend and account for funds under this award in accordance with:

1. Applicable State laws; and

2. To the extent they comply with the requirements of Section B of this Article, your procedures for expending and accounting for your own State funds.

*Section B. System standards for all recipients.* Your financial management system must provide for:

1. Inclusion, in your accounts, of the following information about each DoD grant or cooperative agreement that you receive:

a. That you received the award from DoD;

b. The number and title listed in the Catalog of Federal Domestic Assistance for the DoD program under which the award was made;

c. The DoD award number; and

d. The year (your fiscal year) in which you received the award.

2. Accurate, current, and complete disclosure of the financial results of the award needed to comply with financial and programmatic reporting requirements that are specified in REP Articles I and II of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award concerning reporting requirements. If you are asked at any time under this award to report financial information on an accrual basis, you:

a. Need not establish an accrual accounting system if you maintain your records on a different basis; and

b. May develop the accrual data based on an analysis of the data you have on hand.

3. Records that identify adequately the sources of funds for all activities funded by DoD awards, including any required cost sharing or matching, and the application of those funds. This includes funding authorizations; your obligations and expenditures of the funds; unobligated balances; property and other assets under the award; program income; and interest.

4. Effective control over, and accountability for, all funds, property, and other assets under this award. You must adequately safeguard all assets and ensure they are used solely for authorized purposes (see Section C of this article for additional requirements concerning internal controls).

5. Comparison of expenditures under this award for project or program purposes with amounts in the approved budget for those purposes.

6. The ability to relate financial data to performance accomplishments under this award if you are required to do so by the programmatic reporting requirements in REP Article I of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award concerning reporting requirements.

7. Written procedures:

a. To implement requirements specified in FMS Article II, ''Payments;''

b. For determining the allowability of costs, which for this award are determined in accordance with FMS Article III, ''Allowable costs, period of availability of funds, and fee or profit,'' of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award that relate to allowability of costs.

*Section C. Internal controls.* Your system of internal controls must conform to OMB guidance in 2 CFR 200.303. With respect to paragraph (e) of 2 CFR 200.303, your internal control system must include measures to safeguard any information that Federal statute, Executive order, or regulation requires to be protected (*e.g.*, personally identifiable or export controlled information), whether generated under the award or provided to you and identified as being subject to protection.

## APPENDIX B TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE II, ''PAYMENTS''

Unless a DoD Component adds, deletes, or modifies wording, as permitted by §§1128.210 through 1128.220, a DoD Component's general terms and conditions must include the following wording for FMS Article II.

FMS ARTICLE II. PAYMENTS. (DECEMBER 2014)

*Section A. Awards to States.* If the award-specific terms and conditions of this award do not identify it as an award subject to Subpart A of 31 CFR part 205 (Department of the Treasury regulations implementing the Cash Management Improvement Act), then this award is subject to Subpart B of that part. Consistent with Subpart B of 31 CFR part 205:

1. *Payment method, timing, and amounts. You must:*

a. Minimize the time between your receipt of a payment under this award and your disbursement of those funds for program purposes.

b. Limit the amount of each advance payment request to the minimum amount you need to meet your actual, immediate cash requirements for carrying out the program or project.

c. Submit each advance payment request approximately 10 days before you anticipate disbursing the requested amount for program purposes, so that your receipt of the funds will be as close in time as is administratively feasible to your actual cash outlay for direct project costs and the proportionate share of any allowable indirect costs.

2. *Interest.* Unlike awards subject to Subpart A of 31 CFR part 205, neither you nor we will incur any interest liability due to a difference in timing between your receipt of payments under this award and your disbursement of those funds for project or program purposes.

*Section B. Awards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.*

1. *Payment method.* Unless the award-specific terms and conditions of this award provide otherwise, you are authorized to request advance payments under this award. That authorization is contingent on your continuing to maintain, or demonstrating the willingness to maintain, written procedures that minimize the time elapsing between your receipt of each payment and your disbursement of the funds for program purposes. Note that you are not required to request advance payments and may instead, at your option, request reimbursements of funds after you disburse them for project or program purposes.

2. *Amounts requested.* You must:

a. Limit the amount of any advance payment request to the minimum amount needed to meet your actual, immediate cash requirements for carrying out the purpose of the approved program or project, including direct project costs and a proportionate share of any allowable indirect costs.

b. Exclude from any payment request amounts you are withholding from payments

to contractors to assure satisfactory completion of the work. You may request those amounts when you make the payments to the contractors or to escrow accounts established to ensure satisfactory completion of the work.

c. Exclude from any payment request amounts from any of the following sources that are available to you for program purposes under this award: program income, including repayments to a revolving fund; rebates; refunds; contract settlements; audit recoveries; and interest earned on any of those funds. You must disburse those funds for program purposes before requesting additional funds from us.

3. *Timing of requests.* For any advance payment you request, you should submit the request approximately 10 days before you anticipate disbursing the requested amount for project or program purposes. With time for agency processing of the request, that should result in payment as close as is administratively feasible to your actual disbursements for project or program purposes.

4. *Frequency of requests.* You may request payments as often as you wish unless you have been granted a waiver from requirements to receive payments by electronic funds transfer (EFT). If you have been granted a waiver from EFT requirements, the award-specific terms and conditions of this award specify the frequency with which you may submit payment requests.

5. *Withholding of payments.* We will withhold payments for allowable costs under the award at any time during the period of performance only if one or more of the following applies:

a. We suspend either payments or the award, or disallow otherwise allowable costs, as a remedy under OAR Article III due to your material failure to comply with Federal statutes, regulations, or the terms and conditions of this award. If we suspend payments and not the award, we will release withheld payments upon your subsequent compliance. If we suspend the award, then amounts of payments are subject to adjustment in accordance with the terms and conditions of OAR Article III.

b. You are delinquent in a debt to the United States as defined in OMB Circular A–129, ''Policies for Federal Credit Programs and Non-Tax Receivables,'' in which case we may, after reasonable notice, inform you that we will not make any further payments for costs you incurred after a specified date until you correct the conditions or liquidate the indebtedness to the Federal Government.

c. The award-specific terms and conditions of this award include additional requirements that provide for withholding of payments based on conditions identified during our pre-award risk evaluation, in which case you should have been notified about the nature of those conditions and the actions needed to remove the additional requirements.

6. *Depository requirements.*

a. There are no eligibility requirements for depositories you use for funds you receive under this award.

b. You are not required to deposit funds you receive under this award in a depository account separate from accounts in which you deposit other funds. However, FMS Article I requires that you be able to account for the receipt, obligation, and expenditure of all funds under this award.

c. You must deposit any advance payments of funds you receive under this award in insured accounts whenever possible and, unless any of the following apply, you must deposit them in interest-bearing accounts:

i. You receive a total of less than $120,000 per year under Federal grants and cooperative agreements.

ii. You would not expect the best reasonably available interest-bearing account to earn interest in excess of $500 per year on your cash balances of advance payments under Federal grants and cooperative agreements.

iii. The best reasonably available interest-bearing account would require you to maintain an average or minimum balance higher than it would be feasible for you to do within your expected Federal and non-Federal cash balances.

iv. A foreign government or banking system precludes your use of interest-bearing accounts.

d. You may retain for administrative expenses up to $500 per year of interest that you earn in the aggregate on advance payments you receive under this award and other Federal grants and cooperative agreements. You must remit annually the rest of the interest to the Department of Health and Human Services, Payment Management System, using the procedures set forth in OMB guidance in 2 CFR 200.305(b)(9).

*Section C. Electronic funds transfer and other payment procedural instructions or information.*

1. *Electronic funds transfer.* Unless the award-specific terms and conditions of this award provide otherwise, you will receive payments under this award by electronic funds transfer.

2. [Reserved]

## APPENDIX C TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE III, ''ALLOWABLE COSTS, PERIOD OF AVAILABILITY OF FUNDS, AND FEE OR PROFIT''

Unless a DoD Component reserves sections or paragraphs of this article, as permitted by §§1128.310 through 1128.325, a DoD Component's general terms and conditions must include the following wording for FMS Article III.

FMS ARTICLE III. ALLOWABLE COSTS, PERIOD OF AVAILABILITY OF FUNDS, AND FEE OR PROFIT (DECEMBER 2014)

*Section A. Allowable costs.* This section, with the clarification provided in Section B, specifies which Federal cost principles must be used in determining the allowability of costs charged to this award, a subrecipient's costs charged to any cost-type subaward that you make under this award, and a contractor's costs charged to any cost-type procurement transaction into which you enter under this award. These cost principles also govern the allowable costs that you or a subrecipient of a subaward at any tier below this award may consider when establishing the amount of any fixed-amount subaward or fixed-price procurement transaction at the next lower tier. The set of cost principles to be used in each case depends on the type of entity incurring the cost under the award, subaward, or contract.

1. *General case.* If you, your subrecipient, or your contractor is:

a. *An institution of higher education*, the allowability of costs must be determined in accordance with provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendix III to that part.

b. *A hospital*, the allowability of costs must be determined in accordance with provisions of appendix IX to 2 CFR part 200, which currently specifies the cost principles in appendix IX to 45 CFR part 75 as the applicable cost principles.

c. *A nonprofit organization other than a hospital or institution of higher education*, the allowability of costs must be determined in accordance with provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendices IV and VIII to that part. In accordance with guidance in 2 CFR 200.401(c), a nonprofit organization listed in appendix VIII to 2 CFR part 200 is subject to the cost principles for for-profit entities specified in paragraph 1.e of this section.

d. *A State, local government, or Indian tribe*, the allowability of costs must be determined in accordance with applicable provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendices V through VII to that part.

e. *A for-profit entity (other than a hospital) or a nonprofit organization listed in appendix VIII to 2 CFR part 200:*

i. The allowability of costs must be determined in accordance with:

(A) The cost principles for commercial organizations in the Federal Acquisition Regulation (FAR) at Subpart 31.2 of 48 CFR part 31, as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement (DFARS) at Subpart 231.2 of 48 CFR part 231; and

(B) For a for-profit entity, the additional provisions on allowability of audit costs, in 32 CFR 34.16(f).

ii. The indirect cost rate to use in that determination is:

(A) The for-profit entity's federally negotiated indirect cost rate if it has one.

(B) Subject to negotiation between you and the for-profit entity if it does not have a federally negotiated indirect cost rate. The rate that you negotiate may provide for reimbursement only of costs that are allowable in accordance with the cost principles specified in paragraph A.1.e.i of this article.

2. *Exception.* You may use your own cost principles in determining the allowability of a contractor's costs charged to a cost-type procurement transaction under this award—or in pricing for a fixed-price contract based on estimated costs—as long as your cost principles comply with the Federal cost principles that paragraph A.1 of this section identifies as applicable to the contractor.

*Section B. Clarifications concerning charges for professional journal publications.* For an entity that Section A of this article makes subject to the cost principles in Subpart E of 2 CFR part 200:

1. Costs of publishing in professional journals are allowable under 2 CFR 200.461(b) only if they are consistently applied across the organization. An organization may not charge costs of journal publications as direct costs to this award if it charges any of the same type of costs for other journal publications as indirect costs.

2. ''Costs of publication or sharing of research results'' in 2 CFR 200.461(b)(3) are the ''charges for professional journal publications'' described in 2 CFR 200.461(b) and subject to the conditions of 2 CFR 200.461(b)(1) and (2).

*Section C. Period of availability of funds.* You may charge to this award only:

1. Allowable costs incurred during the period of performance specified in this award, including any subsequent amendments to it;

2. Any pre-award costs that you are authorized (by either the terms and conditions of FMS Article IV or the DoD awarding official) to incur prior to the start of the period of performance, at your own risk, for purposes of the project or program under this award; and

3. Costs of publishing in professional journals incurred after the period of performance, as permitted under 2 CFR 200.461(b)(3), if:

a. We receive the request for payment for such costs no later than the date on which REP Article II requires you to submit the final financial report to us (or, if we grant your request for an extension of the due date, that later date on which the report is due); and

b. Your reported expenditures on the final financial report include the amount you disbursed for those costs.

*Section D. Fee or profit.*

1. You may not receive any fee or profit under this award.

2. You may not use funds available to you under this award to pay fee or profit to an entity of any type to which you make a subaward.

3. You may pay fee or profit to an entity with which you enter into a procurement transaction to purchase goods or general support services for your use in carrying out the project or program under the award.

## APPENDIX D TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE IV, ''REVISION OF BUDGET AND PROGRAM PLANS''

Unless a DoD Component reserves a section or paragraph or adds or modifies wording, as permitted by §§1128.410 through 1128.430, a DoD Component's general terms and conditions must include the following wording for FMS Article IV.

### FMS ARTICLE IV. REVISION OF BUDGET AND PROGRAM PLANS (DECEMBER 2014)

*Section A. Approved budget.* The approved budget of this award:

1. Is the most recent version of the budget that you submitted, and we approved (either at the time of the initial award or a more recent amendment), to summarize planned expenditures for project or program purposes.

2. Includes all Federal funding that we make available to you under this award to use for project or program purposes and any cost sharing or matching that you are required to provide under this award for those same purposes.

*Section B. Revisions requiring prior approval.*

1. *Non-construction activities.* You must request prior approval from us for any of the following program or budget revisions in non-construction activities:

a. A change in the scope or objective of the project or program under this award, even if there is no associated budget revision that requires our prior approval.

b. A change in a key person identified in the award cover pages.

c. The approved principal investigator's or project director's disengagement from the project for more than three months, or a 25 percent reduction in his or her time devoted to the project.

d. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.

e. The transfer to other categories of expense of funds included in the approved budget for participant support costs, as defined at 2 CFR 200.75.

f. A subaward to another entity under which it will perform a portion of the substantive project or program under the award, if it was not included in the approved budget. This does not apply to your contracts for acquisition of supplies, equipment, or general support services you need to carry out the project or program.

g. Any change in the cost sharing or matching you provide under the award, as included in the approved budget, for which FMS Article VI requires prior approval.

h. A transfer of funds among direct cost categories or programs, functions, and activities, if the Federal share of the total value for your award exceeds the simplified acquisition threshold and the cumulative amount of the transfers exceeds or is expected to exceed 10 percent of the approved budget.

i. The need arises for additional Federal funds to complete the project or program.

2. *Construction activities.* You must request prior approval from us for any of the following program or budget revisions in construction activities:

a. A change in the scope or objective of the project or program under this award, even if there is no associated budget revision that requires our prior approval.

b. The need arises for additional Federal funds to complete the project or program.

c. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.

3. *Funding transfers between construction and non-construction activities.* [Reserved]

*Section C. Pre-award costs, carry forward of unobligated balances, and one-time no-cost extensions.* You are authorized, without requesting prior approval from us, to:

1. Charge to this award after you receive it pre-award costs that you incurred, at your own risk, up to 90 calendar days before the start date of the period of performance, as long as they are costs that would be allowable charges to the project or program under the terms and conditions of FMS Article III if they were incurred during the period of performance.

2. Carry forward an unobligated balance to a subsequent period of performance under this award.

3. Initiate a one-time extension of the period of performance by up to 12 months, as long as:

a. You notify us in writing with the supporting reasons and revised end date of the period of performance at least 10 calendar days before the current end date.

b. The extension does not require any additional Federal funding.

c. The extension does not involve any change in the scope or objectives of the project or program.

*Section D. Procedures.*

1. We will review each request you submit for prior approval for a budget or program change and, within 30 calendar days of our receipt of your request, we will respond to you in writing to either:

a. Notify you whether your request is approved; or

b. Inform you that we still are considering the request, in which case we will let you know when you may expect our decision.

2. [Reserved]

## APPENDIX E TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE V, ''NON-FEDERAL AUDITS''

Unless a DoD Component reserves Section B, as permitted by §1128.605, a DoD Component's general terms and conditions must use the following wording for FMS Article V.

### FMS ARTICLE V. NON-FEDERAL AUDITS (DECEMBER 2014)

*Section A. Requirements for entities subject to the Single Audit Act.* You and each subrecipient under this award that is an institution of higher education, nonprofit organization, State, local government, or Indian tribe must comply with the audit requirements specified in Subpart F of 2 CFR part 200, which is the OMB implementation of the Single Audit Act, as amended (31 U.S.C. chapter 75).

*Section B. Requirements for for-profit entities.* Any for-profit entity that receives a subaward from you under this award is subject to the audit requirements specified in 32 CFR 34.16. Your subaward terms and conditions will require the subrecipient to provide the reports to you if it is willing to do so, so that you can resolve audit findings that pertain specifically to your subaward (*e.g.*, disallowance of costs). If the for-profit entity is unwilling to agree to provide the auditor's report to you, contact the grants officer for this award to discuss an alternative approach for carrying out audit oversight of the subaward. If the grants officer does not provide an alternative approach within 30 days of receiving your request, you may determine an approach to ensure the for-profit subrecipient's compliance with the subaward terms and conditions, as described in OMB guidance at 2 CFR 200.501(h).

## APPENDIX F TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE VI, ''COST SHARING OR MATCHING''

Unless a DoD Component reserves FMS Article VI in its entirety, reserves one or more paragraphs within sections of the article, or includes added or alternate wording, as permitted by §§1128.610 through 1128.635, a DoD Component's general terms and conditions must use the following wording for FMS Article VI.

### FMS ARTICLE VI. COST SHARING OR MATCHING (DECEMBER 2014)

*Section A. Required cost sharing or matching.*

1. If any cost sharing or matching is required under this award, the total amount or percentage required is shown in the award cover pages and included in the approved budget. That cost sharing or matching includes all:

a. Cash contributions to the project or program either made by or through (if made by a third party) you and any subrecipients.

b. Third-party in-kind contributions to the project or program.

2. You must obtain our prior approval if you wish to:

a. Change the amount or percentage of cost sharing or matching required under this award.

b. [Reserved]

*Section B. Allowability as cost sharing or matching.* Each cash or third party in-kind contribution toward any cost sharing or matching required under this award, whether put forward by you or a subrecipient under a subaward that you make, is allowable as cost sharing or matching if:

1. You (or the subrecipient, if it is a subrecipient contribution) maintain records from which one may verify that the contribution was made to the project or program and, if it is a third-party in-kind contribution, its value.

2. The contribution is not counted as cost sharing or matching for any other Federal award.

3. The contribution is:

a. Allowable under the cost principles applicable to you (or the subrecipient, if it is a subrecipient contribution) under FMS Article III of these terms and conditions; and

b. Allocable to the project or program and reasonable.

4. The Government does not pay for the contribution through another Federal award, unless that award is under a program that has a Federal statute authorizing application of that program's Federal funds to other Federal programs' cost sharing or matching requirements.

5. The value of the contribution is not reimbursed by the Federal share of this award as either a direct or indirect cost.

6. The contribution conforms to the other terms and conditions of this award, including the award-specific terms and conditions.

*Section C. Allowability of unrecovered indirect costs as cost sharing or matching.* You may use your own or a subrecipient's unrecovered indirect costs as cost sharing or matching under this award. Unrecovered indirect costs means the difference between the amount of indirect costs charged to the award and the amount that you and any subrecipients could have charged in accordance with your respective approved indirect cost rates,

whether those rates are negotiated or de minimis (as described in 2 CFR 200.414(f)).

*Section D. Allowability of program income as cost sharing or matching.* If FMS Article VII of these general terms and conditions or the award-specific terms and conditions of this award specify that you are to use some or all of the program income you earn to meet cost-sharing or matching requirements under the award, then program income is allowable as cost sharing or matching to the extent specified in those award terms and conditions.

*Section E. Valuation of services or property that you or subrecipients contribute or donate.* You must establish values for services or property contributed or donated toward cost sharing or matching by you or subrecipients in accordance with the provisions of this section. These contributions or donations are distinct from third-party in-kind contributions to you or subrecipients, which are addressed in Section F of this article.

1. *Usual valuation of services or property that you or subrecipients contribute or donate.* Values established for contributions of services or property by you or a subrecipient must be the amounts allowable in accordance with the cost principles applicable to the entity making the contribution (*i.e.*, you or the subrecipient), as identified in FMS Article III. For property, that generally is depreciation.

2. *Needed approvals for, and valuation of, property that you or subrecipients donate.*

a. *Types of property that may be donated.*

i. *Buildings or land.* If the purposes of this award include construction, facilities acquisition, or long-term use of real property, you may donate buildings or land to the project if you obtain our prior approval. Donation of property to the project, as described in PROP Article I, means counting the value of the property toward cost sharing or matching, rather than charging depreciation.

ii. *Other capital assets.* If you obtain our prior approval, you may donate to the project other capital assets identified in 2 CFR 200.439(b)(1) through (3).

b. *Usual valuation of donated property.* Unless you obtain our approval as described in paragraph E.2.c of this article, the value for the donated property must be the lesser of:

i. The value of the remaining life of the property recorded in your accounting records at the time of donation, or

ii. The current fair market value.

c. *Approval needed for alternative valuation of property.* If you obtained our approval in the approved budget, you may count as cost sharing or matching the current fair market value of the donated property even if it exceeds the value of the remaining life of the property recorded in your accounting records at the time of donation.

d. *Federal interest in donated property.* Donating buildings, land, or other property to the project, rather than charging depreciation, results in a Federal interest in the property in accordance with PROP Article I of these terms and conditions.

*Section F. Valuation of third-party in-kind contributions.*

1. *General.* If a third party furnishes goods or services to you or subrecipients that are to be counted toward cost sharing or matching under this award, the entity to which the third party furnishes the goods or services (*i.e.*, you or a subrecipient) must document the fair market value of those in-kind contributions and, to the extent feasible, support those values using the same methods the entity uses internally.

2. *Valuation of third-party services.* You must establish values for third-party volunteer services and services of third parties' employees furnished to you or subrecipients as follows:

a. *Volunteer services.* Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor must be valued in accordance with 2 CFR 200.306(e).

b. *Services of third parties' employees.* When a third-party organization furnishes the services of its employees to you or a subrecipient, values for the contributions must be established in accordance with 2 CFR 200.306(f).

c. *Additional requirement for donations to nonprofit organizations.* For volunteer services or services of third parties' employees furnished to a nonprofit organization:

i. OMB guidance in 2 CFR 200.434(e) also applies and may require the nonprofit organization to allocate a proportionate share of its applicable indirect costs to the donated services.

ii. The indirect costs that the nonprofit organization allocates to the donated services in that case must be considered project costs and may be either reimbursed under the award or counted toward required cost sharing or matching, but not both.

3. *Valuation of third-party property.* You must establish values for third-party property furnished to you or subrecipients as follows:

a. *Supplies donated by third parties.* When a third-party organization donates supplies (*e.g.*, office, laboratory, workshop, or classroom supplies), the value that may be counted toward cost sharing or matching may not exceed the fair market value of the supplies at the time of donation.

b. *Equipment, buildings, or land donated by third parties.*

i. The value of third-party donations of equipment, buildings, or land that may be counted toward cost sharing or matching when the third party transferred title to you or a subrecipient depends on the purpose of the award in accordance with the following:

(A) If one of the purposes of the award is to assist you or the subrecipient in the acquisition of equipment, buildings, or land, you may count the aggregate fair market value of the donated property toward cost sharing or matching.

(B) If the award's purposes instead include only the support of activities that require the use of equipment, buildings, or land, you may only charge depreciation unless you obtain our prior approval to count as cost sharing or matching the fair market value of equipment or other capital assets and fair rental charges for land.

ii. The values of the donated property must be determined in accordance with the usual accounting policies of the entity to which the third party transferred title to the property, with the qualifications specified in 2 CFR 200.306(i)(1) and (2) for donated land and buildings and donated equipment, respectively.

c. *Use of space donated by third parties.* If a third party makes space available for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed the fair rental value of comparable space as established by an independent appraisal, as described in 2 CFR 200.306(i)(3).

d. *Equipment loaned by third parties.* If a third party loans equipment for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed its fair rental value.

## APPENDIX G TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE VII, ''PROGRAM INCOME''

Unless a DoD Component revises the wording of Section A or E or reserves Section D, as permitted by §§1128.710 through 1128.725, a DoD Component's general terms and conditions must use the following wording for FMS Article VII.

### FMS ARTICLE VII. PROGRAM INCOME (DECEMBER 2014)

*Section A. Definition.* The term ''program income'' as used in this award:

1. Is gross income that:

a. You earn that is directly generated by a supported activity or earned as a result of this award; or

b. A subrecipient earns as a result of a subaward you make under this award.

2. Includes, but is not limited to, income earned under this award from:

a. Fees for services performed;

b. The use or rental of real or personal property acquired under any Federal award and currently administered under this award;

c. The sale of commodities or items fabricated under this award;

d. License fees and royalties on patents and copyrights; and

e. Payments of principal and interest on loans made with Federal award funds.

3. Does not include for purposes of this award any:

a. Interest earned on advance payments, disposition of which is addressed in FMS Article II;

b. Proceeds from the sale of real property, equipment or supplies, which is addressed in PROP Articles III and IV;

c. Rebates, credits, discounts, and interest earned on any of them; and

d. Governmental revenues, including any taxes, special assessments, levies, fines and similar revenues you raise.

*Section B. Encouragement to earn program income.* You are encouraged to earn program income under this award when doing so does not interfere with the program or project the award supports.

*Section C. Costs of generating program income.* You may deduct costs incidental to the generation of program income from the amount that you use in accordance with Section E of this Article, as long as those costs are not charged to this award (which includes their being counted toward any cost sharing or matching you are required to provide).

*Section D. License fees and royalties.* You have no obligations to the Federal Government with respect to program income earned under this award from license fees and royalties for patents or patent applications, copyrights, trademarks, or inventions developed or produced under the award.

*Section E. Use of program income.*

1. You must use any program income that you earn during the period of performance under this award to increase the amount of the award (the sum of the Federal share and any cost sharing or matching you are required to provide), thereby increasing the amount budgeted for the project. The program income must be used for the purposes and under the terms and conditions of the award.

2. Your use of the additional funding is subject to the terms and conditions of this award, including:

a. FMS Article II concerning your use of balances of program income before you request additional funds from us; and

b. FMS Article III concerning allowability of costs for which the funds may be used.

3. You must report on each Federal Financial Report (SF–425) that you submit in accordance with REP Article II the program income that you earn and any that you use during the reporting period covered by that SF–425.

*Section F. Duration of accountability for program income.* The requirements concerning disposition of program income in Section E of this Article apply only to program income

you earn during the period of performance. There are no requirements under this award applicable to program income you earn after the end of the period of performance.

# PART 1130—PROPERTY ADMINISTRATION: GENERAL AWARD TERMS AND CONDITIONS

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AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 85 FR 51171, Aug. 19, 2020, unless otherwise noted.

## § 1130.1 Purpose of this part.

(a) This part specifies standard wording of general terms and conditions concerning equipment, supplies, and real, intangible, and federally owned property.

(b) It thereby implements OMB guidance in 2 CFR 200.310 through 200.316, as that guidance applies to general terms and conditions of grants and cooperative agreements.

## § 1130.2 Applicability of this part.

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

## § 1130.3 Exceptions from requirements of this part.

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

### § 1130.4 Organization of this part.

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Federal Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) Table 1 shows which article of general terms and conditions may be found in each of appendices A through F to this part (with the associated direction to DoD Components in Subparts A through F, respectively):

TABLE 1 TO PARAGRAPH (c)

| In . . . | You will find terms and conditions specifying recipients' rights and responsibilities related to . . . | That would appear in an award within PROP Article . . . |
|---|---|---|
| Appendix A | Title to property | I. |
| Appendix B | Property management system | II. |
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## Subpart A—Title to Property (PROP Article I)

### § 1130.100 Purpose of PROP Article I.

PROP Article I specifies in whom and under what conditions title to property vests under the award. It thereby implements OMB guidance for grants and cooperative agreements:

(a) Pertaining to vesting of title to property, in 2 CFR 200.311(a), 200.312(a), 200.313(a), 200.314(a), and 200.315(a).

(b) Pertaining to the property trust relationship in 2 CFR 200.316.

### § 1130.105 Title to property acquired under awards.

(a) *General policy*. Title to tangible property that a recipient acquires under an award (whether by purchase, construction or fabrication, development, or otherwise), and title to intangible property that a recipient acquires other than by developing or producing it under an award, generally vests in the recipient subject to the conditions in PROP Articles II–IV and Section D of PROP Article VI, which protect the Federal interest in the property.

(b) *Exceptions to the general policy when there is statutory authority*—(1) *Exempt property in general*. If a DoD Component has statutory authority to do so, it may vest title in recipients to property acquired under awards either unconditionally or subject to fewer conditions than those in PROP Articles II–IV and VI. This subpart refers to acquired property for which a DoD Component has such statutory authority—and elects to use it—as ''exempt property.''

(2) *Research awards*. (i) Under 31 U.S.C. 6306, a DoD Component may vest title to tangible personal property (*i.e.*, equipment and supplies) in a nonprofit institution of higher education or nonprofit organization whose primary purpose is conducting scientific research—without further obligation to the Federal Government or subject to conditions the DoD Component deems appropriate—if the property is bought with amounts provided under a grant or cooperative agreement for basic or applied research.

(ii) As a matter of policy, to enhance the university infrastructure for future performance of defense research and research-related education and training, DoD Components must make maximum use of the authority of 31 U.S.C. 6306 to

vest title to equipment in nonprofit institutions of higher education subject to only the following three conditions:

(A) The recipient uses the equipment for the authorized purposes of the project or program until the property is no longer needed for those purposes.

(B) The recipient manages the equipment as provided in PROP Article II of the general terms and conditions (see Subpart B of this part). This includes maintaining property records that include the percentage of Federal participation in the costs of the project or program under which the recipient acquired the exempt property, so that the recipient may deduct the Federal share if it wishes to use the property in future contributions for cost sharing or matching purposes on Federal awards.

(C) The DoD Component reserves the right to transfer title to the equipment to another recipient entity if the Principal Investigator relocates his or her research program to that entity.

(c) *Award terms and conditions*—(1) *General*. Unless a DoD Component has a statute authorizing it to identify acquired property as exempt property, as described in paragraph (b) of this section, it must use the wording appendix A to this part provides for Section A of PROP Article I.

(2) *Exceptions*. (i) If a DoD Component has statutory authority such as described in paragraph (b) of this section, and elects to use that authority for awards subject to its general terms and conditions, it must insert wording in paragraph A.2 of PROP Article I to:

(A) Identify the type or types of property it is exempting from the standard requirements for title vesting, use, and disposition contained in PROP Articles II through IV and VI and reporting requirements contained in REP Article III of the general terms and conditions.

(B) If it is exempting the property from some, but not all, of the standard requirements, identify the requirements to which the exempt property will be subject.

(ii) Paragraph A.2 of PROP Article I in general terms and conditions used for research awards to institutions of higher education and nonprofit organizations whose primary purpose is conducting scientific research generally should provide for vesting of title to acquired equipment and supplies in those types of entities when they are conducting basic or applied research subject only to the three conditions described in paragraph (b)(2)(ii) of this section.

### § 1130.110 Property trust relationship.

(a) *OMB guidance*. OMB guidance in 2 CFR 200.316 describes the property trust relationship. It states that:

(1) Recipients must hold real property, equipment, and intangible property acquired or improved under grants or cooperative agreements in trust for the beneficiaries of the projects or programs under which the property was acquired or improved; and

(2) A Federal agency may require a recipient to record liens or other appropriate notices of record to indicate that personal or real property was acquired or improved under a grant or cooperative agreement, making the property's use and disposition subject to the award terms and conditions.

(b) *DoD implementation*. A DoD Component's general terms and conditions must specify that recipients hold title to real property, equipment, and intangible property acquired or improved under DoD grants and cooperative agreements in trust for the beneficiaries of the projects or programs carried out under those awards.

(c) *Award terms and conditions*. A DoD Component's general terms and conditions:

(1) Must include the wording appendix A to this part provides for paragraph B.1 of PROP Article I, except that a DoD Component may instead reserve Section B if there will be no acquisition or improvement of real property, equipment, or intangible property under awards using those general terms and conditions or subawards under those awards.

(2) May add wording to the reserved paragraph B.2 of the wording of Section B of PROP Article I to require recipients to record liens or other notices of record, as described in paragraph (a) of this section.

### § 1130.115 Title to federally owned property.

(a) *Requirement.* A DoD Component's general terms and conditions must inform recipients that title to federally owned property remains with the Federal Government and include the wording appendix A to this part provides for Section C of PROP Article I.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must either:

(1) Include the wording appendix A to this part provides for Section C of PROP Article I to indicate that title to federally owned property remains with the Federal Government; or

(2) Reserve Section C if it provides no federally owned property under its awards.

### § 1130.120 Federal interest in donated property.

(a) *Requirement.* A DoD Component's general terms and conditions must inform recipients that the Federal Government acquires an interest in any real property or equipment for which the value of the remaining life of the property in the recipient's accounting records or the fair market value of the property is counted toward required cost sharing or matching, rather than charging depreciation.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the wording appendix A to this part provides for Section D of PROP Article I to specify the Federal interest in donated real property or equipment; or

(2) Reserve Section D of PROP Article I if the DoD Component does not permit recipients to count the fair market value of real property or equipment toward cost sharing or matching.

### § 1130.125 Federal interest in property improved under awards.

(a) *Requirement.* A DoD Component's general terms and conditions must address the Federal interest in improvements to real property or equipment that results if a recipient directly charges the costs of the improvements to an award.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the wording appendix A to this part provides for Section E of PROP Article I to specify the Federal interest in improved real property or equipment; or

(2) Reserve Section E of PROP Article I if there will be no improvements to real property or equipment under awards using those general terms and conditions or subawards under those awards.

## Subpart B—Property Management System (PROP Article II)

### § 1130.200 Purpose of PROP Article II.

(a) PROP Article II prescribes standards for:

(1) Insurance coverage for real property and equipment acquired or improved under awards;

(2) The system that a recipient uses to manage both equipment that is acquired or improved in whole or in part under awards and federally owned property.

(b) It thereby implements OMB guidance in 2 CFR 200.310 and 200.313(d)(1) through (4), and partially implements 2 CFR 200.313(b).

### § 1130.205 Insurance coverage for real property and equipment.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.310 includes a requirement for recipients' insurance coverage for real property and equipment acquired or improved under grants and cooperative agreements and states that federally owned property need not be insured unless required by Federal award terms and conditions.

(b) *DoD implementation.* A DoD Component's general terms and conditions must require recipients to provide insurance coverage for real property and equipment acquired or improved under awards. However, unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment specifies otherwise, DoD awards will not require recipients to insure federally owned property.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the wording appendix B to this part provides for Section A of PROP Article II; or

(2) Reserve Section A of PROP Article II if there will be no real property or equipment acquired or improved under awards using those terms and conditions or subawards under those awards.

### § 1130.210 Other property management system standards for States.

(a) *Requirement.* A DoD Component's general terms and conditions must address the standards for States' property management systems.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the wording appendix B to this part provides for Section B of PROP Article II; or

(2) Reserve Section B of PROP Article II if no State will acquire or improve equipment, in whole or in part, or be accountable for federally owned property under awards using those general terms and conditions or subawards under those awards.

### § 1130.215 Other property management system standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

(a) *Requirement.* A DoD Component's general terms and conditions must address the standards for property management systems of institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the wording appendix B to this part provides for Section C of PROP Article II; or

(2) Reserve Section C of PROP Article II if no institution of higher education, nonprofit organization, local government, or Indian tribe will acquire or improve equipment, in whole or in part, or be accountable for federally owned property under awards using those general terms and conditions or subawards under those awards.

## Subpart C—Use and Disposition of Real Property (PROP Article III)

### § 1130.300 Purpose of PROP Article III.

PROP Article III specifies requirements for recipients' use and disposition of real property acquired or improved under an award. It thereby implements OMB guidance in 2 CFR 200.311(b) and (c).

### § 1130.305 Use of real property.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.311(b) states that, except as otherwise provided by Federal statute or the Federal awarding agency, a recipient must use real property acquired or improved under a grant or cooperative agreement for the originally authorized purpose as long as needed for that purpose, during which time the recipient must not dispose of the property or encumber its title or other interests.

(b) *DoD implementation.* Unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment specifies otherwise, DoD awards must permit recipients to do the following:

(1) While real property acquired or improved under an award still is needed for the authorized purpose, also use it for other projects or programs that either are supported by DoD Components or other Federal agencies or not federally supported, as long as that use does not interfere with the property's use for the authorized purpose.

(2) After the real property no longer is needed for the authorized purpose, with the written approval of the award administration office, use the property on other federally supported projects or programs that have purposes consistent with those authorized for support by the DoD Component that made the award under which the property was acquired or improved.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must either:

(1) Include the wording appendix C to this part provides for Section A of PROP Article III; or

(2) If a statute or program regulation in the Code of Federal Regulations

specifies different requirements for recipients' use of real property, substitute alternative wording for Section A to specify those requirements.

### § 1130.310 Disposition of real property.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.311(c):

(1) Addresses the recipient's responsibility to request disposition instructions for real property when the recipient no longer needs it for the originally authorized purpose; and

(2) Identifies three alternative disposition methods those instructions may specify.

(b) *DoD implementation.* DoD implements the guidance in 2 CFR 200.311(c) through award terms and conditions that govern disposition of real property acquired or improved under awards.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include the wording appendix C to this part provides for Section B of PROP Article III to specify requirements concerning disposition of real property acquired or improved under awards.

## Subpart D—Use and Disposition of Equipment and Supplies (PROP Article IV)

### § 1130.400 Purpose of PROP Article IV.

PROP Article IV specifies requirements for recipients' use and disposition of equipment and supplies in which there is a Federal interest. It thereby implements OMB guidance in:

(a) 2 CFR 200.313(a) through (c), 200.313(d)(5), and 200.313(e) as that guidance applies to requirements for use and disposition of equipment; and

(b) 2 CFR 200.314, as that guidance applies to requirements for use and disposition of supplies.

### § 1130.405 Property subject to PROP Article IV.

(a) *Requirement.* A DoD Component's general terms and conditions must identify the types of non-exempt property to which requirements for use and disposition of equipment and supplies apply.

(b) *Award terms and conditions.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix D to this part provides for Section A of PROP Article IV. That wording identifies the categories of equipment and supplies in which there is a Federal interest.

### § 1130.410 Requirements for a State's use and disposition of equipment.

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.313(a) sets forth basic conditions for use of equipment acquired under a grant or cooperative agreement that apply when title to the equipment is vested in a recipient conditionally, because the awarding agency either does not have statutory authority to vest title in the equipment unconditionally or elects not to do so.

(2) 2 CFR 200.313(b) provides that a State must use, manage, and dispose of equipment in accordance with State laws and procedures.

(b) *DoD implementation.* DoD implements 2 CFR 200.313(a) and (b) through award terms and conditions that govern States' use and disposition of equipment.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix D to this part provides for Section B of PROP Article IV to specify the requirements for a State's use and disposition of equipment in which there is a Federal interest.

### § 1130.415 Use of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.313(a) sets forth basic conditions for use of equipment acquired under a grant or cooperative agreement that apply when title to the equipment is vested in a recipient conditionally, because the awarding agency either does not have statutory authority to vest title in the equipment unconditionally or elects not to do so.

(2) 2 CFR 200.313(c) provides the parameters for use of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.

(3) 2 CFR 200.313(d)(5) calls for use of sales procedures to ensure highest possible return when selling equipment.

(b) *DoD implementation.* For equipment in which there is a Federal interest under awards to institutions of higher education, nonprofit organizations, local governments, or Indian tribes, DoD implements through award terms and conditions the following portions of 2 CFR part 200 as they apply to use of equipment prior to the time of its disposition:

(1) 2 CFR 200.313(a) and (c); and

(2) 2 CFR 200.313(d)(5), as it applies to equipment sales prior to the time of disposition, to offset the acquisition cost of replacement equipment.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix D to this part provides for Section C of PROP Article IV to specify the requirements for use of equipment described in paragraph (b) of this section.

### § 1130.420 Disposition of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.313(e) addresses disposition of original or replacement equipment acquired under a grant or cooperative agreement by an institution of higher education, nonprofit organization, local government, or Indian tribe.

(b) *DoD implementation.* DoD implements 2 CFR 200.313(e) through award terms and conditions that govern disposition of original or replacement equipment acquired under an award by an institution of higher education, nonprofit organization, local government, or Indian tribe when there is a Federal interest in the equipment.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix D to this part provides for Section D of PROP Article IV to specify the requirements for disposition of equipment described in paragraph (b) of this section.

### § 1130.425 Use and disposition of supplies.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.314 sets forth requirements for use and disposition of supplies acquired under a grant or cooperative agreement.

(b) *DoD implementation.* DoD implements 2 CFR 200.314 through award terms and conditions that govern use and disposition of supplies acquired under awards either by purchase or by donation as cost sharing or matching.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix D to this part provides for Section E of PROP Article IV to specify the requirements for use and disposition of acquired supplies.

## Subpart E—Use and Disposition of Federally Owned Property (PROP Article V)

### § 1130.500 Purpose of PROP Article V.

PROP Article V specifies requirements for recipients' use and disposition of federally owned property. It implements the portion of OMB guidance in 2 CFR 200.312(a) that applies to disposition of federally owned property.

### § 1130.505 Content of PROP Article V.

A DoD Component's general terms and conditions must either:

(a) Include the wording appendix E to this part provides for PROP Article V to specify requirements for use and disposition of federally owned property; or

(b) Reserve PROP Article V if there is no possibility of recipients or subrecipients being accountable for federally owned property under awards using those terms and conditions.

## Subpart F—Intangible Property (PROP Article VI)

### § 1130.600 Purpose of PROP Article VI.

PROP Article VI sets forth the rights and responsibilities of recipients and the Federal Government with respect to intangible property. It thereby implements OMB guidance in 2 CFR 200.315.

### § 1130.605 Copyrights asserted in works developed or otherwise acquired under awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(b) addresses recipients' and the Federal Government's rights related to works that recipients may

copyright under grants and cooperative agreements.

(b) *DoD implementation.* DoD implements 2 CFR 200.315(b) through award terms and conditions that specify recipient and DoD rights with respect to copyrightable works.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix F to this part provides for Section A of PROP Article VI to affirm the recipient's right to assert copyright in works it develops or otherwise acquires under an award, as well as DoD's right to use the works for Federal purposes.

### § 1130.610 Inventions developed under awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(c) states that recipients of grants and cooperative agreements are subject to applicable regulations concerning patents and inventions, including Department of Commerce regulations at 37 CFR part 401.

(b) *DoD implementation.* In implementing 2 CFR 200.315(c) for awards for the performance of experimental, developmental, or research work, DoD:

(1) Extends to other entities the patent rights provisions of chapter 18 of Title 35 of the U.S. Code and 37 CFR part 401 that directly apply to small business firms and nonprofit organizations. This broadened applicability is in accordance with the February 18, 1983, Presidential memorandum on Government patent policy, referred to in Executive Order 12591, ''Facilitating Access to Science and Technology.''

(2) Establishes a requirement for recipients to provide final reports listing all subject inventions under their awards or stating there were none, a requirement that 37 CFR 401.5(f)(1) provides as an agency option.

(3) Incorporates the prohibition in 35 U.S.C. 212 on asserting Federal Government rights in inventions made by recipients of scholarships, fellowships, training grants, or other awards made primarily for educational purposes.

(c) *Award terms and conditions.* (1) *Awards for research, developmental, or experimental work.* A DoD Component's general terms and conditions for awards for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government must include the wording appendix F to this part provides for Section B of PROP Article VI, with one permitted exception. The exception is that a DoD Component may reserve or substitute alternative wording for paragraph B.2.b of Section B of PROP Article VI, as appropriate, if it elects to:

(i) Omit the requirement for final invention reports;

(ii) Substitute ''120 calendar days'' for ''90 calendar days'' to provide an additional 30 days for recipient's submissions of final reports after the end date of the period of performance; or

(iii) Include a requirement for recipients to submit information about each patent application they submit for a subject invention, interim listings of all subject inventions, or both, which the Department of Commerce regulations at 37 CFR 401.5(f)(2) and (3) permit agencies to require.

(2) *Awards for primarily educational purposes.* A DoD Component's general terms and conditions for awards to support scholarships or fellowships, training grants, or other awards for primarily educational purposes must replace the wording appendix F to this part provides for Section B of PROP Article VI with an alternative award provision stating that the Federal Government will have no rights to inventions made by recipients.

(3) A*wards for other purposes.* A DoD Component developing general terms and conditions for awards other than those described in paragraphs (c)(1) and (2) of this section should:

(i) Consult its intellectual property counsel if it anticipates that recipients may develop patentable inventions under its awards, to identify any applicable statutes or regulations and determine an appropriate substitute for the wording appendix F to this part provides for Section B of PROP Article VI; or

(ii) Reserve Section B of PROP Article VI if it does not expect development of any patentable inventions under those awards.

### § 1130.615 Data produced under awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(d) and (e) addresses rights in data under grants and cooperative agreements.

(b) *DoD implementation.* DoD implements 2 CFR 200.315(d) and (e) through award terms and conditions.

(c) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must include the wording appendix F to this part provides for Section C of PROP Article VI.

(2) *Exception.* A DoD Component may reserve paragraph C.2 of Section C of PROP Article VI in its general terms and conditions if:

(i) Those terms and conditions will not be used for research awards; and

(ii) The DoD Component determines that no research data as defined in 2 CFR 200.315 will be generated under the awards using those terms and conditions.

### § 1130.620 Intangible property acquired, but not developed or produced, under awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(a) addresses use and disposition of intangible property that is acquired under grants and cooperative agreements (in addition to vesting of title, which is implemented in § 1130.105 and appendix A to this part).

(b) *DoD implementation.* DoD implements 2 CFR 200.315(a) through award terms and conditions that govern use and disposition of intangible property that is acquired, but not developed or produced, under awards.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include the wording appendix F to this part provides for Section D of PROP Article VI.

## APPENDIX A TO PART 1130—TERMS AND CONDITIONS FOR PROP ARTICLE I, ''TITLE TO PROPERTY''

Unless a DoD Component inserts or adds wording or reserves sections of the article, as provided in §§ 1130.105 through 1130.125, a DoD Component's general terms and conditions must use the following wording for PROP Article I.

PROP ARTICLE I. TITLE TO PROPERTY. (DECEMBER 2014)

*Section A. Title to property acquired under this award.*

1. *General.* Other than any property identified in paragraph A.2 of this section as exempt property:

a. Title to real property, equipment, and supplies that you acquire (whether by purchase, construction or fabrication, development, or otherwise) and charge as direct project costs under this award vests in you, the recipient. Title to intangible property that you acquire (other than by developing or producing it) under this award also vests in you.

b. That title is a conditional title, subject to the terms and conditions in PROP Articles II–IV, Section D of PROP Article VI, and REP Article III of this award.

c. There is a Federal interest in the property, other than intangible property that you develop or produce under the award. For real property, equipment, and intangible property, we retain this Federal interest until final disposition of the property under PROP Article III (for real property), PROP Article IV (for equipment and supplies), or Section D of PROP Article VI (for intangible property that is acquired, other than by developing or producing it), a period that in some cases may extend beyond closeout of this award.

2. *Exempt property.* [Reserved]

*Section B. Property trust relationship.*

1. *Basic requirement.* Other than intangible property that you develop or produce under the award, you hold any real property, equipment, or intangible property that you acquire or improve under this award in trust for the beneficiaries of the project or program that you are carrying out under the award.

2. *Notices of record.* [Reserved]

*Section C. Federally owned property.* Title to any federally owned property that we provide to you under this award (or for which accountability is transferred to this award from another Federal award) remains with the Federal Government.

*Section D. Federal interest in donated real property or equipment.* If real property or equipment is acquired under this award through your donation of the property to the project or program (*i.e.*, counting the value of the remaining life of the property recorded in your accounting records or the fair market value as permitted under FMS Article VI of this award as part of your share of project costs to meet any cost sharing or matching requirements, rather than charging depreciation):

1. The Federal Government acquires through that donation an interest in the real property or equipment, the value of which at any given time is the product of:

a. The Federal share of the project costs under this award; and

b. The current fair market value of the property at that time.

2. The real property or equipment is subject to Section B of this article and the terms and conditions of PROP Articles II–IV and REP Article III that are applicable to property acquired under the award.

3. The Federal interest in the real property or equipment must be addressed at the time of property disposition.

*Section E. Federal interest in property improved under the award.*

1. The Federal Government has an interest in improvements (as distinct from ordinary repairs and maintenance) you make to an item of real property or equipment if you charge the costs of the improvements as direct costs to this award.

2. We thereby acquire an interest in the property if the Government did not previously have one. If the Government already had an interest in the property, the value of that Federal interest in the property increases by the amount of the Federal interest in the improvements.

3. The property is subject to Section B of this article and the terms and conditions of PROP Articles II–IV and REP Article III that are applicable to real property or equipment acquired under the award.

4. The Federal interest must be addressed at the time of property disposition.

## APPENDIX B TO PART 1130—TERMS AND CONDITIONS FOR PROP ARTICLE II, ''PROPERTY MANAGEMENT SYSTEM''

Unless a DoD Component reserves sections of the article, as provided in §§1130.205 through 1130.215, a DoD Component's general terms and conditions must use the following wording for PROP Article II.

### PROP ARTICLE II. PROPERTY MANAGEMENT SYSTEM. (DECEMBER 2014)

*Section A. Insurance coverage for real property and equipment.* You must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved under this award as you provide for real property and equipment that you own.

*Section B. Other property management system standards for a State.*

1. *Equipment.* Your property management system for equipment acquired or improved in whole or in part under this award must be in accordance with your State laws and procedures.

2. *Federally owned property.* You may use your own property management system for any federally owned property for which you are accountable, as long as it meets the following minimum standards:

a. *Records.* Your records must include for each item of federally owned property:

i. A description of the item.

ii. The location of the item.

iii. The serial or other identification number.

iv. Which Federal agency holds title.

v. The date you received the item.

vi. Any data on the ultimate disposition of the item, such as the date of disposal.

vii. The Federal award identification number of the award under which you are accountable for the item.

b. *Inventory.* You must take a physical inventory of federally owned property annually.

c. *Control system.* You must:

i. Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of federally owned property.

ii. Investigate any loss, damage, or theft of federally owned property and promptly notify the award administration office.

d. *Maintenance.* You must maintain the property in good condition.

*Section C. Other property management system standards for an institution of higher education, nonprofit organization, local government, or Indian tribe.* Your procedures for managing equipment (including replacement equipment) acquired or improved in whole or in part under this award and any federally owned property for which you are accountable under this award must, as a minimum, meet the requirements in this section.

1. *Records.* You must maintain records that include for each item of equipment or federally owned property:

a. A description of the item.

b. The serial or other identification number.

c. Who holds title (*e.g.*, you or the Federal Government and, if the latter, which Federal agency).

d. The source of funding for the equipment, including the Federal award identification number, or the source of the federally owned property, including the award number of the award under which you are accountable for the property.

e. The acquisition date and cost of the equipment (or improvement to the equipment) or the date you received the federally owned property.

f. The location, use, and condition of the equipment or federally owned property.

g. Information from which one can calculate the amount of the Federal interest in the acquisition or improvement of the item (this amount is zero after you compensate us for the Federal interest in the item or improvement).

h. Any data on the ultimate disposition of the item including the date of disposal and sale price.

2. *Labelling.* You must ensure that property owned by the Federal Government is labeled to identify it as federally owned property.

3. *Inventory.*

a. You must take a physical inventory of equipment in which there is a Federal interest and reconcile the results with your records at least once every 2 years.

b. You must take an annual inventory of any federally owned property for which you are accountable under this award.

4. *Control system.* You must:

a. Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of equipment and federally owned property.

b. Investigate any loss, damage, or theft and notify the award administration office if it involved equipment in which there is a Federal interest under the award or federally owned property.

5. *Maintenance.* You must maintain equipment acquired or improved in whole or in part under the award and federally owned property in good condition.

## APPENDIX C TO PART 1130—TERMS AND CONDITIONS FOR PROP ARTICLE III, ''USE AND DISPOSITION OF REAL PROPERTY''

Unless a DoD Component substitutes wording in Section A, as provided in §1130.305, a DoD Component's general terms and conditions must use the following wording for PROP Article III.

### PROP ARTICLE III. USE AND DISPOSITION OF REAL PROPERTY. (DECEMBER 2014)

*Section A. Use of real property.*

1. You must use real property acquired or improved under this award for the originally authorized purpose as long as needed for that purpose. During that time, you may not:

a. Dispose of the property except, with the approval of the award administration office, to acquire replacement property under this award, in which case you must use the proceeds from the disposition as an offset to the cost of the replacement property; or

b. Encumber the title or other interests in the property without the approval of the award administration office identified in this award.

2. During the time that the real property is used for the originally authorized purpose, you may make the property available for use on other projects or programs, but only if that use will not interfere with the property's use as needed for its originally authorized purpose.

a. First preference must be given to other projects or programs supported by DoD Components and second preference to those supported by other Federal agencies.

b. Third preference is for other projects or programs not currently supported by the Federal Government. You should charge user fees for use of the property in those cases, if it is at all practicable.

3. When the real property is no longer needed for the originally authorized purpose, with the written approval of the award administration office, you may delay final disposition of the property to use it on other federally sponsored projects or programs. A condition for the award administration office's approval is that the other projects or programs have purposes consistent with those authorized for support by the DoD Component that made the award under which the property was acquired or improved.

*Section B. Disposition of real property.* When you no longer need real property for the originally authorized purpose, you must obtain disposition instructions from the award administration office, except as provided in paragraph A.3 of this article. Those instructions will provide for one of the following three alternatives, which are that you:

1. Retain title after compensating us for the Federal interest in the property, which is to be computed as specified in the definition of ''Federal interest.''

2. Sell the property and compensate us for the Federal interest in the property, as described in 2 CFR 200.311(c)(2).

3. Transfer title to us or a third party we designate, as described in 2 CFR 200.311(c)(3).

## APPENDIX D TO PART 1130—TERMS AND CONDITIONS FOR PROP ARTICLE IV, ''USE AND DISPOSITION OF EQUIPMENT AND SUPPLIES''

As specified in §§1130.405 through 1130.425, a DoD Component's general terms and conditions must use the following wording for PROP Article IV.

### PROP ARTICLE IV. USE AND DISPOSITION OF EQUIPMENT AND SUPPLIES. (DECEMBER 2014)

*Section A. Property subject to this article.* This article specifies requirements for use and disposition of equipment and supplies. If a provision of PROP Article I identifies any type of equipment or supplies as exempt property, requirements of this Article apply to that exempt property only to the extent specified in that provision of PROP Article I or an award-specific term or condition. The types of non-exempt property to which this article applies are:

1. Supplies that you acquire either by purchase or by donation as cost sharing or matching under this award; and

2. Equipment for which title is vested conditionally in you. That includes equipment with a conditional title resulting from your having, either under this award or under a previous award from which you transferred accountability for the equipment to this award:

a. Directly charged as project costs, in whole or in part, the acquisition (by purchase, construction or fabrication, or development) of equipment;

b. Donated the equipment to the project or program by counting the value of the remaining life of the property recorded in your accounting records or the fair market value toward any cost sharing or matching requirements under the award, rather than charging depreciation (see PROP Article I, Section D); or

c. Directly charged as project costs improvements to the equipment that meet the criteria given in paragraph E.1 of PROP Article I.

*Section B. Requirements for a State's use and disposition of equipment.* You:

1. Must use the equipment for the authorized purposes of the project or program during the period of performance, or until the property is no longer needed for those purposes.

2. May not encumber the property without the prior written approval of the award administration office.

3. Must use and dispose of the equipment in accordance with your State laws and procedures.

*Section C. Use of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.* You:

1. Must use the equipment for the authorized purposes of the project or program under this award until the equipment is no longer needed for those purposes, whether or not the project or program continues to be supported by this award.

2. May not encumber the equipment without the prior written approval of the award administration office.

3. During the time that the equipment is used for the project or program under this award:

a. You must make the equipment available for use on other projects or programs but only if that use will not interfere with the equipment's use as needed for the project or program supported by this award.

i. First preference must be given to other projects or programs supported or previously supported by DoD Components

ii. Second preference to projects or programs supported or previously supported by other Federal agencies.

iii. Third preference is for other projects or programs not supported by the Federal Government. You should charge user fees for use of the equipment in those cases, if it is at all practicable.

b. You may use the equipment, if you need to acquire replacement equipment, as a trade-in or sell it (using sales procedures designed to ensure the highest possible return) and use the proceeds from the sale to offset the cost of the replacement equipment.

4. When the equipment is no longer needed for the project or program under this award, you may defer final disposition of the equipment and continue to use it on other federally sponsored projects or programs. You must give first priority to other projects or programs supported by DoD Components.

5. Notwithstanding the encouragement in FMS Article VII to earn program income, you may not use equipment in which there currently is a Federal interest—whether you acquired it under this award or are otherwise accountable for it under this award—to provide services for a fee that is less than private companies charge for equivalent services.

*Section D. Disposition of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.* You must request disposition instructions from the award administration office when either original or replacement equipment acquired under this award with a current fair market value that exceeds $5,000 is no longer needed for the original project or program or for other federally sponsored activities as described in paragraph C.4 of this article. For each item of equipment with a current fair market value of $5,000 or less, you may retain, sell, or otherwise dispose of the item with no further obligation to the Federal Government.

1. We may issue disposition instructions that:

a. Allow you to retain or sell any item of equipment after compensating us for the Federal interest in the property, which is to be computed as specified in the definition of ''Federal interest;'' or

b. Require you to transfer title to the equipment to a Federal agency or a third party, in which case you are entitled to compensation from us for the non-Federal interest in the equipment, plus any reasonable shipping or interim storage costs incurred.

2. If we fail to provide disposition instructions for any item of equipment within 120 calendar days of receiving your request, you may retain or sell the equipment, but you must compensate us for the amount of the Federal interest in the equipment.

3. If you sell the equipment:

a. You must use sales procedures designed to ensure the highest possible return; and

b. You may deduct and retain for selling and handling expenses either $500 or ten percent of the proceeds, whichever is less.

*Section E. Use and disposition of supplies acquired under this award.*

1. *Use.* As long as we retain a Federal interest in supplies acquired under this award either by purchase or by donation as cost sharing or matching, you may not use the supplies to provide services to other organizations for a fee that is less than private companies charge for equivalent services, notwithstanding the encouragement in FMS Article VII to earn program income.

2. *Disposition.* If you have a residual inventory of unused supplies with aggregate value exceeding $5,000 at the end of the period of performance under this award, and the supplies are not needed for any other Federal award, you must retain the supplies or sell them but must in either case compensate us for the amount of the Federal interest in the supplies. You may deduct and retain for selling and handling expenses either $500 or ten percent of the proceeds, whichever is less.

## APPENDIX E TO PART 1130—TERMS AND CONDITIONS FOR PROP ARTICLE V, ''USE AND DISPOSITION OF FEDERALLY OWNED PROPERTY''

Unless a DoD Component reserves the article, as specified in §1130.505, a DoD Component's general terms and conditions must use the following wording for PROP Article V.

PROP ARTICLE V. USE AND DISPOSITION OF FEDERALLY OWNED PROPERTY. (DECEMBER 2014)

*Section A. Use.* During the time that federally owned property for which you are accountable under this award is used for the project or program supported by the award, you:

1. Also may make the property available for use on other federally supported projects or programs, but only if that use will not interfere with the property's use for the project or program supported by this award. You must give first priority to other projects or programs supported by DoD Components.

2. May use the property for purposes other than federally supported projects or programs only with the prior approval of the awarding office or, if you request approval after the award is made, the award administration office.

*Section B. Disposition.* You must request disposition instructions from the award administration office for any federally owned property under this award, including any property for which a subrecipient is accountable under a subaward you make under this award, either:

1. At any time during the period of performance if the property is no longer needed for the project or program supported by this award; or

2. At the end of the period of performance.

## APPENDIX F TO PART 1130—TERMS AND CONDITIONS FOR PROP ARTICLE VI, ''INTANGIBLE PROPERTY''

Except for Section B, whose language must be tailored or reserved based on the type of award as specified in §1130.610, and Section D if reserved as provided in §1130.615, a DoD Component's general terms and conditions must use the following wording for PROP Article VI.

PROP ARTICLE VI. INTANGIBLE PROPERTY. (DECEMBER 2014)

*Section A. Assertion of copyright.*

1. You may assert copyright in any work that is eligible for copyright protection if you acquire ownership of it under this award, either by developing it or otherwise.

2. With respect to any work, you developed or otherwise acquired under this award, DoD reserves a royalty-free, nonexclusive and irrevocable license to:

a. Reproduce, publish, or otherwise use the work for Federal Government purposes; and

b. Authorize others to reproduce, publish, or otherwise use the work for Federal Government purposes.

*Section B. Inventions developed under the award.*

1. *Applicability of Governmentwide clause for research awards.* You must comply with the Governmentwide patent rights award clause published at 37 CFR 401.14, with the modifications described in paragraph B.2 of this section. DoD adopts that Governmentwide clause for the following entities, thereby broadening the applicability beyond types of entities included in the definition of ''contractor'' in 37 CFR part 401:

a. Any governmental or nonprofit entity (the types of entities subject to these general terms and conditions) receiving a DoD award for the performance of experimental, research, or developmental work;

b. Any governmental, nonprofit, or forprofit entity receiving a subaward to perform experimental, research, or developmental work under an award described in paragraph B.1.a of this section.

2. *Modifications to the wording of the Governmentwide clause.* DoD adopts the Governmentwide clause at 37 CFR 401.14, as described in paragraph B.1 of this section, with the following modifications:

a. *Terminology.* Throughout the Governmentwide clause:

i. Insert the terms ''recipient'' and ''subrecipient (or contractor to the recipient or to a subrecipient)'' to replace the terms ''contractor'' and ''subcontractor,'' respectively.

ii. Insert the terms ''award'' and ''subaward (or contract under either the award or a subaward)'' to replace the terms ''contract'' and ''subcontract,'' respectively.

b. *Final report.* Add a new subparagraph (f)(5) to read, ''The recipient must submit a final report listing all subject inventions made under the award or stating that there were none. The final report is due 90 calendar days after the end date of the period of performance unless you request, and we grant, an extension of the due date.''

c. *Broadening applicability to all entities.* Delete paragraphs (g)(2) and (3) of the Governmentwide clause, redesignate paragraph (g)(1) as paragraph (g) and delete the phrase ''to be performed by a small business firm or domestic nonprofit organization'' from paragraph (g) as redesignated.

*Section C. Data produced under the award.*

1. *Data in general.* The Federal Government has the right to:

a. Obtain, reproduce, publish, or otherwise use the data produced under this award; and

b. Authorize others to receive, reproduce, publish, or otherwise use the data produced under this award for Federal Government purposes.

2. *Research data requested under the Freedom of Information Act (FOIA).*

a. If we receive a request under the FOIA for ''research data'' that are related to ''published research findings'' produced under this award and that were ''used by the Federal Government in developing an agency action that has the force and effect of law,'' you must provide the data to us within a reasonable time after we request it from you, so that the data can be made available to the public through procedures established under the FOIA.

b. For purposes of the requirement in paragraph C.2.a of this section, 2 CFR 200.315(e) provides definitions of the phrases ''published research findings,'' ''used by the Federal Government in developing an agency action that has the force and effect of law,'' and ''research data.''

*Section D. Use and disposition of intangible property acquired, but not developed or produced, under the award.*

1. *Applicability.* This section applies to a patent, patent application, copyright, or other intangible property acquired, but not developed or produced, under this award.

2. *Use.* You:

a. Must use the intangible property for the authorized purpose under this award until the intangible property is no longer needed for that purpose, whether or not that purpose is still being supported by this award.

b. May not encumber the intangible property without the prior written approval of the award administration office.

3. *Disposition.* When the intangible property is no longer needed for the originally authorized purpose, you must contact the award administration office to arrange for disposition in accordance with the procedures specified for disposition of equipment in either section B or D of PROP Article IV, as applicable.

# PART 1132—RECIPIENT PROCUREMENT PROCEDURES: GENERAL AWARD TERMS AND CONDITIONS

Sec.

1132.1 Purpose of this part.
1132.2 Applicability of this part.
1132.3 Exceptions from requirements of this part.
1132.4 Organization of this part.

**Subpart A—Procurement Standards for States (PROC Article I)**

1132.100 Purpose of PROC Article I.
1132.105 Content of PROC Article I.

**Subpart B—Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, and Indian Tribes (PROC Article II)**

1132.200 Purpose of PROC Article II.
1132.205 Procurement procedures.
1132.210 Procurement of recovered materials.
1132.215 Review of recipient procurement documents.
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**Subpart C—Contract Provisions for Recipient Procurements (PROC Article III)**

1132.300 Purpose of PROC Article III.
1132.305 Administrative requirements.
1132.310 National policy requirements.

APPENDIX A TO PART 1132—TERMS AND CONDITIONS FOR PROC ARTICLE I, ''PROCUREMENT STANDARDS FOR STATES''

APPENDIX B TO PART 1132—TERMS AND CONDITIONS FOR PROC ARTICLE II, ''PROCUREMENT STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION, NONPROFIT ORGANIZATIONS, LOCAL GOVERNMENTS, AND INDIAN TRIBES''

APPENDIX C TO PART 1132—TERMS AND CONDITIONS FOR PROC ARTICLE III, ''CONTRACT PROVISIONS FOR RECIPIENT PROCUREMENTS''

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 85 FR 51171, Aug. 19, 2020, unless otherwise noted.

## § 1132.1 Purpose of this part.

(a) This part specifies standard wording of general terms and conditions concerning recipients' purchases of property (supplies, equipment, and real property) and services.

(b) It thereby implements OMB guidance in 2 CFR 200.317 through 200.326,

and appendix II to 2 CFR part 200, as those portions of 2 CFR part 200 apply to general terms and conditions of grants and cooperative agreements. It also partially implements 2 CFR 200.205(d), 200.213, and 200.517.

### § 1132.2 Applicability of this part.

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

### § 1132.3 Exceptions from requirements of this part.

Exceptions are permitted from the administrative requirements in this part only as follows:

(a) As described in 2 CFR 1126.3, and

(b) Based on any language in 2 CFR 200.110(a) regarding the applicability of the procurement standards in 2 CFR part 200.

### § 1132.4 Organization of this part.

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Federal Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) Table 1 shows which article of general terms and conditions may be found in each of appendices A through C to this part (with the associated direction to DoD Components in Subparts A through C, respectively):

TABLE 1 TO PARAGRAPH (c)

| In . . . | You will find terms and conditions specifying recipients' rights and responsibilities related to . . . | That would appear in an award within PROC Article . . . |
|---|---|---|
| Appendix A | Procurement standards for States | I. |
| Appendix B | Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes. | II. |
| Appendix C | Contract provisions for recipient procurements | III. |

## Subpart A–Procurement Standards for States (PROC Article I)

### § 1132.100 Purpose of PROC Article I.

PROC Article I of the general terms and conditions specifies requirements for a State's procurement of property and services under grants or cooperative agreements. It thereby implements OMB guidance in 2 CFR 200.317 and partially implements the guidance in 2 CFR 200.205(d) and 200.213.

### § 1132.105 Content of PROC Article I.

(a) *Requirement.* A DoD Component's general terms and conditions must address requirements for States' procurement systems.

(b) *Award terms and conditions*—(1) *General.* Except as provided in paragraph (b)(2) of this section, a DoD Component's general terms and conditions must use the wording appendix A to this part provides for PROC Article I.

(2) *Exception.* A DoD Component's general terms and conditions may instead reserve PROC Article I if the DoD Component determines that it is not possible that any States will receive:

(i) DoD Component awards using those general terms and conditions; or

(ii) Subawards from recipients of DoD Component awards using those general terms and conditions.

## Subpart B—Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, and Indian Tribes (PROC Article II)

### § 1132.200 Purpose of PROC Article II.

PROC Article II of the general terms and conditions specifies procurement procedures for a recipient of a grant or cooperative agreement other than a State or for-profit entity. It thereby:

(a) Implements OMB guidance in 2 CFR 200.318 through 200.323, 200.324(a) and (b), and 200.325;

(b) Partially implements 2 CFR 200.205(d) and 200.213; and

(c) Implements, in conjunction with PROC Article III, 2 CFR 200.326.

### § 1132.205 Procurement procedures.

(a) *Requirement.* A DoD Component's general terms and conditions must address requirements for procurement systems of institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

(b) *Award terms and conditions.* In order to implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that appendix B provides for Sections A through F of PROC Article II.

### § 1132.210 Procurement of recovered materials.

(a) *Requirement.* A DoD Component's general terms and conditions must address requirements for procurement of recovered materials if State agencies or agencies of a political subdivision of a State may receive awards using those terms and conditions or be subrecipients under those awards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must either:

(1) Use the wording that appendix B provides for Section G of PROC Article II, to specify requirements for a local government or other political subdivision of a State to comply with Resource Conservation and Recovery Act requirements; or

(2) Reserve Section G if the DoD Component determines that it is not possible that a political subdivision of a State will receive either:

(i) An award using those terms and conditions; or

(ii) A subaward under an award using those terms and conditions.

### § 1132.215 Review of recipient procurement documents.

(a) *Requirements.* A DoD Component's general terms and conditions must:

(1) Include a requirement for recipients to make technical specifications for proposed procurements available upon the DoD Component's request, as described in 2 CFR 200.324(a).

(2) Reserve the DoD Component's right to review a recipient's pre-procurement documents when any of the conditions described in 2 CFR 200.324(b)(1) through (5) apply and the recipient is not exempted from the requirement in accordance with 2 CFR 200.324(c).

(b) *Award terms and conditions.* To implement the requirements described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that appendix B to this part provides for Section H of PROC Article II.

### § 1132.220 Bonding requirements.

(a) *Requirements.* A DoD Component's general terms and conditions must require each recipient to meet minimum bonding requirements if it awards any construction or facility improvement contract with a value in excess of the simplified acquisition threshold. A recipient would instead use its own bonding requirements if the DoD Component determined that the recipient's bonding policy and requirements are adequate to protect Federal interests.

(b) *Award terms and conditions*—(1) *General.* To implement the requirements in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that appendix B to this part provides for Section I of PROC Article II. The DoD Component may include a provision in the award-specific terms and conditions to override Section I of PROC Article II in each award to a recipient for which it made the determination about

the recipient's bonding policy and requirements, as described in paragraph (a) of this section.

(2) *Exceptions.* A DoD Component's general terms and conditions may reserve Section I if the DoD Component determines that there will be no construction or facility improvement contracts with values in excess of the simplified acquisition threshold under awards using its general terms and conditions.

## Subpart C—Contract Provisions for Recipient Procurements (PROC Article III)

### § 1132.300 Purpose of PROC Article III.

PROC Article III of the general terms and conditions specifies provisions that recipients must include in contracts under their awards, as applicable. It thereby:

(a) Implements, in conjunction with PROC Articles I and II, OMB guidance concerning recipients' contract provisions under grants and cooperative agreements in 2 CFR 200.317 and 200.326;

(b) Partially implements the OMB guidance in 2 CFR 200.205(d) and 200.213 concerning suspension and debarment requirements; and

(c) Partially implements the OMB guidance in 2 CFR 200.517 concerning retention and access of auditors' records.

### § 1132.305 Administrative requirements.

(a) *Requirement.* A DoD Component's general terms and conditions must require recipients to include in their contracts standard administrative requirements related to remedies, termination, allowable costs, rights in copyrights and data, records access and retention, and reporting.

(b) *Award terms and conditions.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that appendix C to this part provides for Section A of PROC Article III.

### § 1132.310 National policy requirements.

(a) *Requirement.* A DoD Component's general terms and conditions must require recipients to include provisions in their contracts that require the contractors to comply with applicable national policy requirements.

(b) *Award terms and conditions*—(1) *General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that appendix C to this part provides for Section B of PROC Article III.

(2) *Exceptions.* (i) The Wage Rate Requirements (Construction) statute (40 U.S.C. 3141–44, 3146, and 3147) does not apply to a program carried out through grants or cooperative agreements unless another statute makes it apply to that program. A DoD Component's general terms and conditions therefore may not include the provision that appendix C to this part includes as paragraph B.2 of PROC Article III unless another statute makes the Wage Rate Requirements statute apply to the program using those general terms and conditions.

(ii) If a DoD Component determines that any of the other national policy requirements in Section B will not apply to any of the awards subject to its general terms and conditions, the DoD Component may reserve the paragraphs of Section B addressing those requirements. Should a future need arise to include the requirements in a given award, the DoD Component may include them as award-specific terms and conditions.

## Appendix A to Part 1132—Terms and Conditions for PROC Article I, ''Procurement Standards for States''

Unless a DoD Component reserves the article, as specified in §1132.105, a DoD Component's general terms and conditions must use the following wording for PROC Article I.

PROC Article I. Procurement Standards for States. (December 2014)

*Section A. Use of State procurement system.* Subject only to the conditions in Sections B through D of this article, you must use the same policies and procedures to procure supplies, equipment, real property, and services under this award that you use when you procure those items for State purposes using non-Federal funds.

*Section B. Procurement of recovered materials.* You must comply with the Resource

Conservation and Recovery Act requirements described in OMB guidance in 2 CFR 200.322.

*Section C. Debarment and suspension.* You must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR part 180, as implemented by DoD at 2 CFR part 1125.

*Section D. Contract provisions.* You must include provisions in your procurement transactions under this award to require the contractors' compliance with the requirements specified in PROC Article III, as applicable.

## APPENDIX B TO PART 1132—TERMS AND CONDITIONS FOR PROC ARTICLE II, ''PROCUREMENT STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION, NONPROFIT ORGANIZATIONS, LOCAL GOVERNMENTS, AND INDIAN TRIBES''

With the exception of Sections G and I, which may be reserved as specified in §§1132.210 and 1132.220, a DoD Component's general terms and conditions must use the following wording for PROC Article II.

### PROC ARTICLE II. PROCUREMENT STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION, NONPROFIT ORGANIZATIONS, LOCAL GOVERNMENTS, AND INDIAN TRIBES. (DECEMBER 2014)

*Section A. General procurement standards.*

1. For procurement under this award, you must comply with the following paragraphs of OMB guidance in 2 CFR 200.318:

a. 200.318(a) concerning documented procurement procedures;

b. 200.318(b) concerning oversight of contractors;

c. 200.318(c) concerning standards of conduct and conflicts of interest;

d. 2 CFR 200.318(d) concerning purchases of unnecessary or duplicative items;

e. 200.318(e) concerning intergovernmental or inter-entity agreements;

f. 200.318(g) concerning value engineering;

g. 200.318(i) concerning procurement records;

h. 200.318(j) concerning time and material type contracts; and

i. 200.318(k) concerning settlement of issues arising out of procurements.

2. You must do business only with responsible contractors who are able to perform, as described in OMB guidance in 2 CFR 200.318(h). Related to that, you must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR part 180, as implemented by DoD at 2 CFR part 1125.

*Section B. Competition.* You must award procurement transactions under this DoD award in accordance with the competition requirements described in OMB guidance in 2 CFR 200.319.

*Section C. Procurement methods.* You must award procurement transactions under this award using methods described in OMB guidance in 2 CFR 200.320.

*Section D. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.* You must take the affirmative steps described in OMB guidance in 2 CFR 200.321 when awarding procurement transactions under this award.

*Section E. Contract cost and price.* When awarding a contract under this award, you must follow the procedures related to costs and price that are described in OMB guidance in 2 CFR 200.323, using the applicable cost principles specified in FMS Article III.

*Section F. Contract provisions.* You must include provisions in your procurement transactions under this award to require the contractors' compliance with the requirements of PROC Article III, as applicable.

*Section G. Procurement of recovered materials.* If you are a political subdivision of a State, you must comply with the Resource Conservation and Recovery Act requirements described in OMB guidance in 2 CFR 200.322.

*Section H. Review of procurement documents.* Upon our request, you must make available:

1. Technical specifications on proposed procurements, as described in 2 CFR 200.324(a).

2. Pre-procurement documents for our review, as described in 2 CFR 200.324(b) unless you are exempt from that requirement under 2 CFR 200.324(c).

*Section I. Bonding requirements.* If you award a construction or facility improvement contract under this award with a value in excess of the simplified acquisition threshold, you must comply with at least the minimum requirements for bidders' bid guarantees and contractors' performance and payment bonds described in 2 CFR 200.325(a) through (c), unless a provision in the award-specific terms and conditions of this award excepts you from the requirement based on our determination that your bonding policy and requirements are adequate to protect Federal interests.

## APPENDIX C TO PART 1132—TERMS AND CONDITIONS FOR PROC ARTICLE III, ''CONTRACT PROVISIONS FOR RECIPIENT PROCUREMENTS''

Unless a DoD Component reserves one or more paragraphs of Section B, as specified in §1132.310, a DoD Component's general terms and conditions must use the following wording for PROC Article III.

PROC ARTICLE III. CONTRACT PROVISIONS FOR RECIPIENT PROCUREMENTS. (DECEMBER 2014)

*Section A. Contract provisions for administrative requirements.*

1. *Remedies.* In any contract under this award for an amount in excess of the simplified acquisition threshold, you must provide for administrative, contractual, or legal remedies, including any appropriate sanctions and penalties, when the contractor violates or breaches the contract terms.

2. *Termination.* In any contract for an amount in excess of $10,000, you must specify conditions under which you may terminate the contract for cause or convenience; the procedures for termination; and the basis to be used for settlement.

3. *Allowable costs under cost-type contracts.* In any cost-type contract with an entity, you must include a clause to permit the entity to charge to the contract only costs that are allowable under the cost principles that FMS Article III identifies as applicable to that type of entity, as supplemented by any award-specific terms and conditions related to allowability of costs that are included in this award. Your contract clause may permit the contractor to use its own cost principles in determining the allowability of its costs charged to the contract, as long as its cost principles comply with those Federal cost principles supplemented by any award-specific terms and conditions of this award.

4. *Rights in copyright and data.* You must include in each contract under this award a provision requiring that the contractor:

a. Grant the Federal Government a royalty-free, nonexclusive and irrevocable right to:

i. Reproduce, publish, or otherwise use for Federal purposes any work that is subject to copyright and that the contractor develops, or acquires ownership of, under this award;

ii. Authorize others to reproduce, publish, or otherwise use such work for Federal purposes; and

b. Grant the Federal Government the right to:

i. Obtain, reproduce, publish, or otherwise use data produced under this award;

ii. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes; and

c. Include the Federal Government rights described in subparagraphs 4.a. and 4.b. of this section in any subcontracts.

5. *Access to records.*

a. In any negotiated, cost-type or time and materials contract for an amount in excess of the simplified acquisition threshold, you must provide for access to any of the contractor's books, documents, papers, and records that are directly pertinent to that contract to enable and support audits, examinations, excerpts, and transcriptions. The contract provision must provide access to those records for all of the following and their duly authorized representatives:

i. You;

ii. Us as the Federal awarding agency, including our Inspector General; and

iii. The Comptroller General of the United States.

b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR part 200, you must provide for the access to audit documentation described in 2 CFR 200.517(b).

6. *Records retention.*

a. In any negotiated, cost-type or time and materials contract for an amount in excess of the simplified acquisition threshold, you must provide for retention of all records that are directly pertinent to that contract for 3 years after you make final payment and all pending matters are closed.

b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR part 200, you must provide for the retention of audit documentation described in 2 CFR 200.517(a).

7. *Reporting.* In any contract awarded under this award, you must include any provision for the contractor's reporting to you that may be needed in order for you to meet your requirements under this award to report to us.

*Section B. Contract provisions for national policy requirements.*

1. *Equal employment opportunity.* You must include the clause provided in 41 CFR 60–1.4(b) in any ''federally assisted construction contract'' (as defined in 41 CFR 60–1.3) under this award, unless provisions of 41 CFR part 60–1 exempt the contract from the requirement.

2. *Wage Rate Requirements (Construction),* formerly the Davis-Bacon Act. With respect to each construction contract for more than $2,000 to be awarded using funding provided under this award, you must:

a. Place in the solicitation under which the contract will be awarded a copy of the current prevailing wage determination issued by the Department of Labor;

b. Condition the decision to award the contract upon the contractor's acceptance of that prevailing wage determination;

c. Include in the contract the clauses specified at 29 CFR 5.5(a) in Department of Labor regulations at 29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction,'' to require the contractor's compliance with the Wage Rate Requirements (Construction), as amended (40 U.S.C. 3141–44, 3146, and 3147); and

d. Report all suspected or reported violations to the award administration office identified in this award.

3. *Copeland Act prohibition on kickbacks.* In each contract under this award that is subject to the Wage Rate requirements in paragraph 2 of these provisions, you must:

a. Include a provision requiring the contractor to comply with the anti-kickback provisions of the Copeland Act (18 U.S.C. 874 and 40 U.S.C. 3145), as supplemented by Department of Labor regulations at 29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.''

b. Report all suspected or reported violations to the award administration office identified in the award notice cover sheet of this award.

4. *Contract Work Hours and Safety Standards Act for work involving mechanics or laborers.* In each contract for an amount greater than $100,000 that involves the employment of mechanics or laborers and is not a type of contract excepted under 40 U.S.C. 3701, you must include the clauses specified in Department of Labor (DoL) regulations at 29 CFR 5.5(b) to require use of wage standards that comply with the Contract Work Hours and Safety Standards Act (40 CFR, Subtitle II, Part A, Chapter 37), as implemented by DoL at 29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.''

5. *Patents and inventions.* If you procure the services of a nonprofit organization, small business firm, or other entity for the performance of experimental, developmental or research work, you must include in the contract the clause prescribed in Section B of PROP Article VI to establish contractual requirements regarding subject inventions resulting from the contract and provide for Federal Government rights in those inventions.

6. *Clean air and water requirements.* You must:

a. In each contract for an amount greater than $150,000 under this award, include a clause requiring the contractor to comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401–7671q), Federal Water Pollution Control Act (33 U.S.C. 1251–1387), and standards, orders, or regulations issued under those acts; and

b. Report any violations of the Acts, standards, orders, or regulations to both the award administration office identified in this award and the appropriate regional office of the Environmental Protection Agency.

7. *Nonprocurement suspension and debarment.* Unless you have an alternate method for requiring the contractor's compliance, you must include a clause in each contract for an amount equal to or greater than $25,000 for other than federally required audit services and in each contract for federally required audit services regardless of dollar value to require the contractor to comply with OMB guidance on nonprocurement suspension and debarment in 2 CFR part 180, as implemented by DoD regulations at 2 CFR part 1125.

8. *Byrd Amendment anti-lobbying requirements.* In each contract for an amount exceeding $100,000, you must include a clause requiring the contractor to submit to you the certification and any disclosure forms regarding lobbying that are required under 31 U.S.C. 3152, as implemented by the DoD at 32 CFR part 28.

9. *Purchase of recovered materials by States or political subdivisions of States.* In each contract under which the contractor may purchase items designated in Environmental Protection Agency (EPA) regulations in 40 CFR part 247, subpart B, you must include a clause requiring the contractor to comply with applicable requirements in those EPA regulations, which implement Section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962).

10. *Fly America requirements.* In each contract under which funds provided under this award might be used for international air travel for the transportation of people or property, you must include a clause requiring the contractor to:

a. Comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, also known as the ''Fly America'' Act), as implemented at 41 CFR 301–10.131 through 301–10.143. The statute and regulations provide that U.S. Government-financed international air travel of passengers and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost-sharing arrangement with a U.S. carrier, if such service is available; and

b. Include the requirements of the Fly America Act in all subcontracts that might involve international air transportation.

11. *Cargo preference for United States flag vessels.* In each contract under which equipment, material, or commodities may be shipped by oceangoing vessels, you must include the clause specified in Department of Transportation regulations at 46 CFR 381.7(b) to require that at least 50 percent of equipment, materials or commodities purchased or otherwise obtained with Federal funds under this award, and transported by ocean vessel, be transported on privately owned U.S.-flag commercial vessels, if available.

# PART 1134—FINANCIAL, PROGRAMMATIC, AND PROPERTY REPORTING: GENERAL AWARD TERMS AND CONDITIONS

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APPENDIX E TO PART 1134—TERMS AND CONDITIONS FOR REP ARTICLE V, ''OTHER REPORTING''

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 85 FR 51171, Aug. 19, 2020, unless otherwise noted.

### § 1134.1 Purpose of this part.

(a) This part specifies standard wording of general terms and conditions concerning recipients' reporting requirements.

(b) It thereby implements OMB guidance on reporting in 2 CFR part 170 and the following portions of 2 CFR part 200, as they relate to general terms and conditions of grants and cooperative agreements:

(1) 2 CFR 200.301 and 200.327 through 200.329; and

(2) 2 CFR 200.300(b) as it relates to subaward reporting, 200.312(a) as it relates to inventories of federally owned property, and 200.343(a) as it relates to financial and performance reporting.

### § 1134.2 Applicability of this part.

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

### § 1134.3 Exceptions from requirements of this part.

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

### § 1134.4 Organization of this part.

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms

and conditions address rights and responsibilities of the Federal Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) Table 1 shows which article of general terms and conditions may be found in each of appendices A through D to this part (with the associated direction to DoD Components in Subparts A through D, respectively):

TABLE 1 TO PARAGRAPH (c)

| In . . . | You will find terms and conditions specifying recipients' rights and responsibilities related to . . . | That would appear in an award within REP Article . . . |
|---|---|---|
| Appendix A | Performance management, monitoring, and reporting | I. |
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## Subpart A—Performance Management, Monitoring, and Reporting (REP Article I)

### § 1134.100 Purpose of REP Article I.

REP Article I of the general terms and conditions specifies requirements related to recipient reporting on program performance. It thereby implements OMB guidance for grants and cooperative agreements in:

(a) 2 CFR 200.328; and

(b) Portions of 2 CFR 200.301 and 200.343(a) that relate to performance reporting.

### § 1134.105 Performance reporting for construction awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(c) notes that agencies rely heavily on onsite technical inspections and certified percentage of completion data to monitor progress under construction grants and cooperative agreements and states that agencies may require additional performance reports only when considered necessary.

(b) *DoD implementation.* DoD Components may require performance reports under construction awards only when necessary and, to reduce recipient burdens, should coordinate the performance reporting with financial reporting to the maximum extent practicable.

(c) *Award terms and conditions.* (1) If a DoD Component has general terms and conditions specifically for construction awards and does not need performance reports for those awards, it:

(i) Should reserve Sections A through D of REP Article I in those terms and conditions;

(ii) Must follow the specifications in §§ 1134.135 and 1134.145 to include the wording appendix A to this part provides for Sections E and G of REP Article I in those terms and conditions, in order to require recipients to promptly report significant developments and reserve the DoD Component's right to make site visits.

(iii) Must follow the specifications in § 1134.140 to insert wording in Section F of REP Article I in those terms and conditions, to tell recipients where and how to submit any reports of significant developments.

(2) If a DoD Component has general terms and conditions specifically for construction awards and determines that it needs performance reports for those awards:

(i) It may tailor the template and content that appendix A to this part provides for Sections A through D of REP Article I in those terms and conditions, as needed to specify the reporting requirements or, as appropriate, instead integrate those requirements into REP Article II on financial reporting. The form, format, or data elements that the DoD Component specifies for any of those performance reports must comply with requirements of the Paperwork Reduction Act of 1995, as implemented by OMB at 5 CFR

part 1320, to use OMB-approved information collections if more than 9 recipients will be subject to the reporting requirement.

(ii) It must follow the specifications in §§1134.135 through 1134.145 concerning Sections E through G of REP Article I in those terms and conditions, as described in paragraphs (c)(1)(ii) and (iii) of this section.

### § 1134.110 Performance reporting for non-construction awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(f) states that an agency may waive any performance report that it does not need.

(b) *DoD implementation*—(1) *Interim reports.* DoD Components should waive requirements for interim performance reports under non-construction awards, including research awards, only when program managers have an alternative source for the information that the reports provide in support of the need for technical program oversight during the period of performance.

(2) *Final reports*—(i) *Research.* DoD Components may not waive requirements for final performance reports under research awards, even when program managers have other sources of the information they contain. A primary purpose of a final report under a research award is to document the overall project or program well enough to serve as a long-term reference from which others may understand the purpose, scope, approach, results or outcomes, and conclusions or recommendations of the research.

(ii) *Non-construction awards other than research.* DoD Components should consider the long-term value of final performance reports for documenting program outcomes, as well as any near-term value, before waiving requirements for final reports under other non-construction awards.

(c) *Award terms and conditions.* Appendix A to this part provides a template for REP Article I of the general terms and conditions of research awards or other non-construction awards under which performance reports are required. A DoD Component must either use the wording that appendix A provides or insert wording into the template, in accordance with §§1134.115 through 1134.145, to:

(1) Specify the content and form, format, or data elements recipients must use for interim and final performance reporting (see §1134.115);

(2) Specify the reporting frequency, reporting periods, and due dates for interim performance reports (see §1134.120);

(3) Specify the due dates and reporting periods for final performance reports (see §1134.125);

(4) Specify that recipients may request extensions of due dates for performance reports (see §1134.130);

(5) Require recipients to report significant developments (see §1134.135);

(6) Specify reporting procedures (see §1134.140); and

(7) Reserve the DoD Component's right to make site visits (see §1134.145).

### § 1134.115 Content and forms, formats, or data elements for interim and final performance reporting under non-construction awards.

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.301 and 200.328(b)(2) state that Federal awarding agencies must require recipients to use standard OMB-approved information collections for reporting performance information.

(2) 2 CFR 200.328(b)(2)(i) through (iii) list types of information that performance reports under non-construction grants and cooperative agreements will contain, as appropriate, unless other collections are approved by OMB.

(b) *DoD implementation.* (1) The content of the information collections that a DoD Component's general terms and conditions specify for non-construction awards must include the elements listed in 2 CFR 200.328(b)(2)(i) through (iii) that are appropriate to the projects or programs subject to those general terms and conditions.

(2) Forms, formats, and data elements that a DoD Component's general terms and conditions specify for performance reporting under non-construction awards must comply with requirements of the Paperwork Reduction Act of 1995 to use OMB-approved information collections, as implemented by OMB at 5 CFR part 1320.

(3) To the maximum extent practicable, a DoD Component's general

terms and conditions for non-construction awards must specify that recipients use Governmentwide standard forms, formats, and data elements that also are used by other Federal agencies for similar programs, recipients, and types of awards (*e.g.*, the Research Performance Progress Report format or any successor to it that OMB clears for interim performance progress reports under research awards to institutions of higher education and nonprofit organizations).

(c) *Award terms and conditions.* To implement the provisions of paragraphs (a) and (b) of this section, a DoD Component must insert wording in lieu of the reserved Section A of REP Article I of its general terms and conditions for non-construction awards to specify the form, format, or data elements that recipients must use for interim and final performance reports. Section A of REP Article I may specify a different requirement for final performance reports than interim reports.

### § 1134.120 Frequency, reporting periods, and due dates for interim performance reporting under non-construction awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(b)(1) addresses performance reporting frequency under grants and cooperative agreements and due dates.

(1) *Reporting frequency.* The OMB guidance states that interim performance reports should be no less frequent than annually, nor more frequent than quarterly except in unusual circumstances (*e.g.*, when more frequent reporting is necessary for effective program monitoring).

(2) *Due dates.* The OMB guidance states that due dates for interim performance reports must be:

(i) 30 calendar days after the end of the reporting period if interim reports are required quarterly or semiannually; and

(ii) 90 calendar days after the end of the reporting period if interim reports are required annually, unless the agency elects to require the annual reports before the anniversary dates of multiyear awards.

(b) *DoD implementation.* DoD implements the OMB guidance in 2 CFR 200.328(b)(1) concerning frequency and due dates of interim performance reports through award terms and conditions, with the following clarifications and added specifications concerning reporting periods:

(1) *Reporting frequency.* DoD Components rarely, if ever, should require recipients to submit interim performance reports more often than annually for basic research awards. Before requiring interim performance reports more frequently than annually for other research awards, DoD Components should carefully consider whether the benefits of more frequent reporting are sufficient to offset the potential for slowing the rate of research progress, due to diversion of researchers' time from research performance to report preparation.

(2) *Reporting periods.* For research awards, a DoD Component should not require any recipient to submit interim performance reports on a cumulative basis—*i.e.*, the second and any subsequent performance report should address only the most recent reporting period and not also address previous reporting periods covered by earlier interim performance reports.

(3) *Due dates.* If a DoD Component requires an interim report more frequently than quarterly due to unusual circumstances, as described in 2 CFR 200.328(a)(1) and paragraph (a)(1) of this section, the DoD Component must specify that the due date for the report is 30 days after the end of the reporting period. For all other interim reports, DoD Components must specify due dates in accordance with paragraph (a)(2) of this section.

(c) *Award terms and conditions.* A DoD Component must insert wording in lieu of the reserved Section B of REP Article I of its general terms and conditions for non-construction awards to specify:

(1) The frequency with which recipients must submit interim performance reports;

(2) The reporting period each interim performance report must cover; and

(3) The due date for each interim performance report, stated as the number of calendar days after the end of the reporting period.

### § 1134.125 Due dates and reporting periods for final performance reports under non-construction awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(b)(1) states that each final performance report will be due 90 calendar days after the end date of the period of performance. It also states that an agency may extend the due date if a recipient submits a justified request.

(b) *DoD implementation*—(1) *Due dates.* Consistent with 2 CFR 200.328(b)(1):

(i) *General.* A DoD Component's general terms and conditions must specify that the due date for each recipient's submission of its final performance report is:

(A) 90 calendar days after the end of the period of performance for non-construction awards other than research.

(B) 120 calendar days after the end of the period of performance for research awards.

(ii) *Exception.* A DoD Component may pre-approve a 30-day extension to the due date in its general terms and conditions for non-construction awards other than research by specifying that each recipient's final performance report is due 120 calendar days after the end of the period of performance. Doing so would be especially helpful to recipients that have subawards and need time to assimilate subrecipient inputs into the final report for the project or program as a whole.

(2) *Reporting periods*—(i) *Non-construction awards other than research.* A DoD Component's general terms and conditions for non-construction awards other than research may require each recipient to submit a final report that is cumulative and covers the entire period of performance, as that may more effectively document the project or program for future reference.

(ii) *Research.* Final reports for research awards must be cumulative (*i.e.,* each final report must cover the entire period of performance under the award and not just the period since the previous interim performance report) because a primary purpose of a final report for a research award is to document the overall project or program, as described in § 1134.110(b)(2).

(c) *Award terms and conditions.* To implement the provisions of paragraphs (a) and (b) of this section, a DoD Component in its general terms and conditions for non-construction awards:

(1) Must either:

(i) Specify that the due date for final performance reports is either 90 or 120 calendar days after the end of the period of performance, as indicated in paragraph (b)(1)(i), by including the wording that appendix A to this part provides for paragraph C.1 of REP Article I and modifying the bracketed language in that wording by removing the brackets and showing only the number of days (*i.e.,* 90 or 120 calendar days) appropriate for the type of awards; or

(ii) Pre-approve a 30-day extension to the 90 calendar day due date, as described in paragraph (b)(1)(ii) of this section for non-construction awards other than research, by including the wording that appendix A to this part provides for paragraph C.1 of REP Article I and modifying the bracketed language in that wording by removing the brackets and showing only ''120 calendar days'' in lieu of ''90 calendar days.''

(2) Must insert wording in lieu of the reserved paragraph C.2 of REP Article I, to specify the reporting period for final reports (*e.g.,* that research awards require cumulative final reports).

### § 1134.130 Requesting extensions of due dates for performance reports.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(b)(1) states that, if a recipient submits a justified request for an extension in the due date for any interim or final performance report under a grant or cooperative agreement, an agency may extend the due date.

(b) *DoD implementation.* A DoD Component's general terms and conditions for non-construction awards must specify that a recipient may request an extension of the due date for interim or final performance reports. DoD Components should grant requests that provide adequate justification. For a DoD Component that pre-approves a 30-day extension of due dates for final performance reports in its general terms and conditions, as described in § 1134.125(b)(1)(ii) and (c)(1)(ii), any award-specific extensions would be beyond the pre-approved 30-day extension.

(c) *Award terms and conditions.* To implement the provisions of paragraphs (a) and (b) of this section, a DoD Component's general terms and conditions for non-construction awards must include the wording that appendix A to this part provides for Section D of REP Article I on extensions of performance reporting due dates.

### § 1134.135 Reporting significant developments.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(d) states that a recipient must promptly notify the awarding agency about significant developments under grants and cooperative agreements.

(b) *DoD implementation.* A DoD Component's general terms and conditions must require recipients to report significant developments, as described in 2 CFR 200.328(d).

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include the wording that appendix A to this part provides for Section E of REP Article I on reporting of significant developments.

### § 1134.140 Performance reporting procedures.

(a) *Requirement.* A DoD Component's general terms and conditions must inform recipients about performance reporting procedures.

(b) *Award terms and conditions.* To implement the requirement of paragraph (a) of this section, a DoD Component in its general terms and conditions must insert wording in Section F of REP Article I (which is reserved in the template for REP Article I that appendix A to this part provides), to specify:

(1) The office or offices to which a recipient must submit its interim and final performance reports, any requests in due dates for those reports, and any reports of significant developments; and

(2) How the recipient is to submit those reports and requests (*e.g.,* email or other electronic submission method).

(3) For research awards, component must assure that the recipient final report complies with the distribution and marking requirements of DoD Manual 3200.14, Volume 1. This includes the requirement that all significant scientific or technological findings, recommendations, and results derived from DoD endeavors—which shall include the final performance report at a minimum—are recorded and provided to Defense Technical Information Center (DTIC). Follow guidance in (b)(1) to inform recipients as the submission and distribution requirements (*i.e.* Component may choose to receive the report and submit to DTIC themselves or provide instructions to recipient on submission to DTIC).

(4) Access to Research Results

(i) For purposes of this term and condition, the following definition applies:

*Final Peer-Reviewed Manuscript:* The final version of a peer-reviewed article for a professional journal publication disclosing the results of scientific research which is authored or co-authored by the recipient or funded, in whole or in part, with funds from a DoD award, that includes all modifications from the publishing peer review process, and all graphics and supplemental material associated with the article.

(ii) The recipient shall ensure that any Final Peer-Reviewed Manuscript is submitted to the Defense Technical Information Center (DTIC) repository, currently at *www.dtic.mil.* Ensure that the Final Peer-Reviewed Manuscript is submitted when it is accepted for publication, and when the final title and date of publication are known.

### § 1134.145 Site visits.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(e) states that a Federal awarding agency may make site visits as warranted by program needs.

(b) *DoD implementation.* A DoD Component's general terms and conditions must state that the Federal Government reserves the right to make site visits as warranted.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include the wording that appendix A to this part provides for Section G of REP Article I concerning site visits.

## Subpart B—Financial Reporting (REP Article II)

### § 1134.200 Purpose of REP Article II.

REP Article II of the general terms and conditions specifies requirements related to financial reporting. It thereby implements OMB guidance in 2 CFR 200.327 and the portions of 2 CFR 200.301 and 200.343(a) that are specific to financial reporting under grants and cooperative agreements.

### § 1134.205 Reporting forms, formats, or data elements.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.327 states that Federal awarding agencies may require recipients to use only the standard OMB-approved Governmentwide data elements for collection of financial information, unless OMB approves other forms, formats, or data elements for financial information collection.

(b) *DoD implementation.* DoD Components must collect financial information from recipients using OMB-approved forms, formats, or data elements.

(1) Unless current approvals expire, approved financial information collections include the Federal Financial Report (SF–425) and Request for Advance or Reimbursement (SF–270). In the future, they would include any additional information collections that OMB approves.

(2) For all but the recipient's final financial report, a DoD Component may rely on financial information the recipient provides on the SF–270 or other OMB-approved payment request form, format, or data elements if that financial information is sufficient to meet the DoD Component's needs. For the final report, the DoD Component must require the recipient to use the SF–425 or other OMB-approved financial information collection.

(3) A DoD Component must obtain approval for any variations from OMB-approved forms or formats, including use of additional or substitute data elements or modification of the associated instructions for recipient entities submitting the information.

### § 1134.210 Content of REP Article II.

(a) *Requirement.* A DoD Component's general terms and conditions must specify what financial information recipients are required to report and how often, when, where, and how they must report.

(b) *Award terms and conditions*—(1) *General.* Appendix B to this part provides a template into which a DoD Component must insert wording to specify the form, format, or data elements recipients must use for financial reporting; the frequency, reporting periods, and due dates for their financial reports (stated as the number of days after the end of the reporting period); and where and how they must submit the information.

(2) *Required reporting form, format, or data elements for interim and final financial reports.* In Section A of REP Article II, which is reserved in appendix B to this part, a DoD Component must insert wording to specify the OMB-approved form, format, or data elements that recipients must use for financial reporting and the website where they can be found. The section may provide a different requirement for final financial reports than interim reports during the period of performance if the DoD Component needs less information on interim reports than is needed on the final report.

(3) *Interim financial reports: Frequency, reporting periods, and due dates.* In Section B of REP Article II, which is reserved in appendix B to this part, a DoD Component must insert wording to specify the frequency with which recipients must submit interim financial reports, as well as the reporting period each report must cover and when it is due. However, this section of the article may waive interim reporting requirements if the DoD Component relies on information already provided with payment requests (*e.g.*, on the SF–270).

(i) Consistent with OMB guidance in 2 CFR 200.327, the reporting frequency may be no less often than annually and no more frequently than quarterly except in unusual circumstances (*e.g.*, a need for more frequent reporting for monitoring program performance, in which case financial reporting should

be coordinated with performance reporting).

(ii) The reporting frequency, reporting periods, and due dates must conform with any guidance on those aspects of financial reporting in the OMB-approved instructions accompanying the form, format, or data elements used.

(iii) When a DoD Component's general terms and conditions provide for advance payments based on predetermined schedules—which is very rarely if ever appropriate for research awards—the terms and conditions must provide for quarterly reporting. This will enable post-award administrators to closely monitor recipients' balances of cash on hand for compliance with Governmentwide cash management standards.

(4) *Final financial report.* Appendix B to this part provides wording for Section C of REP Article II to implement OMB guidance in 2 CFR 200.343(a) as it applies to final financial reports. Given that 2 CFR part 200 provides 90 days for subrecipients to liquidate subaward obligations and submit their final financial reports to recipients, the wording in appendix B gives recipients 120 days to submit final financial reports to DoD post-award administration offices. That provides a reasonable amount of time for recipients to incorporate any information they need from final subaward reports. A DoD Component may alter the wording or supplement it if the DoD Component has a basis to do so in a statute or a regulation published in the Code of Federal Regulations.

(5) *Extensions of due dates.* A DoD Component's general terms and conditions must include the wording for Section D of REP Article II that appendix B to this part provides to authorize recipients to request extensions of due dates for interim or final financial reports.

(6) *Where and how to submit financial reports.* In Section E of REP Article II, which is reserved in appendix B to this part, a DoD Component must insert wording to specify the DoD official or office to whom a recipient must submit its interim and final financial reports and the method it must use to do so (*e.g.*, email or other electronic submission method).

## Subpart C—Reporting on Property (REP Article III)

### § 1134.300 Purposes of REP Article III.

REP Article III of the general terms and conditions provides a consolidated source that sets out required reports, notifications, requests, and accountings related to federally owned property and property that is acquired or improved under awards. The article is:

(a) The original source of requirements for recipients to:

(1) Submit periodic status reports and notifications of critical changes for real property (in paragraphs A.1 and A.2 of the article), which thereby implements OMB guidance in 2 CFR 200.329;

(2) Submit an annual inventory of federally owned property (in paragraph C.1 of the article), which thereby partially implements OMB guidance in 2 CFR 200.312(a);

(3) Provide information on request about copyrighted works and data produced under awards (in paragraph D.2 of the article).

(b) A secondary source provided for the convenience of recipients and DoD post-award administrators that lists and refers to the original sources of requirements for recipients to:

(1) Request disposition instructions and account at closeout for real property (in paragraphs A.3 and A.4 of the article), the original sources of which are in PROP Article III and OAR Article VI;

(2) Provide notifications of loss, damage, or theft and requests for disposition instructions for equipment (in paragraphs B.2 and B.3 of the article), the original sources of which are in PROP Articles II and IV, respectively;

(3) Account at closeout for equipment and supplies (in paragraph B.4 of the article), the original sources of which are in OAR Article VI and PROP Article IV;

(4) Provide notifications of loss, damage, or theft and requests for disposition instructions for federally owned property (in paragraphs C.2 and C.3 of the article), the original sources of

which are in PROP Articles II and V, respectively;

(5) Disclose and report on inventions developed under awards (in paragraph D.1), the original source of which is in PROP Article VI; and

(6) Request disposition instructions for intangible property acquired, but not developed or produced, under awards (in paragraph D.3 of the article), the original source of which is in PROP Article VI.

### § 1134.305 Real property: reports, notifications, requests, and accounting.

(a) *Requirement.* A DoD Component's general terms and conditions must specify the real property reporting requirements described in §1134.300(a)(1) and provide references to the related requirements described in §1134.300(b)(1).

(b) *Award terms and conditions.* To implement the requirement described in paragraph (a) of this section, the wording of Section A of REP Article III of a DoD Component's general terms and conditions must comply with either paragraph (b)(1) or (b)(2) of this section.

(1) *General.* Unless a DoD Component determines that there will be no acquisition or improvement of real property under awards using its general terms and conditions, those general terms and conditions must include the wording appendix C to this part provides for Section A of REP Article III, to which the DoD Component:

(i) Must add wording in lieu of the reserved paragraph A.1.a to specify how often a recipient must submit periodic status reports and how long it is required to do so (which should be the duration of the Federal interest in the real property). The wording of paragraph A.1.a must be consistent with OMB guidance in 2 CFR 200.329, which provides different options for reporting frequency depending on the duration of the Federal interest in the real property.

(ii) Must add wording in lieu of the reserved paragraph A.1.b to specify the due date for each periodic status report in terms of the number of calendar days after the end of the period covered by the report (*e.g.*, a report on the status of the property as of September 30 might be due 30 calendar days after that date).

(iii) May provide wording in lieu of the reserved paragraph A.1.c if there are other instructions—*e.g.*, a form, format, or information elements that a recipient must use (which must be cleared by OMB under the Paperwork Reduction Act, as implemented by OMB at 5 CFR part 1320) or a particular office to which reports must be submitted, especially if reporting will continue beyond closeout of the award under which the real property was acquired or improved.

(2) *Exception.* A DoD Component may reserve Section A of REP Article III if it determines that there will be no acquisition or improvement of real property under awards using its general terms and conditions.

### § 1134.310 Equipment and supplies: reports, notifications, requests, and accounting.

(a) *Requirement.* REP Article III of a DoD Component's general terms and conditions must clarify that there is no requirement for routine periodic reporting about equipment acquired under an award and provide the references described in §1134.300(b)(2) and (3) to requirements in other articles for notifications, requests, and accounting related to equipment and supplies.

(b) *Award terms and conditions.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix C to this part provides for Section B of REP Article III.

### § 1134.315 Federally owned property: inventory, notifications, and requests.

(a) *Requirement.* REP Article III of a DoD Component's general terms and conditions must specify the reporting requirement described in §1134.300(a)(2) and provide the references described in §1134.300(b)(4) to requirements in other articles for notifications and requests related to federally owned property.

(b) *Policy.* (1) Except as provided by statute or in regulations adopted in the Code of Federal Regulations after opportunity for public comment, a DoD Component may not specify:

(i) Due dates for the annual inventories of federally owned property; or

(ii) Forms, formats, or specific data elements for the inventories, notifications, or requests for disposition instructions. Any form, format, or data elements that a DoD Component specifies must be cleared by OMB under the Paperwork Reduction Act, as implemented by OMB at 5 CFR part 1320.

(2) Not specifying due dates, forms, formats, or data elements provides flexibility for recipients and DoD post-award administrators to handle these requirements in ways that reduce burdens and costs. For example, a recipient may arrange with a post-award administration office to submit one consolidated inventory annually for federally owned property under all of the awards it receives that are administered by that office, using a format its property management system already generates.

(c) *Award terms and conditions*—(1) *General.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix C to this part provides for Section C of REP Article III. The DoD Component may add wording on due dates or on forms, formats, or data elements only as provided in paragraph (b) of this section.

(2) *Exception.* A DoD Component may reserve Section C of REP Article III if it determines that no recipients of awards using its general terms and conditions, or subrecipients of subawards under those awards, will be accountable for federally owned property under those awards or subawards.

### § 1134.320 Intangible property: disclosures, reports, and requests.

(a) *Requirement.* REP Article III of a DoD Component's general terms and conditions must specify the requirement described in §1134.300(a)(3) and provide the references described in §1134.300(b)(5) and (6) to requirements in other articles for disclosures, reports, and requests related to intangible property.

(b) *Award terms and conditions*—(1) *General.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix C to this part provides for Section D of REP Article III.

(2) *Exceptions.* A DoD Component may reserve:

(i) Section D of REP Article III if it determines that no recipients of awards using its general terms and conditions, or subrecipients of subawards under those awards, will have any intangible property for which they will be accountable to the Federal Government; or

(ii) Any of paragraphs D.1 through D.3, if it determines that no recipients of awards using its general terms and conditions, or subrecipients of subawards under those awards, will be accountable to the Federal Government for the particular types of intangible property addressed by those paragraphs.

## Subpart D—Reporting on Subawards and Executive Compensation (REP Article IV)

### § 1134.400 Purpose of REP Article IV.

REP Article IV of the general terms and conditions specifies requirements for recipients to report information about subawards and executive compensation.

### § 1134.405 Content of REP Article IV.

(a) *Source of the reporting requirements.* The requirements for recipients to report information about subawards and executive compensation originate in the Federal Funding Accountability and Transparency Act of 2006, as amended (31 U.S.C. 6101 note). OMB guidance at 2 CFR part 170 implements those statutory requirements and appendix A to that part provides standard Governmentwide wording of an award provision.

(b) *Award terms and conditions.* To implement the reporting requirements described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix E to this part provides as REP Article IV.

## Subpart E—Other Reporting (REP Article V)

### § 1134.500 Purpose of REP Article V.

REP Article V of the general terms and conditions specifies requirements for recipients to provide any type of report not addressed in REP Articles I–IV.

### § 1134.505 Content of REP Article V.

(a) *Source of reporting requirement.* Any requirement in a DoD Component's general terms and conditions for recipients to provide a type of report not addressed in REP Articles I–IV must:

(1) Have a basis in a statute or regulation adopted in the FEDERAL REGISTER after an opportunity for public comment; and

(2) Use a form/format that has been approved by OMB under the PRA, as implemented by OMB in 5 CFR part 1320.

(b) *Award terms and conditions.* (1) To implement any reporting requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must include the following content in REP Article V, consistent with the PRA approval. Otherwise, REP Article V must be reserved.

(a) The name of the report and where a recipient can obtain it;

(b) For an interim report, the frequency with which it must be submitted and due date(s);

(c) For a final report, whether the report is due 90 days or, if the DoD Component has pre-approved a 30-day extension, 120 days after the end of the period of performance; and

(d) To what DoD office/official the report(s) must be submitted.

(2) If there is more than one such report, the DoD Component must show the information for each in separate sections of the article.

## APPENDIX A TO PART 1134—TERMS AND CONDITIONS FOR REP ARTICLE I, ''PERFORMANCE MANAGEMENT, MONITORING, AND REPORTING''

For the general terms and conditions of construction awards, unless a DoD Component reserves any sections or inserts or modifies wording, as specified in § 1134.105 for Sections A through D of the article, a DoD Component's general terms and conditions must use the following wording for REP Article I.

For the general terms and conditions of non-construction awards (§§ 1134.115 through 1134.145), a DoD Component must use the following wording for REP Article I and, as specified in §§ 1134.115 through 1134.125 and § 1134.140, insert or modify wording, depending on whether the terms and conditions are for research and/or other non-construction awards.

REP ARTICLE I. PERFORMANCE MANAGEMENT, MONITORING, AND REPORTING. (DECEMBER 2014)

*Section A. Required reporting form, format, or data elements for interim and final performance reports.* [Reserved]

*Section B. Frequency, reporting periods, and due dates for interim performance reports.* [Reserved]

*Section C. Due date and reporting period for final performance report.*

1. *Due date.* You must submit the final performance report under this award no later than [90 calendar days for non-construction awards other than research or 120 calendar days for research awards] after the end date of the period of performance unless we approve an extension of that due date as described in Section D of this article.

2. *Reporting period.* [Reserved]

*Section D. Extensions of due dates.* You may request extensions of the due dates that Sections B and C of this Article specify for interim and final reports, respectively. You must provide the reasons for your request and we will approve extensions that are adequately justified.

*Section E. Reporting significant developments.* You must report the following information to us as soon as you become aware of it:

1. Problems, delays, or adverse conditions that will materially impair your ability to meet the objectives of this award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

2. Favorable developments which will enable you to meet schedules and objectives sooner or at less cost than anticipated or produce more or different beneficial results than originally planned.

*Section F. Performance reporting procedures.* [Reserved]

*Section G. Site visits.* We reserve the right to make site visits as warranted to monitor program performance under this award.

## APPENDIX B TO PART 1134—TERMS AND CONDITIONS FOR REP ARTICLE II, ''FINANCIAL REPORTING''

A DoD Component must in its general terms and conditions complete the template provided in this appendix for Sections A, B,

and E of REP Article II by inserting or modifying wording, as specified in §1134.210, and use the following wording for Sections C (unless alternate wording is permitted by §1134.210) and D of the article.

REP ARTICLE II. FINANCIAL REPORTING. (DECEMBER 2014)

*Section A. Required reporting form, format, or data elements for interim and final financial reports.* [Reserved]

*Section B. Interim financial reports: Frequency, reporting periods, and due dates.* [Reserved]

*Section C. Final financial report.* You must submit the final financial report under this award no later than 120 calendar days after the end date of the period of performance.

*Section D. Extensions of due dates.* You may request extensions of the due dates that Sections B and C of this Article specify for interim and final reports, respectively. You must provide the reasons for your request, and we will approve extensions that are adequately justified.

*Section E. Where and how to submit financial reports.* [Reserved]

## APPENDIX C TO PART 1134—TERMS AND CONDITIONS FOR REP ARTICLE III, ''REPORTING ON PROPERTY''

Unless a DoD Component reserves REP Article III in its entirety as specified in §1134.305, or reserves Sections C or D (or any paragraph in those sections) as specified in §§1134.315 and 1134.320, a DoD Component's general terms and conditions must include a completed Section A (as specified in §1134.305) and use the following wording for the remainder of REP Article III.

REP ARTICLE III. REPORTING ON PROPERTY (DECEMBER 2014)

*Section A. Real property.* Paragraphs A.1 through A.4 apply to real property for which you are accountable under this award, for as long as there is a Federal interest in the property (whether that interest is due to you or a subrecipient having acquired or improved the property under this award, or a transfer of the accountability for the property to this award from another award).

1. *Periodic status reports.* You must submit periodic status reports, as follows:

a. *Frequency and duration of reporting requirement.* [Reserved]

b. *Due dates.* [Reserved]

c. *Other submission instructions.* [Reserved]

2. *Notifications of critical changes.* You must notify the award administration office of any critical change in the status of real property as soon as feasible after you become aware of it. A critical change is any event with a significant adverse impact on the condition or value of the property, such as damage due to fire; flood, hurricane, or other severe weather; earthquake; or accident.

3. *Requests for disposition instructions.* You must comply with applicable requirements in PROP Article III to request disposition instructions, either during the period of performance or at closeout.

4. *Closeout accounting.* You must account to the award administration office for real property at the time of closeout of the award, as required by Section D of OAR Article VI.

*Section B. Equipment and supplies.* Paragraphs B.1 through B.4 apply to equipment or supplies for which you are accountable under this award and in which there is a Federal interest (whether that interest is due to you or a subrecipient having acquired or improved the property under this award, or a transfer of the accountability for the property to this award from another award).

1. *Periodic status report.* There is no requirement for periodic reporting during the period of performance.

2. *Notifications of loss, damage, or theft.* You must comply with applicable requirements in PROP Article II governing your property management system to promptly notify the award administration office of any loss, damage, or theft of equipment.

3. *Requests for disposition instructions.* You must comply with applicable requirements in PROP Article IV to request disposition instructions for equipment, either during the period of performance or at closeout.

4. *Closeout accounting.*

a. *Equipment.* You must account to the award administration office for equipment at the time of closeout of this award, as required by Section D of OAR Article VI.

b. *Supplies.* If you have a residual inventory of unused supplies that meets the criteria specified in paragraph E.2 of PROP Article IV, you must as part of your closeout accounting arrange with the award administration office for the compensation that paragraph specifies for the Federal interest in the supplies.

*Section C. Federally owned property.* Paragraphs C.1 through C.3 apply to federally owned property for which you are accountable under this award.

1. *Annual inventory.* You must submit annually to the award administration office an inventory of federally owned property.

2. *Notifications of loss, damage, or theft.* As provided in PROP Article II governing your property management system, you must promptly notify the award administration office of any loss, damage, or theft of federally owned property.

3. *Requests for disposition instructions.* You must comply with requirements in Section B of PROP Article V to request disposition instructions, either during the period of performance or at closeout.

4. *Closeout accounting.* Your requests for disposition instructions for federally owned property, as described in paragraph C.3 of this section, satisfy the need to account for federally owned property at closeout (see Section D of OAR Article VI).

*Section D. Intangible property.* Paragraphs D.1 through D.3 apply to intangible property for which you are accountable under this award.

1. *Inventions developed under the award.* You must submit all reports on subject inventions developed under this award that are required by the modified Governmentwide patent rights award provision specified in Section B of PROP Article VI, which include a disclosure of each subject invention and a final report listing all such subject inventions.

2. *Copyrights and data.* You are not required to submit periodic reports about data produced under the award or about works for which you acquired ownership under this award, either by development or otherwise, and in which copyright was asserted. However, because of the DoD/Federal Government's rights in the works and data that Sections A and C of PROP Article VI specify, you must provide information about the works and data if we request it.

3. *Intangible property acquired, but not developed or produced, under the award.* You must comply with requirements in Section D of PROP Article VI to request disposition instructions for intangible property acquired, but not developed or produced, under the award.

### APPENDIX D TO PART 1134—TERMS AND CONDITIONS FOR REP ARTICLE IV, ''REPORTING ON SUBAWARDS AND EXECUTIVE COMPENSATION''

As specified in §1134.405, a DoD Component's general terms and conditions must use the following wording for REP Article IV.

REP ARTICLE IV. REPORTING ON SUBAWARDS AND EXECUTIVE COMPENSATION (DECEMBER 2014)

You must report information about subawards and executive compensation as specified in the award provision in appendix A to 2 CFR part 170, ''Reporting subaward and executive compensation information,'' modified as follows:

1. To accommodate any future designation of a different Governmentwide website for reporting subaward information, the website ''*http://www.fsrs.gov*'' cited in paragraphs a.2.i. and a.3 of the award provision is replaced by the phrase ''*http://www.fsrs.gov* or successor OMB-designated website for reporting subaward information'';

2. To accommodate any future designation of a different Governmentwide website for reporting executive compensation information, the website ''*http://www.sam.gov*'' cited in paragraph b.2.i. of the award provision is replaced by the phrase ''*https://www.sam.gov* or successor OMB-designated website for reporting information on total compensation''; and

3. The reference to ''Sec. __.210 of the attachment to OMB Circular A–133, 'Audits of States, Local Governments, and Non-Profit Organizations' '' in paragraph e.3.ii of the award provision is replaced by ''2 CFR 200.330, as implemented in SUB Article I of this award''.

### APPENDIX E TO PART 1134—TERMS AND CONDITIONS FOR REP ARTICLE V, ''OTHER REPORTING''

In accordance with §1134.505 of this part, a DoD Component's general terms and conditions must either reserve REP Article V or provide the information required by that section for each applicable report.

REP ARTICLE V. OTHER REPORTING. (DATE) [RESERVED]

# PART 1136—OTHER ADMINISTRATIVE REQUIREMENTS: GENERAL AWARD TERMS AND CONDITIONS

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AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 85 FR 51171, Aug. 19, 2020, unless otherwise noted.

### § 1136.1 Purpose of this part.

(a) This part specifies standard wording of general terms and conditions concerning submission and maintenance of recipient information; records retention and access; remedies for noncompliance and termination; claims, disputes, and appeals; collection of amounts due; closeout; and after-the-award requirements.

(b) It thereby implements OMB guidance for grants and cooperative agreements in multiple portions of 2 CFR part 200, as those portions apply to general terms and conditions. Specifically, this part implements:

(1) 2 CFR 200.113 and 200.210(b)(1)(iii);

(2) 2 CFR 200.300(b) as it refers to requirements in 2 CFR part 25; and

(3) 2 CFR 200.333 through 200.345.

### § 1136.2 Applicability of this part.

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

### § 1136.3 Exceptions from requirements of this part.

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

### § 1136.4 Organization of this part.

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Federal Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) Table 1 shows which article of general terms and conditions may be found in each of appendices A through G to this part (with the associated direction to DoD Components in Subparts A through G, respectively):

TABLE 1 TO PARAGRAPH (c)

| In . . . | You will find terms and conditions specifying recipients' rights and responsibilities related to . . . | That would appear in an award within OAR Article . . . |
|---|---|---|
| Appendix A | Submitting and maintaining recipient information | I. |
| Appendix B | Records retention and access | II. |
| Appendix C | Remedies and termination | III. |
| Appendix D | Claims, disputes, and appeals | IV. |
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| Appendix G | Post-closeout adjustments and continuing responsibilities | VII. |

## Subpart A—Submitting and Maintaining Recipient Information (OAR Article I)

### § 1136.100 Purpose of OAR Article I.

OAR Article I sets forth requirements for recipients to maintain current information about themselves in the data system the Federal Government specifies as the repository for standard information about its business partners, currently the System for Award Management. The article thereby implements OMB guidance in:

(a) 2 CFR 200.113 and 200.210(b)(1)(iii);

(b) 2 CFR part 25; and

(c) The portion of 2 CFR 200.300(b) that cites 2 CFR part 25 and the System for Award Management).

### § 1136.105 Content of OAR Article I.

To implement the requirement described in §1136.100, a DoD Component's general terms and conditions must use the standard wording appendix A to this part provides as OAR Article I. A DoD Component may reserve Section B of the article in its general terms and conditions if it is certain that there will be no award using those general terms and conditions for which the Federal share of the award's total value will exceed $500,000.

## Subpart B—Records Retention and Access (OAR Article II)

### § 1136.200 Purpose of OAR Article II.

OAR Article II addresses rights and responsibilities concerning retention of records related to awards; access to recipients' records; and collection, transmission, and storage of information. The article thereby implements OMB guidance in 2 CFR 200.333 through 200.337.

### § 1136.205 Records retention period.

(a) *OMB guidance.* OMB guidance in:

(1) The lead-in paragraph of 2 CFR 200.333 sets a standard retention period that is generally applicable to recipient records pertinent to grants and cooperative agreements.

(2) 2 CFR 200.333(c) and (f) provide different standard retention periods specifically for records that are related either to real property and equipment acquired with Federal funds or indirect cost rate proposals and cost allocation plans.

(b) *DoD implementation.* A DoD Component's general terms and conditions must specify the standard retention periods described in paragraph (a) of this section.

(c) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section A of OAR Article II.

(2) *Exception.* A DoD Component's general terms and conditions may substitute alternative wording for paragraph A.3 of OAR Article II if the awards using those terms and conditions will be renewed quarterly or annually. The alternative wording for awards that will be renewed quarterly or annually would replace the words ''final financial report'' in paragraph A.3 with ''quarterly financial report'' or ''annual financial report,'' respectively.

### § 1136.210 Extensions of retention period due to litigation, claim, or audit.

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.333(a) provides for an extended retention period for records involved in a litigation, claim, or audit that begins before the end of the standard 3-year retention period.

(2) 2 CFR 200.333(b) provides that a recipient also is required to extend the retention period when a Federal awarding, cognizant, or oversight agency notifies it in writing to do so.

(b) *DoD implementation.* (1) A DoD Component's general terms and conditions must provide for extended retention periods for records involved in a litigation, claim, or audit that begins before the end of the standard 3-year retention period, as described in 2 CFR 200.333(a).

(2)(i) Other than the exception described in paragraph (b)(2)(ii) of this section, DoD Components may not require recipients to extend the records retention period as described in 2 CFR 200.333(b).

(ii) A DoD Component's general terms and conditions must extend the ''retention period,'' as that term is used in 2 CFR 200.344(a), to include the entire period during which recipients retain their records, even if that period extends beyond the standard 3-year retention period described in §1136.205. That extension will enable disallowance of costs and recovery of funds based on an audit or other review of records a recipient elected to retain beyond the standard retention period, even if the audit or review began after the end of that retention period. Without that extension, the ability to disallow costs and recover funds would be limited by 2 CFR 200.344(a), which states that an agency must make any disallowance determination about a recipient's costs and notify the recipient within the record retention period.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section B of OAR Article II.

### §1136.215 Records for program income earned after the end of the performance period.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.333(e) provides the retention period for records related to program income earned under a grant or cooperative agreement after the end of the period of performance, if an agency establishes requirements governing the disposition of program income earned after that time.

(b) *DoD implementation.* A DoD Component's general terms and conditions should not establish retention requirements for records related to program income earned after the end of the period of performance. Retention requirements for those records in general terms and conditions would be inconsistent with the statement in 2 CFR 1128.725 that a DoD Component should rarely, if ever, establish a requirement for a recipient to be accountable for program income earned after the end of the period of performance. Section 1128.725 provides for use of general terms and conditions wording in FMS Article VII that establishes no such requirement. Section 1128.725 further states that exceptions for individual awards are properly addressed at the time of award in the award-specific terms and conditions.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section C of OAR Article II. If a DoD Component includes a requirement in the award-specific terms and conditions for the recipient to be accountable for program income earned after the end of the period of performance, it also may include a requirement in the award-specific terms and conditions for the recipient's retention of the associated records.

### §1136.220 Records for joint or long-term use.

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.334 states that a Federal awarding agency must request that a recipient transfer records to its custody if the agency determines that the records have value that warrants long-term retention. It also provides that the agency may instead arrange for the recipient to retain records that are continuously needed for joint use.

(2) 2 CFR 200.333(d) exempts records transferred to a Federal agency from the standard records retention requirement.

(b) *DoD implementation.* A DoD Component's general terms and conditions must inform recipients that they may be asked to transfer records, maintain them for joint use, or retain them for a longer period.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section D of OAR Article II.

### § 1136.225 Methods for collecting, transmitting, and storing information.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.335 addresses the use of electronic and paper formats in the collection, transmission, and storage of information related to awards.

(b) *DoD implementation.* A DoD Component's general terms and conditions must include provisions consistent with the guidance in 2 CFR 200.335 for recipients' use of electronic and paper formats to collect, transmit, and store information.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section E of OAR Article II.

### § 1136.230 Access to records.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.336 and 200.337 addresses Federal Government and public access to recipient records related to grants and cooperative agreements.

(b) *DoD implementation.* A DoD Component's general terms and conditions must provide for Federal Government access to records consistent with 2 CFR 200.336 and address public access to records to implement the guidance in 2 CFR 200.337.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section F of OAR Article II.

## Subpart C—Remedies and Termination (OAR Article III)

### § 1136.300 Purpose of OAR Article III.

OAR Article III addresses remedies for noncompliance, including suspension and termination of awards. It thereby implements OMB guidance in 2 CFR 200.338 through 200.340 and 200.342.

### § 1136.305 Content of OAR Article III.

(a) *Requirement.* A DoD Component's general terms and conditions must specify remedies available for addressing noncompliance with award terms and conditions, policies and procedures related to termination of awards, and effects of suspension and termination on allowability of costs.

(b) *Award terms and conditions.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix C to this part provides for OAR Article III.

## Subpart D—Claims, Disputes, and Appeals (OAR Article IV)

### § 1136.400 Purpose of OAR Article IV.

OAR Article IV addresses claims, disputes, and appeals under awards. It thereby provides the award terms and conditions required by the DoDGARs at 32 CFR 22.815 and also implements OMB guidance in 2 CFR 200.341.

### § 1136.405 Content of OAR Article IV.

(a) *Requirement.* The DoDGARs at 32 CFR 22.815 require DoD Components' general terms and conditions to incorporate the procedures set forth in that section for processing claims and disputes and deciding appeals of grants officer's decisions.

(b) *Award terms and conditions*—(1) *General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix D to this part provides for OAR Article IV, with wording inserted in lieu of the reserved paragraph A.2 to identify the Component's cognizant Grant Appeal Authority and provide his or her mailing or email address.

(2) *Exception.* A DoD Component may add one or more sections to the wording appendix D to this part provides for OAR Article IV to state a requirement that recipients must provide opportunities to subrecipients for hearings, appeals, or other administrative proceedings with respect to claims, disputes, remedies for noncompliance, or other matters if:

(i) That requirement is in a statute or regulation adopted in the Code of Federal Regulations after opportunity for public comment; and

(ii) The statutory or regulatory requirement applies to awards using the

DoD Component's general terms and conditions.

## Subpart E—Collection of Amounts Due (OAR Article V)

### § 1136.500 Purpose of OAR Article V.

OAR Article V addresses procedures for establishing, appealing, and collecting debts under DoD awards. It thereby:

(a) Provides requirements for recipients paralleling those for DoD Components in the DoDGARs at 32 CFR 22.820;

(b) Augments requirements of OAR Article IV in any case in which a claim leads to a determination that a recipient owes an amount to DoD; and

(c) Implements OMB guidance in 2 CFR 200.345.

### § 1136.505 Content of OAR Article V.

(a) *Requirement.* A DoD Component's general terms and conditions must specify how grants officers' decisions establish debts under awards, when debts become delinquent, how and when recipients may appeal, and how debts not paid in a timely manner are referred for debt collection.

(b) *Award terms and conditions.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix E to this part provides for OAR Article V.

## Subpart F—Closeout (OAR Article VI)

### § 1136.600 Purpose of OAR Article VI.

OAR Article VI addresses recipients' responsibilities for closeout of awards and subawards under them. The article thereby implements OMB guidance in 2 CFR 200.343.

### § 1136.605 Content of OAR Article VI.

(a) *Requirement.* A DoD Component's general terms and conditions must specify requirements related to closeout of awards and subawards, including recipients' liquidations of obligations, refunds of unobligated balances, and submission of final reports.

(b) *Award terms and conditions*—(1) *General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix F to this part provides for OAR Article VI.

(2) *Exception related to due dates for final reports other than performance, financial, and invention reports.* Consistent with OMB guidance in 2 CFR 200.343(a), a DoD Component may grant extensions to due dates for final reports.

(i) To pre-approve a 30-day extension for final reports other than performance, financial, and invention reports, a DoD Component may substitute ''120 calendar days'' for ''90 calendar days'' in the wording appendix F to this part provides for paragraph C.4 of OAR Article VI. These pre-approved 30-day extensions in the general terms and conditions are for all awards using those terms and conditions; they therefore are separate and distinct from any additional extensions a recipient may later request for an individual award.

(ii) The parallel authorities for pre-approved extensions of due dates for final performance and invention reports are elsewhere. DoDGARs provisions in:

(A) 2 CFR 1134.125 authorize a DoD Component to pre-approve a 30-day extension for due dates of performance reports by an appropriate substitution of wording in REP Article I of the general terms and conditions.

(B) 2 CFR 1130.610 authorize a DoD Component to pre-approve a 30-day extension for due dates of final reports listing subject inventions under awards by an appropriate substitution of wording in PROP Article VI of the general terms and conditions.

(C) 2 CFR 1134.505 authorize a DoD Component to pre-approve a 30-day extension for due dates of other types of final reports by inclusion of appropriate wording in REP Article V of the general terms and conditions.

## Subpart G—Post-Closeout Adjustments and Continuing Responsibilities (OAR Article VII)

### § 1136.700 Purpose of OAR Article VII.

OAR Article VII addresses post-closeout funding adjustments and recipients' continuing responsibilities after

award closeout. It thereby implements OMB guidance in 2 CFR 200.344.

### § 1136.705 Content of OAR Article VII.

(a) *Requirement.* A DoD Component's general terms and conditions must specify the rights and responsibilities of the Federal Government and recipients with respect to funding adjustments and recipients' continuing responsibilities after award closeout.

(b) *Award terms and conditions.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix G to this part provides for OAR Article VII.

## APPENDIX A TO PART 1136—TERMS AND CONDITIONS FOR OAR ARTICLE I, ''SUBMITTING AND MAINTAINING RECIPIENT INFORMATION''

Unless a DoD Component reserves Section B, as specified in §1136.105, a DoD Component's general terms and conditions must use the following wording for OAR Article I.

OAR ARTICLE I. SUBMITTING AND MAINTAINING RECIPIENT INFORMATION. (DECEMBER 2014)

*Section A. System for Award Management.*

1. Unless you are exempted from this requirement in accordance with OMB guidance in 2 CFR 25.110, you must maintain the currency of information about yourself in the system the Federal Government specifies as the repository for information about its business partners (currently the System for Award Management (SAM)).

2. You must maintain the information in that system until you submit the final financial report required under this award or receive the final payment, whichever is later.

3. You must review and update the information at least annually after your initial registration in the system (unless you are subject to the requirements in Section B) and more frequently if required by changes in your information.

*Section B. Reporting of Performance and Integrity Information.*

1. *General reporting requirement.* If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal agencies exceeds $10,000,000 for any period of time during the period of performance of this award, then during that period of time you must maintain in SAM the currency of information required by paragraph B.2 of this section. Note that:

a. This reporting is required under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313).

b. As required by section 3010 of Public Law 111–212, all performance and integrity information posted in the designated information system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

c. Recipient information is submitted to the OMB-designated integrity and performance system through the SAM, as described in paragraph B.3 of this section. The currently designated integrity and performance information system is the Federal Awardee Performance and Integrity Information System (FAPIIS).

2. *Proceedings about which you must report.* Submit the information that the designated information system requires about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent 5-year period; and

c. Is one of the following:

i. A criminal proceeding that resulted in a conviction, as defined in paragraph B.5. of this section;

ii. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

iii. An administrative proceeding, as defined in paragraph B.5. of this section, that resulted in a finding of fault and liability and your payment of either monetary fine or penalty of $5,000 or more or a reimbursement, restitution, or damages in excess of $100,000; or

iv. Any other criminal, civil, or administrative proceeding if:

(A) It could have led to an outcome described in paragraph B.2.c.i, ii, or iii of this section;

(B) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(C) The requirement in this section to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. *Reporting procedures.* Submit the information required in paragraph B.2 of this section to the Entity Management functional area of the SAM.

a. Current procedures are to submit the information as part of the maintenance of your information in the SAM that Section A of this article requires.

b. You do not need to submit the information again under this award if you already reported current information to the SAM

under another Federal grant, cooperative agreement, or procurement contract.

4. *Reporting frequency*. During any period of time when you are subject to the requirement in paragraph B.1 of this section, you must report to SAM at least semiannually following your initial report of any information required in paragraph B.2 of this section, either to provide new information not reported previously or affirm that there is no new information to report.

5. *Definitions*. For purposes of this section:

a. *Administrative proceeding* means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract, grant, or cooperative agreement. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. *Total value of currently active grants, cooperative agreements, and procurement contracts* includes:

i. Only the Federal share of the funding under any Federal agency award with a recipient cost share or match; and

ii. The value of all expected funding increments and options, even if not yet exercised, under each Federal agency award.

*Section C. Disclosure of evidence of integrity-related issues*.

1. *Disclosure requirement*. At any time during the period of performance of this award, if you have evidence that a covered person committed a covered action (see paragraphs C.2 and C.3 of this section) that may affect this award, you must disclose the evidence in writing to the Office of the Inspector General, DoD, with a copy to the grants officer identified in the award cover pages.

2. *Covered person*. As the term is used in this section, ''covered person'' means a principal, employee, or agent of either you or a subrecipient under this award, where:

a. ''Principal'' means:

i. An officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities that relate to this award; or

ii. A consultant or other person, whether or not employed by you or a subrecipient or paid with funds under this award, who:

(A) Is in a position to handle funds under this award;

(B) Is in a position to influence or control the use of those funds; or

(C) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the project or program under this award.

b. ''Agent'' means any individual who acts on behalf of, or who is authorized to commit you or the subrecipient, whether or not employed by you or the subrecipient.

3. *Covered action*. As the term is used in this section, ''covered action'' means a violation of Federal criminal law in Title 18 of the United States Code involving fraud, bribery, or a gratuity violation.

4. *Safeguarding of the information*.

a. To the extent permitted by law and regulation, we will:

i. Safeguard and treat information you disclose to us as confidential if you mark the information as ''confidential'' or ''proprietary.''

ii. Not release the information to the public in response to a Freedom of Information Act (5 U.S.C. 552) request without notifying you in advance.

b. We may transfer documents you provide to us to any other department or agency within the Executive Branch of the Federal Government if the information relates to matters within that organization's jurisdiction.

## APPENDIX B TO PART 1136—TERMS AND CONDITIONS FOR OAR ARTICLE II, ''RECORDS RETENTION AND ACCESS''

Unless a DoD Component substitutes alternate wording in paragraph A.3, a DoD Component's general terms and conditions must use the following wording for OAR Article II, as specified in §§1136.205 through 1136.230.

### OAR ARTICLE II. RECORDS RETENTION AND ACCESS. (DECEMBER 2014)

*Section A. Records retention period*. Except as provided in Sections B through D of this article:

1. You must keep records related to any real property and equipment acquired, in whole or in part, using Federal funds under the award for 3 years after final disposition of the property. For any item of exempt property with a current fair market value greater than $5,000, and for which final disposition was not a condition of the title vesting, you must keep whatever records you need for as long as necessary to ensure that you can deduct the Federal share if you later use the property in contributions for cost sharing or matching purposes under any Federal award.

2. You must keep records related to rate proposals for indirect or facilities and administrative costs, cost allocation plans, and supporting records such as indirect cost rate computations and any similar accounting

computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback or composite fringe benefit rates) as follows:

a. If you are required to submit a proposal, plan, or other computations to your Federal cognizant agency for indirect costs, as the basis for negotiation of a rate, you must keep the submissions and all supporting records for 3 years from the date on which you were required to make the submissions.

b. If you are not required to submit a proposal, plan, or other computation as the basis for negotiation, you must keep the proposal, plan, other computation, and supporting records for 3 years from the end of the fiscal year or other accounting period covered by the proposal, plan, or other computation.

3. You must keep other financial records, supporting documents, statistical records, and other records pertinent to this award for a period of 3 years from the date you submit your final financial report under the award.

*Section B. Extensions of retention period due to litigation, claim, or audit.*

1. If any litigation, claim, or audit begins before the end of the 3-year retention period specified in Section A of this article and the final action related to the litigation, claim, or audit is not taken before the end of that 3-year period, you must retain all records related to this award that may be involved in the litigation, claim, or audit until all findings involving the records have been resolved and final action taken.

2. We may disallow costs and recover funds under this award based on an audit or other review of records you elected to retain beyond the retention period required by this article, even if the audit or review begins after the end of the 3-year retention period specified in Section A of this article. Thus, the ''retention period,'' as that term is used in OMB guidance in 2 CFR 200.344(a)(1), is extended, as described in 2 CFR 200.333(b), to include the entire period during which we and our authorized representatives continue to have access to those records under paragraph F.2 of this article.

*Section C. Records for program income earned after the end of the performance period.* In accordance with Section F of FMS Article VII, there are no requirements under this award applicable to program income you earn after the end of the period of performance and therefore no associated records retention requirements.

*Section D. Records for joint or long-term use.*

1. *Joint use.* To avoid duplicate record-keeping for records that you and we both need to use on a continuous basis, we may ask you to make special arrangements with us, by mutual agreement, to make records available for joint and continuous use.

2. *Long-term use.* If we determine that some records will be needed longer than the 3-year period specified in Section A of this article, we may request that you either:

a. Retain the records for a longer period of time; or

b. Transfer the records to our custody for long-term retention.

3. *Retention requirements for transferred records.* For any records transferred to our custody, you are not subject to the records retention requirements in Section A of this article.

*Section E. Methods for collecting, transmitting, and storing information.*

1. You should, whenever practicable, collect, transmit, and store information related to this award in open and machine-readable formats rather than in closed formats or on paper. However, if you request it, we will:

a. Provide award related-information to you on paper; and

b. Accept award related-information from you on paper. In that case, we will not require more than an original and two copies.

2. When your original records are in an electronic form that cannot be altered, you do not need to create and retain paper copies of those records.

3. When your original records are on paper, you may substitute electronic versions produced through duplication or using other forms of electronic media, provided that:

a. You conduct periodic quality control reviews of the records;

b. You provide reasonable safeguards against alteration of the records; and

c. The records remain readable.

*Section F. Access to records.*

1. *Scope of Federal Government access rights.*

a. We as the awarding agency, the Federal Government Inspectors General, the Comptroller General of the United States, and any of our authorized representatives have the right of access to any documents, papers, or other records you have that are pertinent to this award, in order to make audits, examinations, excerpts, and transcripts.

b. This right also includes timely and reasonable access to your personnel for the purposes of interview and discussion related to the records.

c. As described in OMB guidance at 2 CFR 200.336(b), the access to records described in this section will include access to the true name of a victim of a crime only under extraordinary and rare circumstances.

i. You are required to provide that access only in response to a court order or subpoena pursuant to a bona fide confidential investigation, or in response to a request duly authorized by the head of the DoD Component or his or her designee; and

ii. You must take appropriate steps to protect this sensitive information.

2. *Duration of Federal Government access rights.* We have the access rights described in paragraph F.1 of this section as long as you retain the records.

3. *Public access.*

a. You must comply with requirements to protect information that Federal statute, Executive order, or regulation requires to be protected (*e.g.,* personally identifiable or export controlled information), to include both information generated under this award and information provided to you and identified as being subject to protection. Other than those limitations on dissemination of information, we place no restrictions on you that limit public access to your records pertinent to this award.

b. We do not place any requirements on you to permit public access to your records separate from any Federal, State, local, or tribal statute that may require you to do so.

c. The Freedom of Information Act (FOIA, 5 U.S.C. 552) does not apply to records in your possession but records you provide to us generally will be subject to FOIA, with the applicable exemptions.

## APPENDIX C TO PART 1136—TERMS AND CONDITIONS FOR OAR ARTICLE III, ''REMEDIES AND TERMINATION''

As required by §1136.305, a DoD Component's general terms and conditions must use the following wording for OAR Article III.

### OAR ARTICLE III. REMEDIES AND TERMINATION. (DECEMBER 2014)

*Section A. Non-compliance with award terms and conditions.* If you fail to comply with a term or condition of this award or an applicable Federal statute or regulation, we may amend this award to impose award-specific conditions, as described in OMB guidance in 2 CFR 200.207. If imposing award-specific conditions, we will notify you before modifying the award and, once you have corrected the non-compliance, promptly remove the award-specific conditions. If we determine that the imposition of award-specific conditions is insufficient to correct the non-compliance or the non-compliance remains uncorrected despite the use of award-specific conditions, we may consider taking one or more of the remedies specified in Section B of this article.

*Section B. Remedies for noncompliance.*

1. If you fail to comply with a term or condition of this award or an applicable Federal statute or regulation, we may take one or more of the following actions that we deem appropriate to the circumstances:

a. Temporarily withhold cash payments pending:

i. Your correction of the deficiency; or

ii. Our taking more severe enforcement action.

b. Disallow (that is, deny both use of funds and any applicable cost-sharing or matching credit for) all or part of the cost of the activity or action not in compliance;

c. Suspend or, in accordance with paragraph C.1.a.i of this article, terminate this award, in whole or in part (suspension of an award is a separate and distinct action from suspension of a person under 2 CFR parts 180 and 1125, as noted in paragraph B.3 of this article);

d. Withhold further awards to you for the project or program that is not in compliance;

e. Take any other action legally available to us under the circumstances.

2. You may raise an objection to our taking any remedy we take under paragraph B.1 of this section and will be given an opportunity to provide information and documentation challenging the action. The procedures are those specified in OAR Article IV for claims and disputes.

3. Our use of any remedy under paragraph B.1 of this section, including suspension or termination of the award, does not preclude our referring the noncompliance to a suspension and debarment official and asking that official to consider initiating a suspension or debarment action under 2 CFR part 1125, the DoD implementation of OMB guidance at 2 CFR part 180.

*Section C. Termination.*

1. This award may be terminated in whole or in part as follows:

a. *Unilaterally by the Federal Government.* We will provide a notice of termination if we unilaterally terminate this award in whole or in part, which we may do for either of the following reasons:

i. Your material failure to comply with the award terms and conditions. If we terminate the award for that reason, we will report the termination to the OMB-designated integrity and performance system (currently FAPIIS). In accordance with 41 U.S.C. 2313, each Federal awarding official must review and consider the information in the OMB-designated integrity and performance system with regard to any proposal or offer before awarding a grant or contract.

ii. The program office does not have funding for an upcoming increment if this award is incrementally funded. In that case, the Federal Government's financial obligation does not exceed the amount currently obligated under the award.

b. *By mutual agreement.* With your consent, we may terminate this award, in whole or in part, for any reason. In that case, you and we must agree to:

i. The termination conditions, including the effective date; and

ii. In the case of a partial termination, the portion to be terminated.

c. *Unilaterally by the recipient.* You may unilaterally terminate this award, in whole or in part, by sending us written notification that states:

i. The reasons for the termination;

ii. The effective date; and

iii. In the case of partial termination, the portion to be terminated. In that case, however, we may terminate the award in its entirety if we determine that the remaining portion of the award will not accomplish the purposes for which we made the award.

2. If this award is terminated in its entirety before the end of the performance period, you must complete the closeout actions for which you are responsible under OAR Article VI. The due date for each action is to be measured relative to the date of termination.

3. If this award is only partially terminated before the end of the performance period, with a reduced or modified portion of the award continuing through the end of the performance period, then closeout actions will occur at the end of the performance period as specified in OAR Article VI.

4. You will continue to have all of the post-closeout responsibilities that OAR Article VII specifies for you if this award is wholly or partially terminated before the end of the performance period.

*Section D. Effects of suspension or termination of the award on allowability of costs.* If we suspend or terminate this award prior to the end of the period of performance, costs resulting from obligations that you incurred:

1. Before the effective date of the suspension or termination are allowable if:

a. You properly incurred those obligations;

b. You did not incur the obligations in anticipation of the suspension or termination;

c. In the case of termination, the costs resulted from obligations that were noncancellable after the termination; and

d. The costs would have been allowable if we had not suspended or terminated the award and it had expired normally at the end of the period of performance.

2. During the suspension or after the termination are not allowable unless we expressly authorize them, either in the notice of suspension or termination or subsequently.

## APPENDIX D TO PART 1136—TERMS AND CONDITIONS FOR OAR ARTICLE IV, ''CLAIMS, DISPUTES, AND APPEALS''

As specified in §1136.405, a DoD Component's general terms and conditions must use the following wording for OAR Article IV, with the required insertion in paragraph A.2 of the article, along with any additional wording permitted by that section.

### OAR ARTICLE IV. CLAIMS, DISPUTES, AND APPEALS. (DECEMBER 2014)

*Section A. Definitions.*

1. *Claim.* The definition of the term ''claim,'' as it is used in this article, is in the definitions section of the preamble to these general terms and conditions.

2. *Grant Appeal Authority.* [Reserved]

*Section B. Submission of claims.*

1. *Your claims.* To submit a claim arising out of this award, you must submit it in writing to the grants officer for decision, specify the nature and basis for the relief you are requesting, and include all data that supports your claim.

2. *Federal Government claims.* You will receive a written grants officer's decision if a DoD claim arises out of this award.

*Section C. Alternative dispute resolution.*

1. We encourage resolution of all issues related to this award by mutual agreement between you and the grants officer.

2. If you and the grants officer are unable to resolve an issue through unassisted negotiations, we encourage use of Alternative Dispute Resolution (ADR) procedures to try to do so. ADR procedures are any voluntary means, such as mini-trials or mediation, used to resolve issues in controversy. ADR procedures may be used prior to submission of a claim or at any other time prior to the Grant Appeal Authority's decision on any appeal you submit.

*Section D. Grants officer decisions for claims you submit.*

1. Within 60 calendar days of receiving your claim, the grants officer will either:

a. Transmit a written decision that:

i. Identifies data on which the decision is based; and

ii. Identifies and provides the mailing address for the Grant Appeal Authority to whom you would submit an appeal of the decision if you elect to do so; or

b. If more time is required to render a written decision, notify you of a specific date when he or she will render the decision and inform you of the reason for delaying it.

2. The grants officer's decision will be final unless you decide to appeal, in which case we encourage use of ADR procedures as noted in Section C of this article.

*Section E. Formal administrative appeals.*

1. *Right to appeal.* You have the right to appeal a grants officer's decision to the Grant Appeal Authority identified in Section A of this article.

2. *Notice of appeal.* You may appeal a grants officer's decision within 90 calendar days of receiving the decision by submitting a written notice of appeal to the Grant Appeal Authority and grants officer. If you elect to use ADR procedures, you are allowed an additional 60 calendar days to submit the written notice of appeal.

3. *Appeal file.* Within 30 calendar days of the grants officer's receipt of your notice of appeal, you should receive the appeal file with copies of all documents relevant to the appeal. You may supplement the file with other documents you deem relevant and with a memorandum in support of your position for the Grant Appeal Authority's consideration. The Grant Appeal Authority may request additional information from you.

4. *Decision.* Unless the Grant Appeal Authority decides to conduct fact-finding procedures or an oral hearing on the appeal, the appeal will be decided solely on the basis of the written record. Any fact-finding or hearing will be conducted using procedures that the Grant Appeal Authority deems appropriate.

*Section F. Representation.* You may be represented by counsel or any other designated representative in any claim, appeal, or ADR proceeding, as long as the representative is not otherwise prohibited by law or regulation from appearing before the DoD Component concerned.

*Section G. Effect of Grant Appeal Authority's decision.* The Grant Appeal Authority's decision is the final administrative decision of DoD and cannot be further appealed within DoD.

*Section H. Non-exclusivity of remedies.* Nothing in this article is intended to limit your right to any remedy under the law.

## APPENDIX E TO PART 1136—TERMS AND CONDITIONS FOR OAR ARTICLE V, ''COLLECTION OF AMOUNTS DUE''

As required by §1136.505, a DoD Component's general terms and conditions must use the following wording for OAR Article V.

### OAR ARTICLE V. COLLECTION OF AMOUNTS DUE. (DECEMBER 2014)

*Section A. Establishing a debt.*

1. Any amount paid to you in excess of the amount to which you are determined to be entitled under the terms and conditions of this award constitutes a debt to the Federal Government.

2. A grants officer will attempt to resolve any claim of your indebtedness arising out of this award by mutual agreement.

3. If the grants officer fails to resolve the claim in that manner, you will receive a written notice of the grants officer's decision formally determining the debt, as described in paragraph B.2 of OAR Article IV. The notice will describe the debt, including the amount, name and address of the official who determined the debt, and a copy of that official's determination.

*Section B. Debt delinquency and appeals.*

1. Within 30 calendar days of the grants officer's decision, you must either pay the amount owed to the address provided in the written notice or inform the grants officer that you intend to appeal the decision. Appeal procedures are described in OAR Article IV.

2. If you elect not to appeal, any amounts not paid within 30 calendar days of the grants officer's decision will be a delinquent debt.

3. If you elect to appeal the grants officer's decision, you will have 90 calendar days after receipt of the grants officer's decision to file your appeal unless Alternative Dispute Resolution (ADR) procedures are used, as described in section C of OAR Article IV, in which case you will have 150 calendar days.

*Section C. Demand letter, interest, and debt collection.*

1. If within 30 calendar days of the grants officer's decision, you neither pay the amount due nor provide notice of your intent to appeal the grants officer's decision, the grants officer will send you a demand letter identifying a payment office that will be responsible for any further debt collection activity.

2. If you do not pay by the due date specified in the written demand letter, the Federal Government may collect part or all of the debt by:

a. Making an administrative offset against your requests for reimbursements under Federal awards;

b. Withholding advance payments otherwise due to you; and

c. Any other action permitted by Federal statute.

3. The debt will bear interest, and may include penalties and other administrative costs, in accordance with applicable provisions of the DoD Financial Management Regulation (DoD 7000.14–R), which implements the Federal Claims Collection Standards. The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

## APPENDIX F TO PART 1136—TERMS AND CONDITIONS FOR OAR ARTICLE VI, ''CLOSEOUT''

As required by §1136.605, a DoD Component's general terms and conditions must use the following wording for OAR Article VI but may make a substitution in paragraph C.4 of the article as provided in that section.

### OAR ARTICLE VI. CLOSEOUT. (DECEMBER 2014)

*Section A. Liquidation of obligations.* Unless the award administration office authorizes an extension of the due date, you must liquidate all obligations that you incurred under this award not later than 120 calendar days after the end date of the period of performance.

*Section B. Refunds of unobligated balances.* You must promptly refund to the award administration office any balances of unobligated cash that we have advanced or paid to you and not authorized you to use on other projects or programs.

*Section C. Final reports.* You must submit the:

1. Final performance report under this award no later than the date specified in Section C of REP Article I, subject to any extensions granted under Section D of that article;

2. Final financial report under this award no later than the date specified in Section C of REP Article II, subject to any extensions granted under Section D of that article;

3. Final report listing subject inventions made under the award no later than the date specified in Section B of PROP Article VI; and

4. Other final reports that are required under this award no later than 90 calendar days after the end date of the period of performance, unless you request an extension of the due date and the award administration office approves the request.

*Section D. Accounting for property.* You must account for any real property, equipment, supplies, and intangible property that you and any subrecipients acquired or improved under the award, in accordance with PROP Articles I through IV and VI. Your requests for disposition instructions for any federally owned property, as required by PROP Article V, meet the need described in OMB guidance at 2 CFR 200.343(f) to account for that property at closeout.

### APPENDIX G TO PART 1136—TERMS AND CONDITIONS FOR OAR ARTICLE VII, ''POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES''

As required by §1136.705, a DoD Component's general terms and conditions must use the following wording for OAR Article VII.

OAR ARTICLE VII. POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES. (DECEMBER 2014)

*Section A. Adjustments.* The closeout of this award does not affect:

1. Our right to disallow costs and recover funds on the basis of a later audit or other review, as long as we make the determination that the costs are disallowed and notify you about that determination within the extended records retention period specified in paragraph B.2 of OAR Article II of these terms and conditions.

2. Your obligation to return any funds due to the Federal Government as a result of later refunds, corrections, or other transactions (to include any adjustments in final indirect cost rates).

*Section B. Continuing responsibilities.* After closeout of this award, you must continue to comply with terms and conditions of this award that have applicability beyond closeout, including requirements concerning:

1. Audits, as specified in FMS Article V that cover periods of time during which you expended funds under this award.

2. Management, use, and disposition of any real property or equipment acquired or improved under this award in which we continue to have a Federal interest after closeout, as specified in PROP Articles I through IV.

3. Retention of, and access to, records related to this award, as specified in OAR Article II.

## PART 1138—REQUIREMENTS RELATED TO SUBAWARDS: GENERAL AWARD TERMS AND CONDITIONS

Sec.

1138.1 Purpose of this part.
1138.2 Applicability of this part.
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1138.1200 Purpose of SUB Article XII.
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APPENDIX A TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE I, ''DISTINGUISHING SUBAWARDS AND PROCUREMENTS''
APPENDIX B TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE II, ''PRE-AWARD AND TIME OF AWARD RESPONSIBILITIES''
APPENDIX C TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE III, ''INFORMATIONAL CONTENT OF SUBAWARDS''
APPENDIX D TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE IV, ''FINANCIAL AND PROGRAM MANAGEMENT REQUIREMENTS FOR SUBAWARDS''
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APPENDIX K TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE XI, ''REQUIREMENTS CONCERNING SUBRECIPIENTS' LOWER-TIER SUBAWARDS''
APPENDIX L TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE XII, ''FIXED-AMOUNT SUBAWARDS''

AUTHORITY: 5 U.S.C. 301 and 10 U.S.C. 113.

SOURCE: 85 FR 51171, Aug. 19, 2020, unless otherwise noted.

### § 1138.1 Purpose of this part.

(a) This part specifies standard wording of general terms and conditions concerning recipients' award and administration of subawards under DoD grants and cooperative agreements.

(b) It thereby implements OMB guidance in Subparts A through F of 2 CFR part 200 and 2 CFR parts 25, 170, and 180, as they apply to subawards.

### § 1138.2 Applicability of this part.

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

### § 1138.3 Exceptions from requirements of this part.

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

### § 1138.4 Organization of this part.

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the

article addressed by the subpart. Terms and conditions address rights and responsibilities of the Federal Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart and the authorization in §1138.5, which permit a DoD Component to vary from the standard wording in some situations.

(c) Table 1 shows which article of general terms and conditions may be found in each of appendices A through L to this part (with the associated direction to DoD Components in Subparts A through L, respectively, as supplemented by the authorization in §1138.5):

TABLE 1 TO PARAGRAPH (c)

| In . . . | You will find terms and conditions specifying recipients' rights and responsibilities related to . . . | That would appear in an award within SUB Article . . . |
|---|---|---|
| Appendix A | Distinguishing subawards and procurements | I. |
| Appendix B | Pre-award and time of award responsibilities | II. |
| Appendix C | Informational content of subawards | III. |
| Appendix D | Financial and program management requirements for subawards | IV. |
| Appendix E | Property requirements for subawards | V. |
| Appendix F | Procurement procedures to include in subawards | VI. |
| Appendix G | Financial, programmatic, and property reporting requirements for subawards. | VII. |
| Appendix H | Other administrative requirements for subawards | VIII. |
| Appendix I | National policy requirements for subawards | IX. |
| Appendix J | Subrecipient monitoring and other post-award administration | X. |
| Appendix K | Requirements concerning subrecipients' lower-tier subawards | XI. |
| Appendix L | Fixed-amount subawards | XII. |

### §1138.5 Authority to omit or reserve portions of SUB Articles I through XII.

A DoD Component's general terms and conditions may:

(a) Omit SUB Articles II through XII that are the subject of this part if the DoD Component does not allow recipients to make subawards under awards using those terms and conditions. The DoD Component also may amend SUB Article I in that case, to state the prohibition on making subawards and limit the recipient's responsibility to ensuring that any transaction it awards at the next tier is a procurement transaction.

(b) Reserve portions of SUB Articles I through XII that do not apply to the DoD Component's awards using those terms and conditions. For example, the DoD Component may reserve paragraphs in SUB Articles IV through IX specifying administrative requirements that flow down solely to subawards to States if it determines that there is no possibility of a subaward to a State under any of the awards using its general terms and conditions. Similarly, it may reserve SUB Article XII if it does not permit any fixed-amount subawards under its awards.

## Subpart A–Distinguishing Subawards and Procurements (SUB Article I)

### §1138.100 Purpose of SUB Article I.

SUB Article I specifies requirements for a recipient to determine whether each transaction it makes at the next tier below a DoD grant or cooperative agreement is a subaward or a procurement transaction. It thereby implements OMB guidance in 2 CFR 200.201(a) and 200.330.

### §1138.105 Content of SUB Article I.

(a) *Requirement.* A DoD Component's general terms and conditions must:

(1) Require the recipient to determine the nature of transactions it makes under its award; and

(2) Inform the recipient about the effect of that determination on the procedures for awarding the transaction and the transaction's terms and conditions.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix A to this part provides for SUB Article I.

## Subpart B–Pre-Award and Time of Award Responsibilities (SUB Article II)

### § 1138.200 Purpose of SUB Article II.

SUB Article II specifies requirements concerning subrecipients' unique entity identifiers and pre-award risk assessments. It also references requirements in REP Article IV to report on subawards and subrecipients' executive compensation. It thereby partially implements OMB guidance in:

(a) 2 CFR parts 25 and 170;

(b) 2 CFR 200.207; 200.300(b), as it applies to subaward reporting; and 200.331(b); and

(c) Subpart C of 2 CFR part 180, as implemented by DoD at 2 CFR part 1125.

### § 1138.205 Content of SUB Article II.

(a) *Requirement.* A DoD Component's general terms and conditions must require the recipient to:

(1) Obtain an entity's unique entity identifier before making a subaward to the entity;

(2) Notify potential subrecipients in advance about that requirement; and

(3) Conduct a pre-award risk assessment of an entity before making a subaward to the entity and adjust subaward terms and conditions if warranted by the results of the assessment.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for SUB Article II.

## Subpart C–Informational Content of Subawards (SUB Article III)

### § 1138.300 Purpose of SUB Article III.

SUB Article III specifies information that recipients must include in subawards they make under DoD grants and cooperative agreements. It thereby implements OMB guidance in 2 CFR 200.331(a)(1).

### § 1138.305 Content of SUB Article III.

(a) *Requirement.* A DoD Component's general terms and conditions must require recipients to include certain information items in each subaward they make.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix C to this part provides for SUB Article III.

## Subpart D–Financial and Program Management Requirements for Subawards (SUB Article IV)

### § 1138.400 Purpose of SUB Article IV.

SUB Article IV specifies the financial and program management requirements that recipients must include in subawards they make under DoD grants and cooperative agreements. It thereby implements OMB guidance in the following portions of 2 CFR part 200, as they apply to subawards:

(a) Sections 200.209 and 200.302 through 200.309; and (b) Subparts E and F.

### § 1138.405 Content of SUB Article IV.

(a) *Requirement.* A DoD Component's general terms and conditions must require recipients to include pertinent requirements concerning financial and program management in each subaward they make.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix D to this part provides for SUB Article IV.

## Subpart E–Property Requirements for Subawards (SUB Article V)

### § 1138.500 Purposes of SUB Article V in relation to other articles.

(a) *Purposes.* SUB Article V specifies requirements concerning equipment, supplies, and real, intangible, and federally owned property that recipients must include in subawards they make under DoD grants and cooperative agreements. It thereby:

(1) Specifies which of the requirements in PROP Articles I through VI of the award flow down to subawards; and

(2) Implements OMB guidance in 2 CFR 200.310 through 200.316, as those sections apply to subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix E to this part provides as Section A of SUB Article V to inform recipients about the relationship between requirements for the recipient in PROP Articles I through VI and requirements for subawards in SUB Article V.

### § 1138.505 Title to property under subawards.

(a) *Requirement.* A DoD Component's general terms and conditions must specify requirements related to title to property under subawards.

(b) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must use the wording appendix E to this part provides as Section B of SUB Article V to specify the requirements concerning title to property that recipients must include in their subawards.

(2) *Exception.* If a DoD Component has the necessary statutory authority to do so and includes provisions in paragraph A.2 of PROP Article I to identify any property acquired under the award as exempt property, as described in 2 CFR 1130.105, the DoD Component may at its option insert wording in paragraph B.1.b of SUB Article V to allow recipients to pass through those provisions to subrecipients.

(i) It is critical, however, that the DoD Component ensures that the wording of paragraph B.1.b is consistent with the statutory authority.

(ii) For example, if the statutory authority is 31 U.S.C. 6306—as described in 2 CFR 1130.105(b)(2)(i)—the wording of paragraph B.1.b of SUB Article V may permit a recipient to flow down the substance of the exempt property provision in paragraph A.2 of PROP Article I only to a subrecipient that is a nonprofit institution of higher education or nonprofit organization whose primary purpose is conducting scientific research.

### § 1138.510 Property management system requirements for subawards.

(a) *Requirement.* A DoD Component's general terms and conditions must address the standards for property management systems that apply to subawards.

(b) *Award terms and conditions.* To specify the property management system standards that recipients must include in their subawards, a DoD Component's general terms and conditions must use the wording appendix E to this part provides as Section C of SUB Article V.

### § 1138.515 Use and disposition of real property, equipment, supplies, and federally owned property under subawards.

(a) *Requirement.* A DoD Component's general terms and conditions must specify the requirements concerning use and disposition of real property, equipment, supplies, and federally owned property that recipients must include in subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix E to this part provides for Sections D through F of SUB Article V.

### § 1138.520 Intangible property under subawards.

(a) *Requirement.* A DoD Component's general terms and conditions must address the provisions concerning intangible property that recipients must include in subawards.

(b) *Award terms and conditions*—(1) *General.* To specify the intangible property provisions that recipients must include in their subawards, a DoD Component's general terms and conditions must use the wording appendix E to this part provides as Section G of SUB Article V.

(2) *Exception.* A DoD Component's general terms and conditions may delete the reference to ''Section B of PROP Article VI'' in the wording appendix E to this part provides for paragraph G.2 of SUB Article V and provide alternative wording if:

(i) Those general terms and conditions will be used in awards for purposes other than research or education, as described in 2 CFR 1130.610(c)(3); and

(ii) The DoD Component wants to specify that nonprofit and governmental recipients include either:

(A) No provisions concerning inventions in subawards to for-profit entities; or

(B) Provisions in subawards to for-profit entities that differ from those the DoD Component's general terms and conditions specify for nonprofit and governmental recipients.

## Subpart F–Procurement Procedures to Include in Subawards (SUB Article VI)

### § 1138.600 Purpose of SUB Article VI.

SUB Article VI of the general terms and conditions specifies procurement provisions recipients must include in their subaward terms and conditions. It thereby:

(a) Specifies which of the requirements in PROC Articles I through III of the award flow down to subawards; and

(b) Implements OMB guidance in 2 CFR 200.317 through 200.326 and appendix II to 2 CFR part 200, as those portions of 2 CFR part 200 apply to subawards; and

(c) Partially implements OMB guidance in 2 CFR 200.205(d), 200.213, and 200.517, as those sections of 2 CFR part 200 apply to subawards.

### § 1138.605 Content of SUB Article VI.

(a) *Requirement.* A DoD Component's general terms and conditions must specify that recipients' subawards include requirements for subrecipients' procurement procedures.

(b) *Award terms and conditions.* To specify the requirements for procurement procedures that a recipient must include in its subawards, a DoD Component's general terms and conditions must use the wording appendix F to this part provides for SUB Article VI.

## Subpart G—Financial, Programmatic, and Property Reporting Requirements for Subawards (SUB Article VII)

### § 1138.700 Purposes of SUB Article VII in relation to other articles.

(a) *Purposes.* SUB Article VII of the general terms and conditions specifies provisions concerning reporting that recipients must include in their subaward terms and conditions, as applicable. It thereby implements OMB guidance in the following sections of 2 CFR part 200, as they apply to subawards:

(1) 2 CFR 200.301 and 200.327 through 200.329; and

(2) 2 CFR 200.315(c), as it relates to invention reporting; and

(3) 2 CFR 200.343(a), as it relates to financial and performance reporting.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix G to this part provides as Section A of SUB Article VII to inform recipients about the relationship between requirements for the recipient in REP Articles I through III and requirements for subawards in SUB Article VII.

### § 1138.705 Performance reporting requirements for subawards.

(a) *Requirement.* A DoD Component's general terms and conditions must specify performance reporting requirements for subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix G to this part provides as Section B of SUB Article VII to specify the performance reporting requirements that recipients must include in their subawards.

### § 1138.710 Financial reporting requirements for subawards.

(a) *Requirement.* A DoD Component's general terms and conditions must specify financial reporting requirements for subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix G to this part provides for Section C of SUB Article VII to specify the financial reporting requirements that recipients must include in their subawards.

### § 1138.715 Reporting on property under subawards.

(a) *Requirement.* A DoD Component's general terms and conditions must specify the requirements for reporting on property that recipients must include in their subawards.

(b) *Award terms and conditions.* To implement the requirement described in paragraph (a) of this section, a DoD

Component's general terms and conditions must use the wording appendix G to this part provides as Section D of SUB Article VII.

### § 1138.720 Other reporting under subawards.

(a) *Requirement.* A DoD Component's general terms and conditions must specify any requirements for other reporting that recipients must include in their subawards.

(b) *Award terms and conditions.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must:

(1) Include in Section E of SUB Article VII any reporting requirement included in REP Article V that may flow down to subrecipients, and

(2) Indicate whether the recipient must require the subrecipient to provide any specific information or can comply by ensuring that the recipient meets its responsibilities to DoD.

## Subpart H—Other Administrative Requirements for Subawards (SUB Article VIII)

### § 1138.800 Purpose of SUB Article VIII.

SUB Article VIII of the general terms and conditions:

(a) Specifies provisions that a recipient must include in its subaward terms and conditions concerning submission and maintenance of subrecipient information; records retention and access; remedies and termination; disputes, hearings, and appeals; collection of amounts due; closeout; and post-closeout adjustments and continuing responsibilities.

(b) It thereby implements OMB guidance in 2 CFR 200.113 and 200.333 through 200.345, as those sections apply to subawards.

### § 1138.805 Content of SUB Article VIII.

(a) *Requirement.* A DoD Component's general terms and conditions must specify the administrative requirements that a recipient must include in its subaward terms and conditions in areas covered by OAR Articles I through VII of the recipient's prime award.

(b) *Award terms and conditions*—(1) *General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix H to this part provides for SUB Article VIII.

(2) *Exception.* A DoD Component's general terms and conditions may add one or more sections to the wording that appendix H to this part provides for SUB Article VIII if the DoD Component added requirements to OAR Article IV of its general terms and conditions, in accordance with paragraph 2 CFR 1136.405(b)(2), because a statute or regulation requires recipients to provide opportunities to subrecipients for hearings, appeals, or other administrative proceedings with respect to claims, disputes, remedies for noncompliance, or other matters. The additional wording in SUB Article VIII would address the flow down to subrecipients of the added requirements in OAR Article IV.

## Subpart I—National Policy Requirements for Subawards (SUB Article IX)

### § 1138.900 Purpose of SUB Article IX.

SUB Article IX addresses national policy requirements that recipients must include in their subaward terms and conditions. It thereby partially implements OMB guidance in 2 CFR 200.331(a)(2).

### § 1138.905 Content of SUB Article IX.

(a) *Requirement.* A DoD Component's general terms and conditions must specify which of the national policy requirements in NP Articles I through IV of the award flow down to subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions:

(1) Must use the wording appendix B to this part provides for SUB Article IX if the DoD Component did not add, delete, or otherwise modify any of the wording that appendices A through D of 2 CFR part 1122 provided for NP Articles I through IV of the award (as permitted in accordance with DoDGARs provisions at 2 CFR 1122.115 and 1122.120).

(2) May make corresponding alterations to the wording appendix I to this part provides for SUB Article IX if the DoD Component did modify the wording of NP Articles I through IV, in order to conform the national policy requirements in SUB Article IX to the requirements in those modified articles.

## Subpart J—Subrecipient Monitoring and Other Post-Award Administration (SUB Article X)

### § 1138.1000 Purpose of SUB Article X.

SUB Article X specifies the requirements for recipients' monitoring of subrecipients and related post-award administration of subawards they make under DoD grants and cooperative agreements. It thereby implements OMB guidance in 2 CFR 200.331(d) through (h) and 2 CFR 200.340(a).

### § 1138.1005 Content of SUB Article X.

(a) *Requirement.* A DoD Component's general terms and conditions must specify requirements for recipients' monitoring of subrecipients and related post-award administration of subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix J to this part provides for SUB Article X of its general terms and conditions.

## Subpart K—Requirements Concerning Subrecipients' Lower-Tier Subawards (SUB Article XI)

### § 1138.1100 Purpose of SUB Article XI.

SUB Article XI specifies requirements that a recipient must include in any subaward under which it judges that the subrecipient may make lower-tier subawards. It thereby implements OMB guidance in 2 CFR 200.331(a) through (c) and other portions of 2 CFR part 200 as they apply to lower-tier subawards.

### § 1138.1105 Content of SUB Article XI.

(a) *Requirement.* A DoD Component's general terms and conditions must address requirements that recipients must include in subawards to entities that may make lower-tier subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix K to this part provides for SUB Article XI.

## Subpart L—Fixed-Amount Subawards (SUB Article XII)

### § 1138.1200 Purpose of SUB Article XII.

SUB Article XII specifies policy and procedures concerning recipients' use of fixed-amount subawards under DoD grants and cooperative agreements. It thereby implements OMB guidance in 2 CFR 200.201(b) and 200.332 and other portions of 2 CFR part 200 as they apply to fixed-amount subawards.

### § 1138.1205 Content of SUB Article XII.

(a) *Requirement.* A DoD Component's general terms and conditions must address how a recipient may use a fixed-amount type of subaward, when it requires the Component's prior approval to do so, and what requirements the recipient must include in those subawards.

(b) *Award terms and conditions* — (1) *General.* A DoD Component's general terms and conditions must use the wording appendix L to this part provides for SUB Article XII.

(2) *Exceptions.*

(i) In addition to the authorities provided in §1138.5 to omit or reserve all or portions of the wording appendix L to this part provides for SUB Article XII, a DoD Component's general terms and conditions may add wording to Section B of the article to authorize recipients to use fixed-amount subawards without obtaining the Component's prior approval in other situations for which it would be appropriate to do so, given the nature of the program or programs that use its general terms and conditions.

(ii) However, a DoD Component's general terms and conditions should never authorize recipients' use of fixed-amount subawards for basic or applied research, for the reason given in paragraph B.2.a.ii of the wording appendix L provides for SUB Article XII. It is

unrealistic to have a subrecipient commit in advance to accomplishing specific, well-defined, and observable research outcomes. Doing so subjects the subrecipient to undue risk of not being reimbursed for research costs it incurred if it fails to fully accomplish the outcomes.

## APPENDIX A TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE I, ''DISTINGUISHING SUBAWARDS AND PROCUREMENTS''

Unless modified as provided in §1138.5, a DoD Component's general terms and conditions must use the following wording for SUB Article I.

SUB ARTICLE I. DISTINGUISHING SUBAWARDS AND PROCUREMENTS. (DECEMBER 2014)

*Section A. Required recipient determination.* For each transaction into which you enter with another entity at the next tier below this award, you must determine whether the transaction is a subaward or a procurement.

*Section B. Considerations in making the determination.*

1. The primary purpose of the transaction between you and the other entity is the key factor you must use to determine whether the transaction is a subaward or a procurement.

a. The transaction is a subaward and the other entity therefore a subrecipient if the transaction's primary purpose is for you to transfer—for performance by the other entity—a portion of the substantive program for which we are providing financial assistance to you through this award. You will continue to be accountable to us for performance of the project or program under the award, including portions performed by any subrecipients.

b. The transaction is a procurement and the other entity therefore your contractor if the transaction's primary purpose is for you to purchase goods or services that you need to perform the substantive program supported by this award. The distinction from a subaward is the contractor is not performing a portion of the substantive program as a result of the transaction.

2. What you call the transaction is not a factor in distinguishing a subaward from a procurement. If the transaction meets the criterion in paragraph B.1.a of this article, it is a subaward for purposes of the requirements of this award even if you call and consider the transaction a ''contract.''

*Section C. Effect of the determination on the next-tier transaction.*

1. *Process for awarding the transaction.* One important consequence of your determining whether a next-tier transaction is a subaward or a procurement is that there are different requirements governing the pre-award and time of award processes that you use to award the transaction.

a. SUB Article II of this award specifies pre-award and time of award responsibilities for subawards.

b. PROC Articles I and II of this award govern pre-award and time of award processes for awarding procurement transactions.

2. *Transaction terms and conditions.* A second important consequence of your determining whether a next-tier transaction is a subaward or a procurement is that the terms and conditions you include in a subaward differ from those you include in a procurement transaction.

a. Section C of SUB Article II of this award addresses requirements you must include in subaward terms and conditions. Those requirements generally are either identical or directly related to requirements in the general terms and conditions of this award. They include national policy requirements as well as administrative requirements in areas such as financial and programmatic management, property administration, procurement, and reporting.

b. PROC Article III of this award lists requirements you must include in a procurement transaction when applicable to the procurement.

## APPENDIX B TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE II, ''PRE-AWARD AND TIME OF AWARD RESPONSIBILITIES''

Unless modified as provided in §1138.5, a DoD Component's general terms and conditions must use the following wording for SUB Article II.

SUB ARTICLE II. PRE-AWARD AND TIME OF AWARD RESPONSIBILITIES. (DECEMBER 2014)

*Section A. Requirements for unique entity identifiers.*

1. *Definition of ''entity.''* For purposes of the unique entity identifier requirements in paragraphs A.2 and 3 of this section, ''entity'' has the meaning given in paragraph C.3 of appendix A to OMB guidance in 2 CFR part 25.

2. *Pre-notification of potential subrecipients.* You must notify potential subrecipients that no entity may receive a subaward from you under this award unless it has provided its unique entity identifier to you.

3. *Restriction on making subawards.*

a. *General.* You may not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

b. *Exception.* You may make a subaward to an entity that has not provided its unique entity identifier to you in rare cases in which you requested, and we approved, an

exemption from the requirement for the entity to provide a unique entity identifier, based on the criteria in OMB guidance in 2 CFR part 25.110(d).

*Section B. Pre-award risk assessment.*

1. Before making a subaward to an entity, you must perform a risk assessment of the prospective subrecipient, as described in 2 CFR 200.331(b). OMB guidance in 2 CFR 200.205(c) provides examples of factors you may consider in evaluating risk.

2. As part of the risk assessment under paragraph B.1 of this article, you must:

a. Verify that neither the prospective subrecipient nor its principals under the subaward are excluded or disqualified from participating in the transaction, in accordance with requirements in Subpart C of OMB guidance in 2 CFR part 180, as implemented by DoD at 2 CFR part 1125; and

b. If warranted by risks you identify, determine whether to impose award-specific terms and conditions in the subaward to mitigate the risks.

i. These award-specific terms and conditions may be in addition to, or differ from, the terms and conditions that SUB Articles IV through IX of this award require you to include in subawards.

ii. They may include items such as those listed in OMB guidance in 2 CFR 200.207(b)(1) through (6).

iii. Your procedures for imposing and removing the additional or different requirements must comply with the procedural guidance in 2 CFR 200.207(c) and (d).

*Section C. Subaward content.*

1. *Cost-type subawards.*

a. SUB Article III of this award specifies informational content that you must include in each cost-type subaward.

b. SUB Articles IV through VIII specify administrative requirements that you must include:

i. As applicable, in each cost-type subaward to:

(A) A domestic U.S. entity (*i.e.*, an entity other than a foreign public entity or a foreign organization); or

(B) An organizational unit of a foreign organization if that unit has a place of business in the United States; and

ii. To the maximum extent practicable in each cost-type subaward to either a foreign public entity or an organizational unit of a foreign organization that does not have a place of business in the United States (regardless of whether another organizational unit of that foreign organization has one). However, absent our prior approval, you may not allow that foreign entity or organization to acquire real property or equipment under a subaward.

c. SUB Article IX of this award specifies national policy requirements that you must include, as applicable, in each cost-type subaward.

2. *Fixed-amount type subawards.*

a. Sections A through F of SUB Article III of this award specify informational content that you must include in each fixed-amount subaward.

b. SUB Article IX of this award specifies national policy requirements that you must include, as applicable, in each fixed-amount subaward.

c. Section D of SUB Article XII of this award specifies administrative requirements that you must include, as applicable, in any fixed-amount subaward to:

i. A domestic U.S. entity (*i.e.*, an entity other than a foreign public entity or a foreign organization); or

ii. An organizational unit of a foreign organization if that unit has a place of business in the United States; and

iii. To the maximum extent practicable to either a foreign public entity or an organizational unit of a foreign organization that does not have a place of business in the United States (regardless of whether another organizational unit of that foreign organization has one). However, absent our prior approval, you may not allow that foreign entity or organization to acquire real property or equipment under a subaward.

3. *Additional subaward terms and conditions.* You may include other requirements in your subawards that you need in order to meet your responsibilities under this award for performance of the project or program (including portions performed by subrecipients) and compliance with applicable administrative and national policy requirements.

*Section D. Subaward and executive compensation reporting.* You must report subaward obligating actions and information on subrecipients' executive compensation as required by REP Article IV of this award.

## APPENDIX C TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE III, ''INFORMATIONAL CONTENT OF SUBAWARDS''

Unless modified as provided in §1138.5, a DoD Component's general terms and conditions must use the following wording for SUB Article III.

### SUB ARTICLE III. INFORMATIONAL CONTENT OF SUBAWARDS. (DECEMBER 2014)

*Section A. Informational content in general.* You must include in each subaward (and each subsequent amendment to a subaward that alters the amount of the subaward) the information specified in OMB guidance in 2 CFR 200.331(a)(1), ''Federal Award Identification,'' with the clarifications provided in Sections B through G of this article.

*Section B. Federal award identification number and award date.* The ''Federal Award Identification Number'' and ''Federal Award

Date'' described in 2 CFR 200.331(a)(1)(iii) and (iv), respectively, are the award number and award date for this award to you. You must provide the information in a way that makes it clear that the subaward is under this DoD award.

*Section C. Amount of Federal funds obligated.*

1. The ''Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient'' that is described in 2 CFR 200.331(a)(1)(vi) is either:

a. The amount of your obligation to the subrecipient, if the terms and conditions of this award do not require you to provide any cost sharing or matching for the project or program the award supports; or

b. The amount of the Federal share of your subaward obligation if this award does require cost sharing or matching, which in that case is the product of:

i. The Federal share of total project costs under this DoD award to you, as a percentage of those total project costs; and

ii. The total amount of project costs obligated for the subaward action.

2. Note that the total project costs of the award and subaward, as used in paragraphs C.1.b.i and ii of this section, include any cost sharing or matching that you or the subrecipient provides if you are counting it toward the cost sharing or matching required under this award.

*Section D. Total amount obligated to the subrecipient.* The ''Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including the current obligation,'' as described in 2 CFR 200.331(a)(1)(vii), is the cumulative amount to date of the amounts described in Section C of this article.

*Section E. Total Amount of the Federal Award.* The ''Total Amount of the Federal Award committed to the subrecipient by the pass-through entity,'' as described in 2 CFR 200.331(a)(1)(viii), is the total amount through the end of the subaward that you and the subrecipient mutually agreed upon, to include: Funding obligated to date, any future anticipated funding increments, and any options you may exercise in the future.

*Section F. Federal awarding agency, pass-through entity, and awarding official.* The ''Name of Federal awarding agency'' and ''pass-through entity,'' as those terms are used in 2 CFR 200.331(a)(1)(x) are the DoD and the business name associated with your registration in SAM. In that same paragraph of 2 CFR part 200, the ''awarding official'' is the individual in your organization who made the subaward.

*Section G. Indirect cost rate.* With respect to the requirement in 2 CFR 200.331(a)(1)(xiii) for the subaward to include the ''Indirect cost rate for the Federal award:''

1. This requirement applies to cost-type subawards only.

2. The rate the subaward must include is the subrecipient's rate, whether it is a rate set by negotiation with a Federal agency or you or is the de minimis rate described in 2 CFR 200.414(f).

3. You are required to include the indirect cost rate only if the subrecipient is willing to share that information with you and assents that information about its rate is not proprietary. If a subrecipient is not willing to share information about its indirect cost rate with you, consult the grants officer for this award to explore alternative ways to assess the reasonableness of costs of the subaward.

## APPENDIX D TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE IV, ''FINANCIAL AND PROGRAM MANAGEMENT REQUIREMENTS FOR SUBAWARDS''

Unless modified as provided in §1138.5, a DoD Component's general terms and conditions must use the following wording for SUB Article IV.

### SUB ARTICLE IV. FINANCIAL AND PROGRAM MANAGEMENT REQUIREMENTS FOR SUBAWARDS. (DECEMBER 2014)

*Section A. Purposes of this article in relation to other articles.*

1. This article specifies administrative requirements concerning financial and program management that you must include in the terms and conditions of each cost-type subaward that you make under this award to a domestic entity.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under FMS Articles I through VII of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

*Section B. Financial management system standards.* You must include in any subaward you make under this award the requirements of:

1. Sections A through C of FMS Article I of this award if the subrecipient is a State;

2. Sections B and C of FMS Article I if the subrecipient is an institution of higher education, nonprofit organization, local government, or Indian tribe; or

3. 32 CFR 34.11 if the subrecipient is a for-profit entity.

*Section C. Payments.*

1. *Subawards to States.* You must include the provisions of Section A of FMS Article II of this award in each subaward you make to a State;

2. *Subawards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.* The following paragraphs specify requirements you must include in subawards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

a. *Payment method.*

i. If you are authorized to request advance payments under this award, you must authorize a subrecipient to request advance payments unless:

(A) The subrecipient does not maintain, or demonstrate the willingness to maintain, written procedures that minimize the time elapsing between its receipt of each payment and its disbursement of the funds for project or program purposes;

(B) You impose a requirement for the subrecipient to be paid by reimbursement as a result of your risk evaluation of the subrecipient under SUB Article II of this award.

(C) The subaward is for construction.

ii. If you do not authorize advance payments for one of the reasons given in paragraph C.2.a.i of this article, you must specify either reimbursement or working capital advances as the payment method in accordance with OMB guidance in 2 CFR 200.305(b)(3) and (4).

b. *Payment timing and amount.*

i. *Advances.* You must limit advance payments to the minimum amounts needed and time the payments to be in accordance with the subrecipient's actual, immediate cash requirements in carrying out the project or program under the subaward. The timing and amount of your advance payments to the subrecipient must be as close as is administratively feasible to the subrecipient's actual disbursements for direct project costs and the proportionate share of any allowable indirect costs. Your subawards also must include the requirements of paragraphs B.2.b and c of FMS Article II to specify costs subrecipients must exclude from amounts of their advance payment requests.

ii. *Reimbursements or working capital advances.* You must follow OMB guidance in 2 CFR 200.305(b)(3) and (4) concerning timing and amount of reimbursements or working capital advances.

c. *Frequency of requests.* You must allow the subrecipient to request advance payments or reimbursements, including those associated with the working capital advance payment method, as often as it wishes if you pay using electronic funds transfers and at least monthly otherwise.

d. *Other requirements.*

i. In any subaward that was subject to our consent, you must include the requirements of paragraph B.5 of FMS Article II of this award concerning withholding of payments.

ii. You must include the provisions of paragraph B.6 of FMS Article II concerning depositories in each subaward that authorizes the subrecipient to request advance payments.

3. *Subawards to for-profit entities.* The provision concerning payments in each subaward you make to a for-profit entity must conform to the requirements in 32 CFR 34.12.

*Section D. Allowable costs, period of availability of funds, and fee and profit.*

1. You must include in each cost-type subaward a requirement that the allowability of costs under the subaward (and any lower-tier subawards or procurement transactions into which the subrecipient enters) must be determined in accordance with the applicable cost principles identified in Section A of FMS Article III of this award, as well as the clarification in Section B of that article if it applies to those cost principles.

2. You must specify in each subaward the period of availability of funds for any project or program purpose so that the period neither begins before nor ends after the period during which you may use funds available to you under this award for that same project or program purpose.

3. You must include in each subaward the provisions concerning fee or profit that are in Section D of FMS Article III of this award.

*Section E. Revision of budget and program plans.* You must include in each subaward provisions requiring the subrecipient to request your approval for any change in the subaward budget or program that would cause a budget or program change under this award for which Section B of FMS Article IV requires you to first obtain our prior approval. You may not approve any budget or program revision that is inconsistent with the purpose or terms and conditions of this award.

*Section F. Non-Federal audits.* You must include a provision in each subaward that you make under this award to require the subrecipient entity to comply with the audit requirements applicable to that entity, as specified in either Section A or Section B of FMS Article V.

*Section G. Cost sharing or matching requirements.* If you make a subaward under which the subrecipient may provide contributions or donations of cash or third-party in-kind contributions to be counted toward any cost sharing or matching that is required under this award, you must include provisions in that subaward to specify:

1. The criteria governing the allowability as cost sharing or matching of the types of cash or third-party in-kind contributions that the subrecipient may contribute or donate. Those criteria are specified in:

a. Sections B through D of FMS Article VI of this award if the subaward is to a State, institution of higher education, nonprofit organization, local government, or Indian tribe.

b. The provisions of 32 CFR 34.13(a) if the subaward is to a for-profit entity.

2. The methods for determining and documenting the values of those contributions or donations to be counted as cost sharing or matching. Those methods are specified in:

a. Sections E and F of FMS Article VI of this award if the subaward is to a State, institution of higher education, nonprofit organization, local government, or Indian tribe.

b. The provisions of 32 CFR 34.13(b) if the subaward is to a for-profit entity.

*Section H. Program income.* You must include requirements concerning program income in subawards, as follows:

1. In each subaward to a State, institution of higher education, nonprofit organization, local government, or Indian tribe:

a. You must require the subrecipient to account to you when it earns any program income under the subaward or uses it, so that you can prepare reports you are required to submit to us. If the award-specific terms and conditions of this award require you to account for program income earned after the period of performance, you must include a corresponding requirement in your subawards.

b. You must include the provisions of Sections A through D of FMS Article VII of this award.

c. You may specify the deduction, addition, or cost-sharing or matching alternative—described in 2 CFR 1128.720(b)—or a combination of those alternatives, for the subrecipient's use of any program income it earns. However, you still must comply with the alternative specified in Section E of FMS Article VII and any applicable award-specific terms and conditions for the total amount of program income earned, which includes amounts earned by you and your subrecipients. For example, if we require you to use the deduction alternative, you may authorize a subrecipient to use the addition alternative if you reduce the funding allocated for portions of the project or program that you or other subrecipients perform to make the required reduction in the total award amount.

2. In each subaward to a for-profit entity, you must include the provisions of 32 CFR 34.14, with the appropriate method specified for disposition of program income.

## APPENDIX E TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE V, ''PROPERTY REQUIREMENTS FOR SUBAWARDS''

Unless modified as provided in §1138.5 or either or both of the exceptions in §1138.505 and §1138.520 are applied, a DoD Component's general terms and conditions must use the following wording for SUB Article V (as specified in §§1138.500 through 1138.520).

SUB ARTICLE V. PROPERTY REQUIREMENTS FOR SUBAWARDS. (DECEMBER 2014)

*Section A. Purposes of this article in relation to other articles.*

1. This article specifies administrative requirements concerning property that you must include in the terms and conditions of each cost-type subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under PROP Articles I through VI of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

*Section B. Title to property.*

1. *Subawards to institutions of higher education, nonprofit organizations, States, local governments, or Indian tribes.*

a. *General.* You must include terms and conditions in each subaward to flow down to the subrecipient the provisions of:

i. Paragraph A.1 of PROP Article I concerning vesting of title to property acquired under the subaward unless paragraph B.1.b of this section provides otherwise.

ii. Sections B through E of PROP Article I that are applicable to types of property that the subrecipient may acquire, improve, donate, or for which it may otherwise be accountable under the subaward.

b. *Exceptions.* [Reserved]

2. *Subawards to for-profit entities.*

a. *Real property and equipment.* You must obtain the prior approval of the grants officer before permitting any for-profit subrecipient to acquire or improve real property or equipment under the award.

i. If the grants officer does not grant the approval, you must include a subaward provision that prohibits the for-profit entity from acquiring or improving real property or equipment under the subaward.

ii. If the approval is granted, you must include a subaward provision specifying that title vesting and Federal interest are governed by provisions of 32 CFR 34.21(b) and (c).

b. *Supplies.* You must include a subaward provision specifying that vesting of title to supplies is governed by provisions of 32 CFR 34.24(a), subject to the use and disposition requirements of 32 CFR 34.24(b).

c. *Federally owned property.* You must include a provision in any subaward to a for-profit entity under which the entity may be accountable for federally owned property, to state that title to such property will remain vested in the Federal Government.

*Section C. Property management system.* If you make a subaward under which the subrecipient either may acquire or improve

equipment, or may be accountable for federally owned property, you must include in the subaward:

1. If the subrecipient is a State, applicable provisions of:

a. Section A of PROP Article II concerning insurance for real property and equipment.

b. Section B of PROP Article II concerning other property management system standards.

2. If the subrecipient is an institution of higher education, nonprofit organization, local government, or Indian tribe, applicable provisions of:

a. Section A of PROP Article II concerning insurance for real property and equipment.

b. Section C of PROP Article II concerning other property management system standards.

3. If the subrecipient is a for-profit entity, applicable provisions of 32 CFR 34.22(a) and 34.23 and:

a. The for-profit entity may be accountable under the subaward for federally owned property; or

b. You obtained the grants officer's prior approval for the for-profit entity's acquisition of equipment under the subaward.

*Section D. Use and disposition of real property*. If the subrecipient of a subaward you make under this award may acquire or improve real property, then you must include in the subaward:

1. *Use*. The requirements concerning use of real property:

a. In Section A of PROP Article III if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe, unless the award-specific terms and conditions of this award provide otherwise; and

b. In 32 CFR 34.21(d) if the subaward is to a for-profit entity and you obtained the grants officer's prior approval for the entity's acquisition of real property under the subaward.

2. *Disposition*. Provisions to require the subrecipient to request disposition instructions through you when the property is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B of PROP Article III to address the Federal interest in the property.

*Section E. Use and disposition of equipment and supplies*. If you make a subaward under which the subrecipient may acquire or improve equipment, or acquire supplies, you must include in the subaward, as applicable:

1. If the subaward is to a State:

a. The requirements in Sections B and E of PROP Article IV concerning use and disposition of equipment and supplies; and

b. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements.

2. If the subaward is to an institution of higher education, nonprofit organization, local government, or Indian tribe:

a. The requirements in Sections C and E of PROP Article IV concerning use of equipment and use and disposition of supplies;

b. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements; and

c. Provisions to require the subrecipient to request disposition instructions from you when equipment is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section D of PROP Article IV to address the Federal interest in the equipment.

3. If the subaward is to a for-profit entity:

a. The requirements concerning use and disposition of supplies in 32 CFR 34.24(b);

b. And you obtained the grants officer's prior approval for the for-profit entity's acquisition of equipment under the subaward:

i. The requirements concerning use of equipment in 32 CFR 34.21(d); and

ii. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements; and

iii. Provisions to require the subrecipient to request disposition instructions from you when equipment is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B or D of PROP Article IV to address the Federal interest in the equipment.

*Section F. Use and disposition of federally owned property*. If you make a subaward under which the subrecipient may be accountable for federally owned property, you must include subaward provisions specifying that the subrecipient:

1. May use the property for purposes specified in paragraph A.1 of PROP Article V;

2. Must submit requests through you for the award administration office's approval to use the property for other purposes, as described in paragraph A.2 of PROP Article V;

3. Must request the award administration office's disposition instructions through you when the property is no longer needed for subaward purposes or the subaward ends.

*Section G. Intangible property*. You must include in a subaward provisions specifying the requirements of:

1. Sections A through D of PROP Article VI if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe.

2. Section A of PROP Article VI as it applies to works developed under the subaward, Section B of PROP Article VI, and paragraph C.1 of Section C of PROP Article VI, if the subaward is to a for-profit entity.

## APPENDIX F TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE VI, ''PROCUREMENT PROCEDURES TO INCLUDE IN SUBAWARDS''

Unless modified as provided in §1138.5, a DoD Component's general terms and conditions must use the following wording for SUB Article VI.

SUB ARTICLE VI. PROCUREMENT PROCEDURES TO INCLUDE IN SUBAWARDS. (DECEMBER 2014)

*Section A. Purposes of this article in relation to other articles.*

1. This article specifies administrative requirements concerning procurement procedures that you must include in the terms and conditions of each cost-type subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under PROC Articles I through III of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

*Section B. Subaward to a State.* In any subaward that you make to a State, you must include the requirements of PROC Article I and applicable sections of PROC Article III of this award.

*Section C. Subaward to an institution of higher education, nonprofit organization, local government, or Indian tribe.* In any subaward that you make to an institution of higher education, nonprofit organization, local government, or Indian tribe:

1. You must include the requirements of Sections A through G of PROC Article II and applicable sections of PROC Article III of this award.

2. You must include the requirement for the subrecipient to make available to you, upon request:

a. Technical specifications of proposed procurements, under the conditions described in OMB guidance at 2 CFR 200.324(a); and

b. Other procurement documents for pre-procurement review, under the conditions described in OMB guidance at 2 CFR 200.324(b).

3. If it is possible that, under a subaward you make, the subrecipient may award a construction or facility improvement contract with a value in excess of the simplified acquisition threshold, you must include provisions in the subaward to require the subrecipient to comply with at least the minimum requirements for bidders' bid guarantees and contractors' performance and payment bonds described in 2 CFR 200.325(a) through (c), unless you determine that the subrecipient's bonding policy and requirements are adequate to protect Federal interests.

*Section D. Subaward to a for-profit entity.* In any subaward you make to a for-profit entity, you must include the requirements in 32 CFR 34.31.

## APPENDIX G TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE VII, ''FINANCIAL, PROGRAMMATIC, AND PROPERTY REPORTING REQUIREMENTS FOR SUBAWARDS''

Unless modified as provided in §1138.5, a DoD Component's general terms and conditions must use the following wording for SUB Article VII (as specified in §§1138.700 through 1138.715).

SUB ARTICLE VII. FINANCIAL, PROGRAMMATIC, AND PROPERTY REPORTING REQUIREMENTS FOR SUBAWARDS. (DECEMBER 2014)

*Section A. Purposes of this article in relation to other articles.*

1. This article specifies administrative requirements concerning reporting that you must include in the terms and conditions of each cost-type subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under REP Articles I through III of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

*Section B. Performance reporting.*

1. You must include terms and conditions in each subaward to require the subrecipient to provide any performance information you need, by the time you need it, to comply with the performance reporting requirements in REP Article I and other terms and conditions of this award.

2. You may specify a form, format, or data elements for use by the subrecipient to provide the information to you (you need not require the subrecipient to use the same form, format, or data elements that REP Article I specifies for your reporting to us).

*Section C. Financial reporting.*

1. You must include terms and conditions in each subaward to require the subrecipient to provide any financial information you need, by the time you need it, to comply with the financial reporting requirements in REP Article II and other terms and conditions of this award.

2. You may specify a form, format, or data elements for use by the subrecipient to provide the information to you (you need not require the subrecipient to use the same form,

format, or data elements that REP Article II specifies for your reporting to us).

*Section D. Reporting on property.*

1. Each subaward you make under this award must include provisions concerning property reporting as described in paragraph D.2 of this section if the subrecipient may, under the subaward:

a. Acquire or improve real property or equipment;

b. Acquire supplies or intangible property; or

c. Be accountable for federally owned property.

2. The subaward provisions must require the subrecipient to give you the information you need about the property in order to meet your responsibilities to us under Sections A through D of REP Article III and PROP Articles II through VI.

*Section E. Other reporting* [Reserved]

## APPENDIX H TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE VIII, ''OTHER ADMINISTRATIVE REQUIREMENTS FOR SUBAWARDS''

Unless modified as provided in §1138.5, a DoD Component's general terms and conditions must use the following wording for SUB Article VIII, as specified in §1138.805, but may add a section(s), as appropriate.

### SUB ARTICLE VIII. OTHER ADMINISTRATIVE REQUIREMENTS FOR SUBAWARDS. (DECEMBER 2014)

*Section A. Purposes of this article in relation to other articles.*

1. This article specifies other administrative requirements that you either must or should include in the terms and conditions of each cost-type subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under OAR Articles I through VII of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

*Section B. Submission and maintenance of subrecipient information.* You must include the substance of the provision in Section C of OAR Article I in any subaward you make under this award. The provision must require the subrecipient's disclosure of any evidence directly to the Inspector General, DoD.

*Section C. Records retention and access.* In each subaward you make under this award:

1. If the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe:

a. You must include the requirements of Section A of OAR Article II with the additional condition that, for any subrecipient under this award that does not have a federally approved rate for indirect or facilities and administrative costs and that does not use the de minimis rate described in 2 CFR 200.414(f), you must:

i. Require the subrecipient to keep records that support its indirect or facilities and administrative costs charged to the subaward for 3 years from the end of the fiscal year (or other accounting period) to which the costs apply; and

ii. Keep any plan or computation the subrecipient submits to you to serve as a basis for your determining the reasonableness and allowability of indirect or facilities and administrative costs of the subaward, for 3 years from the end of the fiscal year (or other accounting period) to which the proposal, plan, or computation applies.

b. You must include the requirements of Sections B, C, and F of OAR Article II.

c. You must include provisions that enable you to comply with the requirements of Section D of OAR Article II concerning records for joint or long-term use.

d. You must include provisions that establish the same rights and responsibilities for the subrecipient under the subaward that Section E of OAR Article II establishes for you under this award.

e. You may not impose any other record retention or access requirements on the subrecipient.

2. If the subaward is to a for-profit entity, you must include the records retention and access provisions of 32 CFR 34.42.

*Section D. Remedies and termination.* The terms and conditions of each subaward you make under this award should specify your rights and responsibilities and those of the subrecipient if you take a remedial action to address a subrecipient's noncompliance with an applicable Federal statute or regulation or the terms and conditions of your subaward. Each subaward's terms and conditions should:

1. Identify remedial actions you may take to address the subrecipient's noncompliance. Available remedies are described in:

a. OMB guidance in 2 CFR 200.338 for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

b. 32 CFR 34.52 for a subaward to a for-profit entity.

2. With respect to termination specifically:

a. Identify conditions under which you, the subrecipient, or both (by mutual agreement) may terminate the subaward, in whole or in part, as described in:

i. OMB guidance in 2 CFR 200.339(a) for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

ii. 32 CFR 34.51 for a subaward to a for-profit entity.

b. Inform the subrecipient that you will provide it with a notice of termination if you unilaterally terminate the award.

c. Specify that you and the subrecipient remain responsible for applicable requirements addressed in Sections G and H of this article concerning closeout, post-closeout adjustments, and continuing responsibilities.

3. With respect to either suspension or termination of the subaward, inform the subrecipient about the criteria that you will use to either allow or disallow subaward costs, which are in:

a. Section D of OAR Article III for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

b. 32 CFR 34.52(c) for a subaward to a for-profit entity.

*Section E. Disputes, hearings, and appeals.* Each subaward's terms and conditions should specify any rights the subrecipient has to a hearing, appeal, or other administrative proceeding if it disputes a decision you render in administering its subaward. You must comply with any statute or regulation that affords the subrecipient an opportunity for a hearing, appeal, or other administrative proceeding and is applicable to the dispute.

*Section F. Collection of amounts due.* Although your subaward terms and conditions do not need to include any of the requirements of OAR Article V because those requirements do not flow down to subrecipients, you should consider including provisions to specify what you would need from the subrecipient if you owed a debt to the Federal Government under this award that is related to its subaward.

*Section G. Closeout.*

1. In each subaward that you make to an institution of higher education, nonprofit organization, State, local government, or Indian tribe, you must include provisions to require the subrecipient to:

a. Liquidate all obligations that it incurred under the subaward not later than 90 calendar days after the end date of the period of performance of either the subaward or this award, whichever is earlier, unless you grant an extension.

b. Promptly refund to you any balances of unobligated cash that you advanced or paid to the subrecipient, unless you received authorization from the DoD award administration office for the subrecipient's use of those funds on other projects or programs.

c. Submit to you:

i. Any information you need from the subrecipient to meet your responsibilities to us for an accounting of property, under Section D of OAR Article VI; and

ii. Not later than 90 calendar days after the end date of the period of performance of this award, unless you grant the subrecipient an extension, any information you need to meet your responsibilities to us for final reports, under Section C of OAR Article VI.

2. In each subaward that you make to a for-profit entity, you must include the terms and conditions that you deem necessary for you to be able to comply with the requirements in OAR Article VI.

*Section H. Post-closeout adjustments and continuing responsibilities.*

You must include provisions in each subaward to require the subrecipient to provide what you need in order to comply with the requirements of OAR Article VII.

## APPENDIX I TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE IX, ''NATIONAL POLICY REQUIREMENTS FOR SUBAWARDS''

Unless modified as provided in §1138.5, a DoD Component's general terms and conditions must use the following wording for SUB Article IX, as specified in §1138.905, or may modify the wording of the article, consistent with the Component's treatment of NP Articles I through IV in those terms and conditions.

SUB ARTICLE IX. NATIONAL POLICY REQUIREMENTS FOR SUBAWARDS. (DECEMBER 2014)

*Section A. General.*

1. You must include provisions in the terms and conditions of each subaward you make, whether cost-type or fixed-amount type, to require the subrecipient entity's compliance with each of the national policy requirements in Sections B through E of this article that you determine is applicable, given the type of entity receiving the subaward and activities it will be carrying out under the subaward.

2. If an entity to which you are about to make a subaward will not accept an award provision requiring its compliance with a national policy requirement that you determine to be applicable, you must alert the award administration office immediately. You may not omit an applicable national policy requirement in order to make the subaward.

3. If at any time during the performance of a subaward, you learn that—or receive a credible allegation that—the subrecipient is not complying with an applicable national policy requirement, you must alert the award administration office immediately.

*Section B. Nondiscrimination national policy requirements.* You must include provisions in each subaward to require the subrecipient's compliance with the nondiscrimination national policy requirements specified in paragraphs A.1 through A.5 of NP Article I, as applicable.

*Section C. Environmental national policy requirements.* You must include provisions in each subaward to require that:

1. The subrecipient comply with all applicable Federal environmental laws and regulations, including those specified in paragraphs A.2, A.3, A.5, and A.6 of NP Article II, as applicable.

2. Provide any information you need, when you need it, in order to comply with the requirement to immediately notify us of potential environmental impacts specified in paragraphs A.4, A.5, and A.6 of NP Article II, as applicable, due to activities under the award (which includes subaward activities).

*Section D. National policy requirements concerning live organisms.* You must include provisions in each subaward to require the subrecipient's compliance with the national policy requirements concerning human subjects and animals that are specified in paragraphs A.1 and A.2 of NP Article III, as applicable.

*Section E. Other national policy requirements.* You must include provisions in each subaward to require the subrecipient's compliance with the national policy requirements in the following portions of NP Article IV of this award, as applicable:

1. Paragraph A.1.
2. Paragraphs A.3.a and b.
3. Paragraphs A.4 through A.17.

## APPENDIX J TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE X, ''SUBRECIPIENT MONITORING AND OTHER POST-AWARD ADMINISTRATION''

Unless modified as provided in §1138.5, a DoD Component's general terms and conditions must use the following wording for SUB Article X.

### SUB ARTICLE X. SUBRECIPIENT MONITORING AND OTHER POST-AWARD ADMINISTRATION. (DECEMBER 2014)

*Section A. General requirement for subrecipient monitoring.* You must do the post-award monitoring of the subrecipient's activities under each subaward that is needed in order for you to ensure that:

1. The subrecipient carries out the portion of the substantive project or program under this award.

2. The subrecipient is using funds under the subaward (including any cost sharing or matching the subrecipient provides that is counted as project costs in the approved budget of this award) for authorized purposes.

3. The subrecipient's performance under the subaward is in compliance with applicable Federal statutes and regulations, and the terms and conditions of your subaward.

*Section B. Subrecipient monitoring actions.*

1. *Required monitoring actions under cost-type subawards.* You must, as part of your post-award monitoring of each subrecipient:

a. Review the financial and programmatic information that your subaward terms and conditions require the subrecipient to provide, in accordance with Sections B and C of SUB Article VII of this award.

b. Follow up and ensure that the subrecipient takes timely and appropriate action to remedy deficiencies detected through any means, including audits and on-site reviews.

c. With respect to audits of subrecipients that are required under FMS Article V of this award:

i. Verify that the subrecipient is audited in accordance with those requirements, as applicable (note that Section F of SUB Article IV requires you to include those audit requirements for the subrecipient in the subaward's terms and conditions).

ii. Resolve and issue a management decision for audit findings that pertain to your subaward. Doing so is a requirement under either Section A or B of FMS Article V of this award (Section B requires that explicitly and Section A does so by implementing OMB guidance in 2 CFR 200.521, as well as other portions of Subpart F of that part).

iii. Consider whether you need to adjust your own records related to this award based on results of audits, on-site reviews or other monitoring of the subrecipient and, as applicable, notify the award administration office.

2. *Other monitoring actions.* OMB guidance in 2 CFR 200.331(e)(1) through (3) describes other actions that may be useful as part of your subrecipient monitoring program, depending on the outcomes of the pre-award risk assessment you conducted in accordance with Section B of SUB Article II.

*Section C. Remedies and subaward suspension or termination.* With respect to any subaward under this award, you must:

1. Consider whether you need to take any remedial action if you determine that the subrecipient is noncompliant with an applicable Federal statute or regulation or the terms and conditions of your subaward, as described in Section D of SUB Article VIII.

2. Provide a notice of termination to the subrecipient if you terminate its subaward unilaterally for any reason prior to the end of the period of performance.

3. In the case of suspension or termination of a subaward prior to the end of the period of performance, allow or disallow subaward costs in accordance with Section D of OAR Article III.

*Section D. Subaward closeout.*

1. You will close out each subaward when you either:

a. Determine that the subrecipient has completed its programmatic performance under the subaward and all applicable administrative actions; or

b. Terminate the subaward, if you do so prior to the end of the subaward's period of performance.

2. With respect to the closeout of each subaward:

a. You must pay the subrecipient promptly for allowable and reimbursable costs.

b. Consistent with the terms and conditions of the subaward, you must make a settlement for any upward or downward adjustments to the Federal share of costs after you receive the information you need from the subrecipient to close out the subaward.

c. You should complete the closeout of the subaward no later than one year after you receive and accept the final reports and other information from the subrecipient that you need to close out the subaward.

## APPENDIX K TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE XI, ''REQUIREMENTS CONCERNING SUBRECIPIENTS' LOWER-TIER SUBAWARDS''

Unless modified as provided in §1138.5, a DoD Component's general terms and conditions must use the following wording for SUB Article XI.

### SUB ARTICLE XI. REQUIREMENTS CONCERNING SUBRECIPIENTS' LOWER-TIER SUBAWARDS. (DECEMBER 2014)

*Section A. Purpose.* This article specifies requirements you must include in any cost-type subaward under which you determine that the subrecipient of your subaward may make lower-tier cost-type subawards to other entities. Paragraph G.1 of SUB Article XII specifies requirements related to fixed-amount type subawards at lower tiers.

*Section B. Requirements for lower-tier subawards.* Your cost-type subaward terms and conditions must require your subrecipient, with respect to each lower-tier cost-type subaward that it makes, to:

1. Ensure that the lower-tier transaction is a subaward, rather than a procurement, by making the determination that SUB Article I of this award requires you to make for your subawards.

2. Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of this award requires you to make for your subawards.

3. Include in any cost-type subaward it makes at the next tier:

a. The informational content that SUB Article III specifies;

b. The administrative requirements that SUB Articles IV through VIII of this award specify;

c. The national policy requirements that SUB Article IX of this award specifies, as applicable; and

d. The requirements of this article if the next-tier subrecipient may make even lower-tier cost-type subawards to other entities.

4. Carry out the subrecipient monitoring and other post-award administration responsibilities specified in SUB Article X of this award.

## APPENDIX L TO PART 1138—TERMS AND CONDITIONS FOR SUB ARTICLE XII, ''FIXED-AMOUNT SUBAWARDS''

Unless modified as provided in §1138.5 or 1138.1205, a DoD Component's general terms and conditions must use the following wording for SUB Article XII.

### SUB ARTICLE XII. FIXED-AMOUNT SUBAWARDS. (DECEMBER 2014)

*Section A. Limitations on use.*

1. You may not use a fixed-amount subaward:

a. If the total value over the life of the subaward will exceed the simplified acquisition threshold.

b. Unless the project or program scope is specific, with definite outcomes, and you are able to establish a reasonable estimate of the actual costs of accomplishing those outcomes.

c. If you will predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under the subaward.

d. If the subrecipient will acquire any real property or equipment under the subaward.

2. For fixed-amount subawards not prohibited by paragraph 1 of this section and except as provided in Section B of this article, you must obtain our prior approval before making a fixed-amount type of subaward.

a. If Section B of FMS Article IV requires you to obtain our prior approval before you make any subaward, and you do not identify the subaward as a fixed-amount subaward when you obtain that approval, then you must subsequently request separate approval before awarding it as a fixed-amount type of subaward.

b. If a subaward is identified as a fixed-amount type of subaward in the budget you submit for our approval, then our approval of the budget is the required prior approval.

*Section B. Fixed-amount subawards that do not require prior approval.* You are not required to obtain our prior approval before using a fixed-amount type of subaward if:

1. The subaward is to either:

a. A foreign public entity; or

b. An organizational unit of a foreign organization, if that unit does not have a place of business in the United States, regardless of whether another organizational unit of that foreign organization has one.

2. You determine that the portion of the project or program under this award which the subrecipient will be carrying out under

the subaward has one or more specific outcomes with the following characteristics:

a. You can define the outcomes well enough to specify them at the time you make the subaward. Note that:

i. Outcomes are distinct from inputs needed to achieve the outcomes, such as amounts or percentages of time that subrecipient employees or other participants will spend on the project or program.

ii. The inherently unpredictable nature of basic or applied research makes it rarely, if ever, possible to define specific research outcomes in advance, which makes fixed-amount subawards inappropriate for research. Note that technical performance reports serve to document research outcomes but are not themselves outcomes, notwithstanding the definition of ''performance goals'' in OMB guidance at 2 CFR 200.76.

b. The accomplishment of each outcome will be observable and verifiable by you when it occurs, so that you will not need to rely solely on the subrecipient's assurance of that accomplishment.

c. The subrecipient associates its estimated costs with outcomes in the proposal it submits to you, and you are confident that the costs of accomplishment of the outcomes will equal or exceed the subaward amount. This requires either that you have a high degree of confidence:

i. In your estimate of the costs associated with accomplishing the well-defined and observable outcomes, based on the prospective subrecipient's proposal (and using the applicable cost principles in FMS Article III as a guide); or

ii. That those costs will be within a finite range, rather than a specific amount, so that you may provide an amount of funding under the subaward that does not exceed the lower end of the range, with the provision that the subrecipient agrees to provide any balance above that amount that ultimately is needed to accomplish the outcomes. Your subaward then would include a term or condition to reflect the subrecipient's agreement to provide that balance (which would be in an amount to be post-determined, when the outcomes are accomplished). Note that this is distinct from a situation in which you predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under its subaward, a situation in which paragraph A.1.c of this article prohibits use of a fixed-amount subaward.

3. a. The subaward is based on a fixed rate per unit of outcome (or ''unit cost'') and you have both the confidence:

i. That is described in paragraph B.2.c of this article in the estimated costs associated with each unit of outcome; and

ii. In the subrecipient's guarantee that it can accomplish at least the number of units of outcome on which your total subaward amount will be based (*i.e.*, the product of the unit cost and the number of units of outcome the subrecipient guarantees to accomplish).

b. Note, however, that not every fixed rate subaward is also a fixed-amount subaward. If you have confidence in the unit cost but not also in the subrecipient's ability to guarantee the number of units of outcome that it will accomplish, then you should set a not-to-exceed award amount based on the number of units desired and reduce the subaward amount at the end if the subrecipient accomplishes fewer than that number. Examples of activities for which it may be appropriate to award this type of fixed rate subaward that is not a fixed-amount subaward include:

i. A clinical trial for which the unit cost is the cost of treating each participant. The not-to-exceed amount would be based on the number of participants the subrecipient planned to recruit and the final award on the number who actually participated, documentation for which would be subject to audit.

ii. Labor costs for performance of a portion of the project or program under this award by a for-profit entity that treats its indirect cost rate as proprietary information. The unit cost in that case may be ''loaded'' labor rates for the entity's employees that include indirect costs. The final award amount would depend on the number of labor hours the entity's employees expended under the subaward, documentation for which may be audited without exposing proprietary details associated with the actual costs.

*Section C. Informational content of fixed-amount subawards.* You must include in each fixed-amount subaward the informational content, other than the indirect cost rate, that is described in SUB Article III of this award.

*Section D. Terms and conditions addressing administrative requirements.*

1. *General.* This section:

a. Specifies the minimum set of terms and conditions (in lieu of the more extensive set specified in SUB Articles IV through X for cost-type subawards) addressing administrative requirements that you must include in each fixed-amount subaward:

i. To an entity other than a foreign organization, as applicable; and

ii. To the maximum extent practicable, to a foreign organization.

b. Does not preclude the inclusion of other requirements that you need in order to meet your responsibilities under this award for performance of the project or program and compliance with applicable administrative and national policy requirements.

2. *Financial and program management requirements.*

a. *Financial management system standards.* For a subaward to other than a for-profit entity, your subaward must require the subrecipient to include the information specified in paragraph B.1 of FMS Article I in its

financial management system, for the purposes of the non-Federal audits required by paragraph 2.d of this section.

b. *Payments.* Your payments must be based on accomplishment of the outcomes and associated costs that you used to establish the award amount, rather than on subrecipient expenditures for project or program purposes. Milestone payments before the end of the subaward's period of performance may be appropriate if there are outcomes that the subrecipient will accomplish at different times during that period.

c. *Revision of budget and program plans.* If our prior approval was required under paragraph A.2 of this article for use of a fixed-amount type of subaward, then you must:

i. Request our prior approval for any change in scope or objective of the subaward; and

ii. Include a requirement in the subaward for the subrecipient to request that approval through you.

d. *Non-Federal audits.* You must include the requirement for non-Federal audits described in Section F of SUB Article IV. The audits are intended to focus on compliance with the performance requirements in the subaward terms and conditions and not to review actual costs as they would for a cost-type subaward.

3. *Property requirements.*

a. *Federally owned property.* If the subrecipient will be accountable for federally owned property, you must include the property management system, use, and disposition requirements described in Sections C and F of SUB Article V that are applicable to federally owned property.

b. *Intangible property.* You must include the applicable intangible property requirements described in Section G of SUB Article V.

4. *Reporting requirements.* You must include requirements for reporting that you need in order to meet your responsibilities under this award for reporting to us.

5. *Other administrative requirements.*

a. *Integrity-related information.* You must include the substance of the provision in Section C of OAR Article I in any subaward you make under this award. The provision must require the subrecipient's disclosure of any evidence directly to the Inspector General, DoD.

b. *Records retention and access.*

i. You must include the requirements for records retention and access in paragraph A.3 and Sections B and F of OAR Article II, as applicable, if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe. You may not impose any other records retention or access requirements on the subrecipient.

ii. You must include the corresponding requirements of 32 CFR 34.42 if the subaward is to a for-profit entity.

c. *Remedies and termination.* You must include:

i. The requirements concerning remedies and termination that are described in paragraphs D.1 and 2 of SUB Article VIII;

ii. Provisions addressing any hearing and appeal rights the subrecipient has, as described in Section E of SUB Article VIII; and

iii. Terms and conditions addressing adjustment of the amount of the subaward if it is terminated before the subrecipient accomplishes all of the specified outcomes.

d. *Continuing responsibilities.* You must include requirements concerning continuing responsibilities for audits and records retention and access that are described in paragraphs B.1 and 3 of OAR Article VII.

e. *Collection of amounts due.* You should consider including requirements concerning collection of amounts due, as described in Section F of SUB Article VIII.

*Section E. National policy requirements for fixed-amount subawards.* You must include in the terms and conditions of each fixed-amount subaward the national policy requirements that SUB Article IX of this award specifies, as applicable.

*Section F. Subrecipient monitoring and other post-award administration.* You must carry out the subrecipient monitoring and post-award administration actions specified in SUB Article X, as applicable.

*Section G. Fixed-amount subawards at lower tiers.*

1. *Authority.*

a. If Section B of this article authorizes you to use a fixed-amount type of subaward without our prior approval in some situations, a cost-type subaward that you make may authorize the subrecipient to use fixed-amount subawards at the next lower tier in those same situations without our prior approval.

b. If you wish to allow a subrecipient of a cost-type subaward to use fixed-amount subawards at the next tier in other situations (*i.e.*, situations in which this article requires you to obtain our prior approval before using a fixed-amount type of subaward), your subaward terms and conditions must require the subrecipient to submit a request through you to obtain our prior approval for use of that type of subaward.

2. *Subaward requirements.* If your subrecipient is authorized to use lower-tier fixed-amount subawards, as described in paragraphs 1.a and b of this section, your subaward's terms and conditions must:

a. Require the subrecipient, before it makes any lower-tier fixed-amount subaward, to:

i. Ensure that the lower-tier transaction is a subaward, rather than a procurement, by making the determination that SUB Article I of this award requires you to make for your subawards.

ii. Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of this award requires you to make for your subawards.

b. Include the requirements specified in Sections A through F of this article.

## PART 1140 [RESERVED]

# SUBCHAPTER E [RESERVED]

## PARTS 1141–1155 [RESERVED]

# SUBCHAPTER F [RESERVED]

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# SUBCHAPTER G [RESERVED]

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# CHAPTER XII—DEPARTMENT OF TRANSPORTATION


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# PART 1200—NONPROCUREMENT SUSPENSION AND DEBARMENT

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1200.10 What does this part do?
1200.20 Does this part apply to me?
1200.30 What policies and procedures must I follow?

Subpart A—General

1200.137 Who in the Department of Transportation may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

1200.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

1200.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

1200.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–J [Reserved]

AUTHORITY: 49 U.S.C. 322; Sec. 2455, Public Law 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

SOURCE: 73 FR 24140, May 2, 2008, unless otherwise noted.

### § 1200.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Transportation policies and procedures for nonprocurement suspension and debarment. It thereby gives regulatory effect for the Department of Transportation to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Supension and Debarment'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Suspension and Debarment'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

### § 1200.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970;

(b) Respondent in a Department of Transportation suspension or debarment action;

(c) Department of Transportation debarment or suspension official;

(d) Department of Transportation grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 1200.30 What policies and procedures must I follow?

The Department of Transportation policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220), as supplemented by section 220 in this part (i.e., §1200.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, Department of Transportation policies and procedures are those in the OMB guidance.

## Subpart A—General

### § 1200.137 Who in the Department of Transportation may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Transportation, Office of the Secretary, the Secretary or an official designated by the

Secretary may grant an exception permitting an excluded person to participate in a particular covered transaction. Within an Operating Administration of the Department of Transportation, the head of the operating administration may grant an exception permitting an excluded person to participate in a particular covered transaction. The head of an operating administration may delegate this function and authorize successive delegations.

## Subpart B—Covered Transactions

### § 1200.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed $25,000. This extends the coverage of the Department of Transportation nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180).

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 1200.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 1200.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180 and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–J [Reserved]

# PART 1201—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

1201.1 What does this part do?
1201.2 Definitions.
1201.80 Program income.
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1201.112 Conflict of interest.
1201.207 Standard application requirements.
1201.313 Equipment.
1201.317 Procurements by States.
1201.319 Competition.
1201.328 Financial reporting.

AUTHORITY: 49 U.S.C. 322(a); 2 CFR 200.106.

SOURCE: 79 FR 76049, Dec. 19, 2014, unless otherwise noted.

### § 1201.1 What does this part do?

Except as otherwise provided in this part, the Department of Transportation adopts the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200). This part supersedes and repeals the requirements of the Department of Transportation Common Rules (49 CFR part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and 49

CFR part 19—Uniform Administrative Requirements—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), except that grants and cooperative agreements executed prior to December 26, 2014 shall continue to be subject to 49 CFR parts 18 and 19 as in effect on the date of such grants or agreements. New parts with terminology specific to the Department of Transportation follow.

### § 1201.2 Definitions.

Throughout this part, the term ''DOT Component'' refers to any Division, Office, or Mode (*e.g.*, the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), National Highway Traffic Safety Administration (NHTSA), Office of Inspector General (OIG), Office of the Secretary of Transportation (OST), Pipeline and Hazardous Materials Safety Administration (PHMSA), St. Lawrence Seaway Development Corporation (SLSDC), and the Surface Transportation Board (STB)) within the Department of Transportation awarding Federal financial assistance. In addition, the term ''DOT Headquarters'' refers to the Secretary of Transportation or any office designated by the Secretary to fulfill headquarters' functions within any office under the Secretary's immediate supervision.

### § 1201.80 Program income.

Notwithstanding 2 CFR 200.1, *program income* means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance. (See 2 CFR 200.1 *Definitions*.) Program income includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, taxes, special assessments, levies, and fines raised by a grantee and subgrantee, and interest earned on any of them.

[79 FR 76049, Dec. 19, 2014, as amended at 88 FR 12806, Mar. 1, 2023]

### § 1201.102 Exceptions.

DOT Headquarters may grant exceptions to Part 1201 on a case-by-case basis. Such exceptions will be granted only as determined by the Secretary of Transportation.

### § 1201.106 DOT Component implementation.

The specific requirements and responsibilities for grant-making DOT Components are set forth in this part. DOT Components must implement the language in this part unless different provisions are required by Federal statute or are approved by DOT Headquarters. DOT Components making Federal awards to non-Federal entities must implement the language in the Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards of this Part through Subpart F—Audit Requirements of this Part in codified regulations unless different provisions are required by Federal statute or are approved by DOT Headquarters.

### § 1201.107 DOT Headquarters responsibilities.

DOT Headquarters will review DOT Component implementation of this part, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation. Any exceptions will be subject to approval by DOT Headquarters. Exceptions will only be made in particular cases where adequate justification is presented.

### § 1201.108 Inquiries.

Inquiries regarding Part 1201 should be addressed to the DOT Component

making the award, cognizant agency for indirect costs, cognizant or oversight agency for audit, or pass-through entities as appropriate. DOT Components will, in turn, direct the inquiry to the Office of Chief Financial Officer, Department of Transportation.

### § 1201.109 Review date.

DOT Headquarters will review this part at least every five years after December 26, 2014.

### § 1201.112 Conflict of interest.

The DOT Component making a financial assistance award must establish conflict of interest policies for Federal awards, including policies from DOT Headquarters. The non-Federal entity must disclose in writing any potential conflict of interest to the DOT Component or pass-through entity in accordance with applicable Federal awarding agency policy.

### § 1201.207 Standard application requirements.

The requirements of 2 CFR 200.207 do not apply to formula grant programs, which do not require applicants to apply for funds on a project basis.

[79 FR 76049, Dec. 19, 2014. Redesignated and amended at 88 FR 12806, Mar. 1, 2023]

### § 1201.313 Equipment.

Notwithstanding 2 CFR 200.313, subrecipients of States shall follow such policies and procedures allowed by the State with respect to the use, management and disposal of equipment acquired under a Federal award.

### § 1201.317 Procurements by States.

Notwithstanding 2 CFR 200.317, subrecipients of States shall follow such policies and procedures allowed by the State when procuring property and services under a Federal award.

### § 1201.328 Financial reporting.

Notwithstanding 2 CFR 200.328, recipients of FHWA and NHTSA financial assistance may use FHWA, NHTSA or State financial reports.

[79 FR 76049, Dec. 19, 2014. Redesignated and amended at 88 FR 12806, Mar. 1, 2023]

## PARTS 1202–1299 [RESERVED]

# CHAPTER XIII—DEPARTMENT OF COMMERCE


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## PARTS 1300–1325 [RESERVED]

# PART 1326—NONPROCUREMENT DEBARMENT AND SUSPENSION

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1326.10 What does this part do?
1326.20 Does this part apply to me?
1326.30 What policies and procedures must I follow?

### Subpart A—General

1326.137 Who in the Department of Commerce may grant an exception to let an excluded person participate in a covered transaction?

### Subpart B—Covered Transactions

1326.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?
1326.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

### Subpart C—Responsibilities of Participants Regarding Transactions

1326.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

1326.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

### Subparts E–H [Reserved]

### Subpart I—Definitions

1326.970 Nonprocurement transaction (Department of Commerce supplement to government-wide definition at 2 CFR 180.970).

### Subpart J [Reserved]

AUTHORITY: 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 71 FR 76574, Dec. 21, 2006, unless otherwise noted.

### § 1326.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Commerce policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

### § 1326.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970, as supplemented by subpart B and § 1326.970 of this part).

(b) Respondent in a Department of Commerce suspension or debarment action.

(c) Department of Commerce debarment or suspension official;

(d) Department of Commerce grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

### § 1326.30 What policies and procedures must I follow?

The Department of Commerce policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § 1326.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, Department of Commerce policies

and procedures are those in the OMB guidance.

## Subpart A—General

### § 1326.137 Who in the Department of Commerce may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Commerce, the Secretary of Commerce or designee has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

## Subpart B—Covered Transactions

### § 1326.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?

(a) For purposes of the Department of Commerce, a transaction that the Department needs to respond to a national or agency-recognized emergency or disaster includes the Fisherman's Contingency Fund.

(b) For purposes of the Department of Commerce, an incidental benefit that results from ordinary governmental operations includes:

(1) Export Promotion, Trade Information and Counseling, and Trade policy.

(2) Geodetic Surveys and Services (Specialized Services).

(3) Fishery Products Inspection Certification.

(4) Standard Reference Materials.

(5) Calibration, Measurement, and Testing.

(6) Critically Evaluated Data (Standard Reference Data).

(7) Phoenix Data System.

(8) The sale or provision of products, information, and services to the general public.

(c) For purposes of the Department of Commerce, any other transaction if the application of an exclusion to the transaction is prohibited by law includes:

(1) The Administration of the Antidumping and Countervailing Duty Statutes.

(2) The export Trading Company Act Certification of Review Program.

(3) Trade Adjustment Assistance Program Certification.

(4) Foreign Trade Zones Act of 1934, as amended.

(5) Statutory Import Program.

### § 1326.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to a subcontract that is awarded by a participant in a procurement transaction covered under 2 CFR 180.220(a), if the amount of the subcontract exceeds or is expected to exceed $25,000. This extends the coverage of the Department of Commerce nonprocurement suspension and debarment requirements to one additional tier of contracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 1326.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR Part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 1326.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–H [Reserved]

## Subpart I—Definitions

**§ 1326.970 Nonprocurement transaction (Department of Commerce supplement to government-wide definition at 2 CFR 180.970).**

For purposes of the Department of Commerce, nonprocurement transaction includes the following:

(a) Joint project Agreements under 15 U.S.C. 1525.

(b) Cooperative research and development agreements.

(c) Joint statistical agreements.

(d) Patent licenses under 35 U.S.C. 207.

(e) NTIS joint ventures, 15 U.S.C. 3704b.

## Subpart J [Reserved]

# PART 1327—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

AUTHORITY: 5 U.S.C. 301; 38 U.S.C. 501; 2 CFR part 200.

SOURCE: 79 FR 76050, Dec. 19, 2014, unless otherwise noted.

**§ 1327.101 Adoption of 2 CFR Part 200.**

Under the authority listed above, the Department of Commerce adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

# PART 1328 [RESERVED]

# PART 1329—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

1329.10 What does this part do?
1329.20 Does this part apply to me?
1329.30 What policies and procedures must I follow?

### Subpart A—Purpose and Coverage [Reserved]

### Subpart B—Requirements for Recipients Other Than Individuals

1329.225 Whom in the Department of Commerce does a recipient other than an individual notify about a criminal drug conviction?

### Subpart C—Requirements for Recipients Who Are Individuals

1329.300 Whom in the Department of Commerce does a recipient who is an individual notify about a criminal drug conviction?

### Subpart D—Responsibilities of Agency Awarding Officials

1329.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

### Subpart E—Violations of This Part and Consequences

1329.500 Who in the Department of Commerce determines that a recipient other than an individual violated the requirements of this part?
1329.505 Who in the Department of Commerce determines that a recipient who is an individual violated the requirements of this part?

### Subpart F—Definitions [Reserved]

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 701–707.

SOURCE: 81 FR 3700, Jan. 22, 2016, unless otherwise noted.

**§ 1329.10 What does this part do?**

This part requires that the award and administration of Department of Commerce grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (subparts A through F of 2 CFR part 182) for the Department of Commerce's grants and cooperative agreements; and

(b) Establishes Department of Commerce policies and procedures for compliance with the Act that are the same

as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

### § 1329.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of a Department of Commerce grant or cooperative agreement; or

(b) Department of Commerce awarding official.

### § 1329.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| (1) 2 CFR 182.225(a) | § 1329.225 | Whom in the Department of Commerce a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace. |
| (2) 2 CFR 182.300(b) | § 1329.300 | Whom in the Department of Commerce a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| (3) 2 CFR 182.500 | § 1329.500 | Who in the Department of Commerce is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| (4) 2 CFR 182.505 | § 1329.505 | Who in the Department of Commerce is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, Department of Commerce policies and procedures are the same as those in the OMB guidance.

## Subpart A—Purpose and Coverage [Reserved]

## Subpart B—Requirements for Recipients Other Than Individuals

### § 1329.225 Whom in the Department of Commerce does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each Department of Commerce office from which it currently has an award.

## Subpart C—Requirements for Recipients Who Are Individuals

### § 1329.300 Whom in the Department of Commerce does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each Department of Commerce office from which it currently has an award.

## Subpart D—Responsibilities of Agency Awarding Officials

### § 1329.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award: Drug-free workplace. You as the recipient must

comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR part 1329, which adopts the Govemmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

## Subpart E—Violations of This Part and Consequences

### § 1329.500 Who in the Department of Commerce determines that a recipient other than an individual violated the requirements of this part?

The Secretary of Commerce or designee determines that a recipient other than an individual violated the requirements of this part.

### § 1329.505 Who in the Department of Commerce determines that a recipient who is an individual violated the requirements of this part?

The Secretary of Commerce or designee determines that a recipient who is an individual violated the requirements of this part.

## Subpart F—Definitions [Reserved]

## PARTS 1330–1399 [RESERVED]

# CHAPTER XIV—DEPARTMENT OF THE INTERIOR


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# PART 1400—NONPROCUREMENT DEBARMENT AND SUSPENSION

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1400.970 Nonprocurement transaction (Department of the Interior supplement to the definition at 2 CFR 180.970).
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1400.1011 The DOI Debarment Program Director.
1400.1012 The OIG Administrative Remedies Division (ARD).
1400.1013 The administrative record.
1400.1014 Respondent.

**Subpart J [Reserved]**

AUTHORITY: Section 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 5 U.S.C. 301; E.O. 12549 (3 CFR, 1986 Comp., p. 189); and E.O. 12689 (3 CFR, 1989 Comp., p. 235).

SOURCE: 72 FR 33384, June 18, 2007, unless otherwise noted.

## § 1400.10 What does this part do?

This part provides procedures for the Department of the Interior nonprocurement suspension and debarment actions.

[81 FR 65855, Sept. 26, 2016]

## § 1400.20 When does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of

''nonprocurement transaction'' at 2 CFR 180.970, as supplemented by subpart B and §1400.970);

(b) Respondent in a Department of the Interior suspension or debarment action;

(c) Department of the Interior debarment or suspension official, i.e., the Director, Office of Acquisition and Property Management; or

(d) Department of the Interior grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### §1400.30 What policies and procedures must I follow?

(a) The Department of the Interior policies and procedures that you must follow are specified in:

(1) Each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180; and

(2) The supplement to each section of the OMB guidance that is found in this part under the same section number. (The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., Sec. 1400.220)).

(b) For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, Department of the Interior policies and procedures are those in the OMB guidance.

## Subpart A—General

### §1400.137 Who in the Department of the Interior may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of the Interior, the Director, Office of Acquisition and Property Management has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

## Subpart B—Covered Transactions

### §1400.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?

(a) Transactions entered into pursuant to Public Law 93–638, 88 Stat. 2203.

(b) Under natural resource management programs, permits, licenses, exchanges, and other acquisitions of real property, rights-of-way, and easements.

(c) Transactions concerning mineral patent claims entered into pursuant to 30 U.S.C. 22 *et seq.;* and

(d) Water service contracts and repayments entered into pursuant to 43 U.S.C. 485.

### §1400.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), the Department of the Interior does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

## Subpart C—Responsibilities of Participants Regarding Transactions

### §1400.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### §1400.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435

of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subpart E—System for Award Management Exclusions

SOURCE: 81 FR 65855, Sept. 26, 2016, unless otherwise noted.

### § 1400.526 Who at DOI Places Exclusions Information into SAM?

The Office of Acquisition and Property Management (PAM) Debarment Program personnel enter information about persons suspended or debarred by DOI into the GSA Web-based System for Award Management (SAM) within 3 working days of the effective date of the action.

## Subpart F—General Principles Relating to Suspension and Debarment Actions

SOURCE: 81 FR 65855, Sept. 26, 2016, unless otherwise noted.

### § 1400.600 How does a DOI suspension or debarment action begin?

(a) Federal officials, DOI award officials, employees, or other sources will forward information indicating the potential existence of a cause for suspension or debarment, as listed in 2 CFR 180.700 and 180.800, to:

(1) The DOI Office of Inspector General Administrative Remedies Division (OIG ARD); or

(2) The Suspending and Debarring Official.

(b) If forwarded to the OIG ARD, that office will conduct a review to determine if a recommendation for administrative action is warranted. If warranted, the OIG ARD will prepare and submit to the Suspending and Debarring Official an Action Referral Memorandum (ARM) with supporting documentation for the administrative record.

(c) OIG ARD will also identify potential matters for case development and conduct a review to determine if a recommendation for administrative action is warranted. If warranted, the OIG ARD will prepare and submit to the Suspending and Debarring Official an ARM with supporting documentation for the administrative record.

(d) The Suspending and Debarring Official will review the ARM to determine the adequacy of evidence to support and initiate:

(1) A suspension by taking the actions listed in 2 CFR 180.615 and 180.715; or

(2) A debarment by taking the actions listed in 2 CFR 180.615 and 2 CFR 180.805; and

(3) Notification of the respondent on how the respondent may contest the action.

### § 1400.635 May DOI settle a debarment or suspension action?

Under 2 CFR 180.635, the Suspending and Debarring Official may resolve a suspension or debarment action through an administrative agreement if it is in the best interest of the Government at any stage of proceedings, where the respondent agrees to appropriate terms. The specific effect of administrative agreements that incorporate terms regarding award eligibility will vary with the terms of the agreements. Where the Suspending and Debarring Official enters into an administrative agreement, PAM will notify the award officials by:

(a) Entering any appropriate information regarding an exclusion or the termination of an exclusion into the SAM; and

(b) Entering the agreement into the Federal Awardee Performance Integrity Information System (FAPIIS) or its successor system.

## Subpart G—Suspension

SOURCE: 81 FR 65855, Sept. 26, 2016, unless otherwise noted.

### § 1400.751 What does the Suspending and Debarring Official consider in making a decision on whether to continue a suspension following notice issuance?

(a) In the event a respondent does not contest the suspension in writing within the time period provided at 2 CFR 180.715 through 180.725, the suspension will remain in place without further proceedings.

(b) Where a suspension is contested, the Suspending and Debarring Official follows the provisions at 2 CFR 180.730 through 180.755 in reaching a decision on whether to continue or terminate the suspension.

(c) The contested suspension proceeding will include an oral Presentation of Matters in Opposition (PMIO), where one is requested by a respondent. The PMIO is conducted in an informal business meeting format and electronically recorded for inclusion in the administrative record.

(d) Where fact-finding occurs as part of the suspension proceeding, after receiving the findings of fact and the hearing record from the fact-finding official, the Suspending and Debarring Official completes suspension proceedings, including a PMIO if one has been requested and did not occur before the fact-finding proceeding. Following completion of suspension proceedings, the Suspending and Debarring Official issues a written decision under the provisions of 2 CFR 180.750 and 180.755.

### § 1400.752 When does a contested suspension action include a fact-finding proceeding?

(a) Fact-finding to resolve genuine disputes over facts material to the suspension occurs where the conditions listed in 2 CFR 180.735(b) are satisfied.

(b) The fact-finding official for DOI suspension proceedings is the DOI Debarment Program Director, unless the Suspending and Debarring Official designates another DOI official to serve as the fact-finding official.

### § 1400.753 How is the fact-finding proceeding conducted?

(a) The fact-finding proceeding is conducted in accordance with PAM's suspension and debarment program fact-finding procedures, a copy of which is provided to the respondent.

(b) The fact-finding proceeding is undertaken in accordance with 2 CFR 180.745.

(1) The reporters' fees and other direct costs associated with the fact-finding proceeding are borne by the bureau(s) or office(s) initiating the suspension action, except in the case of actions initiated by the OIG ARD.

(2) For actions initiated by the OIG ARD, the costs are borne by bureau(s) and/or office(s) out of which the matter arose.

(3) A transcribed record transcript of the fact-finding proceedings is available to the respondent as provided at 2 CFR 180.745(b).

(c) The fact-finding official provides findings of fact and the hearing record to the Suspending and Debarring Official. The fact-finding official files the original copy of the transcribed record of the fact-finding proceedings transcript with the administrative record.

### § 1400.756 May a respondent request administrative review of the Suspending and Debarring Official's decision?

A respondent may seek administrative reconsideration of the Suspending and Debarring Official's decision by following the procedures in this section.

(a) Within 30 days of receiving the decision, the respondent may ask the Suspending and Debarring Official to reconsider the decision for clear and material errors of fact or law that would change the outcome of the matter. The respondent bears the burden of demonstrating the existence of the asserted clear and material errors of fact or law.

(b) A respondent's request for reconsideration must be submitted in writing to the Suspending and Debarring Official and include:

(1) The specific findings of fact and conclusions of law believed to be in error; and

(2) The reasons or legal basis for the respondent's position.

(c) The Suspending and Debarring Official may, in the exercise of discretion, stay the suspension pending reconsideration. The Suspending and Debarring Official will:

(1) Notify the respondent in writing of the decision on whether to reconsider the decision; and

(2) If reconsideration occurs, notify the respondent in writing of the results of the reconsideration.

## Subpart H—Debarment

SOURCE: 81 FR 65855, Sept. 26, 2016, unless otherwise noted.

### § 1400.861 What procedures does the Suspending and Debarring Official follow to make a decision on whether to impose debarment following notice issuance?

(a) In the event a respondent does not contest the proposed debarment in writing within the time period provided at 2 CFR 180.815 through 180.825, the debarment as proposed in the notice will be imposed without further proceedings.

(b) Where a proposed debarment is contested, the Suspending and Debarring Official will follow the provisions at 2 CFR 180.830 through 180.870 in reaching a decision on whether to impose a period of debarment.

(c) The administrative record will include an oral PMIO, in those actions where the respondent requests one. The PMIO is conducted in an informal business meeting format and electronically recorded for the record.

(d) Where fact-finding occurs as part of the proposed debarment proceeding, after receiving the findings of fact and the hearing record from the fact-finding official, the Suspending and Debarring Official completes debarment proceedings, including a PMIO if one has been requested and did not occur before the fact-finding proceeding. Following completion of proposed debarment proceedings, the Suspending and Debarring Official issues a written decision under the provisions of 2 CFR 180.870.

### § 1400.862 When does a contested proposed debarment action include a fact-finding proceeding?

Fact-finding to resolve genuine disputes over facts material to the proposed debarment occurs where the conditions at 2 CFR 180.830(b) are satisfied.

### § 1400.863 How is the fact-finding proceeding conducted?

(a) The fact-finding proceeding is conducted in accordance with PAM's suspension and debarment program fact-finding procedures, a copy of which is provided to the respondent.

(b) The fact-finding official for DOI debarment proceedings is the DOI Debarment Program Director, unless the Suspending and Debarring Official designates another DOI official to serve as the fact-finding official.

(c) The fact-finding proceeding is undertaken in accordance with 2 CFR 180.840.

(1) The reporters' fees and other direct costs associated with the fact-finding proceeding are borne by the bureau(s) or office(s) initiating the debarment action, except in the case of actions initiated by the OIG.

(2) For actions initiated by the OIG, the costs are borne by the bureau(s) and/or office(s) out of which the matter arose.

(3) A transcribed record of the fact-finding proceedings is available to the respondent as provided at 2 CFR 180.840(b).

(d) The fact-finding official provides written findings of fact and the hearing record to the Suspending and Debarring Official. The fact-finding official files the original copy of the transcribed record of the fact-finding proceedings with the administrative record.

### § 1400.876 May a respondent request administrative reconsideration of a decision?

A respondent may request the Suspending and Debarring Official to review a decision under this part as follows:

(a) Within 30 days of receiving the decision, the respondent may ask the Suspending and Debarring Official to reconsider the decision based on clear and material error(s) of fact or conclusion(s) of law that would change the outcome of the matter. The respondent bears the burden of demonstrating the existence of the asserted clear and material error(s) of fact or conclusion(s) of law.

(b) The respondent's request for reconsideration must be submitted in

writing to the Suspending and Debarring Official and include:

(1) The specific finding(s) of fact and conclusion(s) of law the respondent believes are in error; and

(2) The reasons or legal bases for the respondent's position.

(c) The Suspending and Debarring Official may in the exercise of discretion stay the debarment pending reconsideration. The Suspending and Debarring Official will review the request for reconsideration and:

(1) Notify the respondent in writing whether the Suspending and Debarring Official will reconsider the decision; and

(2) If reconsideration occurs, notify the respondent in writing of the results of the reconsideration.

### § 1400.881 May a respondent seek award eligibility reinstatement at any time before the end of the period of debarment?

In addition to a petition for reconsideration based on a clear error of material fact or law, a respondent may, at any time following imposition of debarment, request the Suspending and Debarring Official to reduce or terminate the period of debarment based upon the factors under the provisions of 2 CFR 180.880.

## Subpart I—Definitions

### § 1400.930 Debarring official (Department of the Interior supplement to the definition at 2 CFR 180.930).

The Debarring Official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

### § 1400.970 Nonprocurement transaction (Department of the Interior supplement to the definition at 2 CFR 180.970).

In addition to those listed in 2 CFR 180.970, the Department of the Interior includes the following as nonprocurement transactions:

(a) Federal acquisition of a leasehold interest or any other interest in real property;

(b) Concession contracts;

(c) Disposition of Federal real and personal property and natural resources; and

(d) Any other nonprocurement transactions between the Department and a person.

### § 1400.1010 Suspending official (Department of the Interior supplement to the definition at 2 CFR 180.930).

The Suspending Official for the Department of the Interior is the Director, Office of Acquisition and Property Management.

### § 1400.1011 The DOI Debarment Program Director.

The Debarment Program Director is the individual in PAM who advises the Suspending and Debarring Official on DOI suspension and debarment practices and procedures, manages the suspension and debarment process, and acts as the DOI suspension and debarment program fact-finding official.

[81 FR 65857, Sept. 26, 2016]

### § 1400.1012 The OIG Administrative Remedies Division (ARD).

The OIG ARD prepares and forwards suspension and/or debarment action referral memoranda to the Suspending and Debarring Official and may provide additional assistance, in the course of action proceedings.

[81 FR 65857, Sept. 26, 2016]

### § 1400.1013 The administrative record.

The administrative record for DOI suspension and debarment actions consists of the initiating action referral memorandum and its attached documents; the action notice; contested action scheduling correspondence; written information, arguments and supporting documents submitted by a respondent in opposition to the action notice; written information, arguments and supporting documents submitted by the OIG ARD in response to information provided by a respondent; the electronic recording of the PMIO, where a PMIO is held as part of the proceeding; where fact-finding is conducted, the transcribed record of the fact-finding proceedings, and findings of fact; and the final written determination by the Suspending and Debarring Official on the action; or, alternatively, the administrative agreement

endorsed by the respondent and the Suspending and Debarring Official that resolves an action.

[81 FR 65857, Sept. 26, 2016]

### § 1400.1014 Respondent.

Respondent means a person who is the subject of a DOI suspension or proposed debarment action.

[81 FR 65857, Sept. 26, 2016]

## Subpart J [Reserved]

# PART 1401—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

### Subpart A—Purpose and Coverage

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1401.325 What actions must I take concerning employees who are convicted of drug violations in the workplace?
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### Subpart D—Requirements for Recipients Who Are Individuals

1401.400 What must I do to comply with this part if I am an individual recipient?
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### Subpart E—Responsibilities of Department of the Interior Awarding Officials

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### Subpart F—Violations of this Part and Consequences

1401.600 How are violations of this part determined for recipients other than individuals?
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1401.610 What actions will the Federal Government take against a recipient determined to have violated this part?
1401.615 Are there any exceptions to those actions?

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. 252a; 41 U.S.C. 701–707.

SOURCE: 75 FR 71008, Nov. 22, 2010, unless otherwise noted.

## Subpart A—Purpose and Coverage

### § 1401.100 What does this part do?

This part requires that the award and administration of the DOI grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988, 41 U.S.C. 701–707, as amended (hereinafter, ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR Part 182) for DOI's grants and cooperative agreements; and

(b) Establishes DOI policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for

government-wide implementing regulations.

### § 1401.105 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 apply if you are—

(a) A recipient of an assistance award from the Department of the Interior; or

(b) The Department of the Interior awarding official.

The following table (will be incorporated into 2 CFR part 182) shows the subparts that apply to you:

| If you are | *See* subparts |
|---|---|
| (1) A recipient who is not an individual | A, C and F. |
| (2) A recipient who is an individual | A, D and F. |
| (3) A Department of the Interior awarding official. | A, E and F. |

### § 1401.110 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) In implementing OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures set forth in the OMB guidance, as supplemented by this part.

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| (1) 2 CFR 182.225(a) | § 1401.335 | Whom in the DOI a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace. |
| (2) 2 CFR 182.300(b) | § 1401.401 | Whom in the DOI a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| (3) 2 CFR 182.500 | § 1401.600 | Who in the DOI is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR Part 182, as implemented by this part. |
| (4) 2 CFR 182.505 | § 1401.605 | Who in the DOI is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR Part 182, as implemented by this part. |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR Part 182 that is not listed in paragraph (b) of this section, DOI policies and procedures are the same as those in the OMB guidance.

### § 1401.115 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award if the Director, Office of Acquisition and Property Management (PAM), determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

### § 1401.120 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 1401.610(c). However, this part does not directly apply to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in 48 CFR part 23, subpart 23.5.

## Subpart B—Definitions

### § 1401.205 Award.

*Award* means an award of financial assistance by DOI or other Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the

grant is exempted from coverage under the Departmental rules at 43 CFR part 12, subpart C, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.''

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

### § 1401.210 Controlled substance.

*Controlled substance* means any controlled substance identified in schedules I through V of the Controlled Substances Act, 21 U.S.C. 812, and as further defined by regulations at 21 CFR 1308.11 through 1308.15.

### § 1401.215 Conviction.

*Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

### § 1401.220 Cooperative agreement.

*Cooperative agreement* means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (*see* definition of grant in section 1401.250), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

### § 1401.225 Criminal drug statute.

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

### § 1401.230 Debarment.

*Debarment* means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered non-procurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and 2 CFR part 180.

### § 1401.235 Drug-free workplace.

*Drug-free workplace* means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

### § 1401.240 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (*e.g.*, volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of sub-recipients or subcontractors in covered workplaces).

### § 1401.245 Federal agency or agency.

*Federal agency* or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

### § 1401.250 Grant.

*Grant* means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship whereby—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

### § 1401.255 Individual.

*Individual* means a natural person.

### § 1401.260 Recipient.

*Recipient* means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

### § 1401.265 State.

*State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

### § 1401.270 Suspension.

*Suspension* means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered non-procurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and 2 CFR part 180. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

## Subpart C—Requirements for Recipients Other Than Individuals

### § 1401.300 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees; and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace.

(b) Second, you must identify all known workplaces under your Federal awards.

### § 1401.305 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

### § 1401.310 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in §1401.305 be given to each employee who will be engaged in the performance of any Federal award.

### § 1401.315 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

### § 1401.320 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 1401.305 and an ongoing awareness program as described in § 1401.315, you must publish the statement and establish the program by the time given in the following table:

| If . . . | then you . . . |
|---|---|
| (a) The performance period of the award is less than 30 days | must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed. |
| (b) The performance period of the award is 30 days or more ... | must have the policy statement and program in place within 30 days after award. |
| (c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program. | may ask the Department of the Interior awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official. |

### § 1401.325 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 1401.305(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must—

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either—

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

### § 1401.330 How and when must I identify workplaces?

(a) You must identify all known workplaces under each DOI award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces—

(1) To the DOI official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by DOI officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under

the award takes place. Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the DOI awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the DOI awarding official.

### § 1401.335 Whom in the DOI does a recipient other than an individual notify about a criminal drug conviction?

The DOI is not designating a central location for the receipt of these reports. Therefore you shall provide this report to every grant officer, or other designee within a bureau or office of the Department on whose grant activity the convicted employee was working.

## Subpart D—Requirements for Recipients Who Are Individuals

### § 1401.400 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a DOI award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the Department of the Interior awarding official or other designee for each award that you currently have, unless § 1401.401 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

### § 1401.401 Whom in the DOI does a recipient who is an individual notify about a criminal drug conviction?

The DOI is not designating a central location for the receipt of these reports. Therefore you shall provide this report to every grant officer, or other designee within a bureau or office of the Department on whose grant activity the convicted employee was working.

## Subpart E—Responsibilities of Department of Interior Awarding Officials

### § 1401.500 What are my responsibilities as a DOI awarding official?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

*Drug-free workplace.* You, as the recipient, must comply with drug-free workplace requirements in subpart B (or subpart C, if the recipient is an individual) of part 1401, which adopts the government-wide implementation of 2 CFR part 182; sections 5152–5158 of the Drug-Free Workplace Act of 1988, Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707.

## Subpart F—Violations of this Part and Consequences

### § 1401.600 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Director, PAM determines, in writing, that—

(a) The recipient has violated the requirements of subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

### § 1401.605 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the Director, PAM determines, in writing, that—

(a) The recipient has violated the requirements of subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

### § 1401.610 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 1401.600 or § 1401.605, DOI may take one or more of the following actions—

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under 2 CFR part 180, for a period not to exceed five years.

### § 1401.615 Are there any exceptions to those actions?

The Secretary of the Interior may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the Secretary of the Interior determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

# PART 1402—FINANCIAL ASSISTANCE INTERIOR REGULATION, SUPPLEMENTING THE UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

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AUTHORITY: 5 U.S.C. 301 and 2 CFR part 200.

SOURCE: 84 FR 45635, Aug. 30, 2019, unless otherwise noted.

## Subpart A—Definitions

### § 1402.1 Definitions.

The definitions in this subpart are for terms used in this part. For terms used in this part that are not defined, the definitions in 2 CFR part 200 apply. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

### § 1402.2 Employment.

*Employment* includes any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as, or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee of the other organization.

### § 1402.3 Financial Assistance Officer.

*Financial Assistance Officer* means a person with the authority to enter into, administer, and/or terminate financial assistance awards (including grants and cooperative agreements); and make related determinations and findings.

### § 1402.4 Foreign entity.

*Foreign entity* means both ''foreign public entity'' and ''foreign organization,'' as defined in 2 CFR 200.1.

[84 FR 45635, Aug. 30, 2019, as amended at 86 FR 57531, Oct. 18, 2021]

### § 1402.5 Non-Federal entity.

*Non-Federal entity* means a State, local government, Indian tribe, institution of higher education (IHE), for-profit entity, or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

### § 1402.6 Real property.

*Real property* has the same meaning as set forth in 2 CFR 200.1, except that the definition in this section also applies to legal ownership interests in land such as easements.

[84 FR 45635, Aug. 30, 2019, as amended at 86 FR 57531, Oct. 18, 2021]

## Subpart B—General Provisions

### § 1402.100 Purpose.

(a) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 apply to the Department of the Interior. This part adopts, as the Department of the Interior (DOI) policies and procedures, the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth in 2 CFR part 200. The Uniform Guidance applies in full except as stated in this part.

(b) This part establishes DOI financial assistance regulations that implement or supplement the OMB's Uniform Guidance. It is designed to ensure that financial assistance is administered in full compliance with applicable law, regulation, policy, and best practices to ensure the American people get the most value from the funds DOI awards on financial assistance. For supplemental guidance, DOI has adopted section numbering that corresponds to related OMB guidance in 2 CFR part 200.

(c) This part extends 2 CFR part 200, subparts A through E, policies and procedures to foreign public entities and foreign organizations as allowed by 2 CFR 200.101, except as indicated throughout this part.

### § 1402.101 To whom does this part apply?

(a) This part applies to all DOI grant-making activities and to any non-Federal entity that applies for, receives, operates, or expends funds from a DOI Federal award after October 29, 2019, unless otherwise authorized by Federal statute.

(b) This part applies to foreign entity applicants and recipients, except where the DOI office or bureau determines that the application of this part would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government (see § 1402.102).

(1) Foreign entities are subject to the definitions and requirements in 2 CFR part 200, subparts A through E, and as supplemented by this part. In addition to the general requirements in 2 CFR part 200, foreign entities must follow the special considerations and requirements for different classes of recipients in subparts A through E as follows, unless otherwise instructed in this part:

(i) Foreign public entities are to follow those for States, with the exception of the State payment procedures

in 2 CFR 200.305(a). Foreign public entities must follow the payment procedures for non-Federal entities other than States;

(ii) Foreign nonprofit organizations are to follow those for nonprofits; and

(iii) Foreign higher education institutions are to follow those for Institutions of Higher Education (IHEs).

(2) [Reserved]

### § 1402.102 Are there any exceptions to this part?

(a) Awards made in accordance with the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, 88 Stat. 2204), as amended, are governed by 25 CFR parts 900 and 1000, and by 2 CFR part 200, subparts E and F.

(b) Exceptions for individual foreign entities to the requirements in this part may be authorized by the Director, Office of Grants Management. Such exceptions must be made in accordance with written bureau or office policy and procedures.

(1) Foreign entities must request any exception to a requirement established in this part in writing. Such requests must be submitted to the funding bureau or office by an authorized official of the foreign entity, and must provide sufficient pertinent background information, including:

(i) Identification of the requirement under this part that is inconsistent with an in-country statute or regulation to which the foreign entity is subject;

(ii) A complete description of the in-country statute or regulation, including a description of how it prohibits or otherwise limits the foreign entity's ability to comply with the identified requirement under this part; and

(iii) Identification of the entity's name, DOI award(s) affected, and point of contact for the request.

(2) The Director, Office of Grants Management may approve exceptions for individual foreign entities to the requirements of this part only when it has been determined that the requirement to be waived is inconsistent with either the international obligations of the United States or the statutes or regulations of a foreign government. Bureaus and offices will communicate exception request decisions to the requesting entity in writing.

(3) Submissions by public international organization submissions of any assurances, certifications or representations required for and related to a Federal award do not constitute a waiver of immunities provided under the International Organizations Immunities Act (22 U.S.C. 288–288f).

(4) Foreign entities are not subject to the following requirements in 2 CFR part 200:

(i) Foreign entities may be subject to other applicable international or in-country alternatives to generally accepted accounting principles (GAAP), such as the International Financial Reporting Standards (IFRS). See 2 CFR 200.403, Factors affecting allowability of costs;

(ii) 2 CFR 200.321, Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms; and

(iii) Section 6002 of the Solid Waste Disposal Act. See 2 CFR 200.322, Procurement of recovered materials.

### § 1402.103 What other policies or procedures must non-Federal entities follow?

Non-Federal entities must follow bureau or office policies and procedures as communicated in notices of funding opportunity (NOFOs) and award terms and conditions. In the event such policies or procedures conflict with 2 CFR part 200 or this part, 2 CFR part 200 or this part will supersede, unless otherwise authorized by Federal statute.

### §§ 1402.104–1402.111 [Reserved]

### § 1402.112 What are the conflict of interest policies?

This section shall apply to all non-Federal entities. NOFOs and financial assistance awards must include the full text of the conflict of interest provisions in paragraphs (a) through (e) of this section.

(a) *Applicability.* (1) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.

(2) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.

(b) *Notification.* (1) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112.

(2) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

(c) *Restrictions on lobbying.* Non-Federal entities are strictly prohibited from using funds under a grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR part 18 and 31 U.S.C. 1352.

(d) *Review procedures.* The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

(e) *Enforcement.* Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.339, Remedies for noncompliance, including suspension or debarment (see also 2 CFR part 180).

[84 FR 45635, Aug. 30, 2019, as amended at 86 FR 57531, Oct. 18, 2021]

### § 1402.113 What are the mandatory disclosure requirements?

In addition to the disclosures required under 2 CFR 200.112 and 200.113, non-Federal entities, including applicants for all Federal awards, must disclose in writing any potential or actual conflict of interest to the DOI awarding agency or pass-through entity. Non-Federal entities and applicants must also disclose any outstanding unresolved matters with the Government Accountability Office or an Office of Inspector General when submitting a proposal and through the life of the award as needed. Unresolved items are those items that do not have an approved (by the awarding agency) corrective action plan in place and remain open.

### §§ 1402.114–1402.203 [Reserved]

## Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

### § 1402.204 What are the merit review requirements for competitive awards?

The requirements in this section apply to competitive grants and cooperative agreements unless otherwise authorized by Federal statute. Merit review procedures must be described or incorporated by reference in NOFOs (see 2 CFR part 200, appendix I, and 2 CFR 200.203). Pre-award considerations for both discretionary competitive and noncompetitive awards shall take into account the alignment of the award's purpose, goals, and measurement with the current DOI Government Performance and Results Act Strategic Plan including, the mission statement, vision, values, goals, objectives, strategies, and performance metrics therein, unless otherwise prohibited by statute.

(a) *Competition in grant and cooperative agreement awards.* Competition is expected in awarding discretionary funds, unless otherwise directed by Congress. When grants and cooperative agreements are awarded competitively, DOI requires that the competitive process be fair and impartial, that all applicants be evaluated only on the criteria stated in the announcement, and that no applicant receive an unfair competitive advantage. All competitive funding announcements, and all modifications/amendments to those announcements, must be posted on *Grants.gov* (*www.grants.gov*).

(b) *Independent objective evaluation of financial assistance applications and proposals.* Bureaus and offices must conduct reviews of applications submitted in response to the announcement and for selecting applicants for award following established merit review procedures. Bureaus and offices must conduct comprehensive, impartial, and objective review of applications based on the criteria contained in the announcement by individuals who have no conflicts of interest with respect to the competing proposal/applications or applicants. Bureaus and offices must ensure reviewers are qualified, applications are scored on the basis of announced criteria, consideration is given to the level of applicant risk and past performance, applications are ranked, and funding determinations are made.

(c) *Evaluation and Selection Plan for notice of funding opportunities.* Bureaus and offices must develop an Evaluation and Selection Plan in concert with the notice of funding opportunity to ensure consistency, and to outline and document the selection process. The Evaluation and Selection Plan should be finalized prior to the release of the notice of funding opportunity. An Evaluation and Selection Plan is comprised of five basic elements:

(1) Merit review factors and sub-factors;

(2) A rating system (*e.g.*, adjectival, color coding, numerical, or ordinal);

(3) Evaluation standards or descriptions that explain the basis for assignment of the various rating system grades/scores;

(4) Program policy factors; and

(5) The basis for selection.

(d) *Basic review standards.* Bureaus and offices must initially screen applications/proposals to ensure that they meet the standards in paragraphs (e) through (g) of this section before they are subjected to a detailed evaluation utilizing a merit review process specified in paragraph (h) of this section. The review system should include three phases: Initial Screening, Threshold Screening, and a Merit Review Evaluation Screening. Bureaus and offices may remove an application from funding consideration if it does not pass the basic eligibility screening per paragraphs (e) through (g) of this section.

(e) *Completeness.* Bureaus and offices may return applications/proposals that are incomplete or otherwise fail to meet the requirements of the *Grants.gov* announcement to the applicant to be corrected, modified, or supplemented, or may reject the application/proposal outright. Until the application/proposal meets the substantive requirements of the announcement and this part, it shall not be given detailed evaluation. Bureaus and offices may use discretion to determine the length of time for applicants to resolve application deficiencies.

(f) *Timeliness.* Bureaus and offices must consider the timeliness of the application submission. Applications that are submitted beyond the announced deadline date must be removed from the review process.

(g) *Threshold Screening.* Bureaus and offices are responsible for screening applications and proposals for the adequacy of the budget and compliance with statutory and other requirements. The SF–424 and budget information (SF–424A, SF–424C, or OMB-approved alternate budget data collection) must be reviewed according to Department of the Interior policy.

(h) *Merit Review Evaluation Screening.* This is the final review stage where the technical merit of the application/proposal is reviewed. In the absence of a program rule or statutory requirement, program officials shall develop criteria that include all aspects of technical merit. Bureaus and offices shall develop criteria that are conceptually independent of each other, but all-encompassing when taken together. While criteria will vary, the basic criteria shall focus reviewers' attention on the project's underlying merit (*i.e.*, significance, approach, and feasibility). The criteria shall focus not only on the technical details of the proposed project but also on the broader importance or potential impact of the project. The criteria shall be easily understood.

(i) *Risk assessments.* Bureaus and offices must also consider risk thresholds during application/proposal review process. Elements to be considered may

include organization; single audit submissions, past performance; availability of necessary resources, equipment, or facilities; financial strength and management capabilities; and procurement procedures; or procedures for selecting and monitoring subrecipients or sub-vendors, if applicable. For all non-Federal entities that receive an award, the Financial Assistance Officer must document the risk analysis.

(j) *Requirements for proposal evaluators.* Upon receipt of a Memorandum of Appointment, each proposal evaluator and advisor must sign and return a Conflict of Interest Certificate to the Financial Assistance Officer. If an actual or potential conflict of interest exists, the appointee may not evaluate or provide advice on a potential applicant's proposal until the conflict has been resolved or mitigated. Further, each proposal evaluator or advisor must agree to comply with any notice or limitation placed on the application. Upon completion of the review, the proposal evaluator or advisor shall return or destroy all copies of the application and accompanying proposals (or abstracts) to DOI; and unless authorized by the Financial Assistance Officer or agency designee, the reviewer shall not contact the non-Federal entity concerning any aspect of the application.

### § 1402.205 [Reserved]

### § 1402.206 What are the FAIR requirements for domestic for-profit entities?

(a) *Requirements for domestic for-profit entities.* (1) Section 1402.207(a) contains standard award terms and conditions that always apply to for-profit entities and §1402.207(b) contains terms that apply to sub-awards or contracts with for-profit entities over the simplified acquisition threshold. Bureaus and offices must incorporate into awards to domestic for-profit organizations the award terms and conditions that always apply, either directly or by reference.

(2) Bureaus and offices may apply the administrative guidelines in subparts A through D of 2 CFR part 200, the cost principles at 48 CFR part 31, subpart 31.2, and the procedures for negotiating indirect costs (detailed in §1402.414) to domestic for-profit entities.

(3) Depending on the nature of a particular program, offices and bureaus may additionally develop program-specific administrative guidelines for domestic for-profits based on the requirements in 2 CFR part 200, subparts A through D, but may not apply more restrictive requirements than the requirements in 2 CFR part 200, subparts A through D, unless approved by OMB through a request to the Director, Office of Grants Management.

(b) *Requirements for award terms and conditions.* Bureau and office award terms and conditions must be managed in accordance with the requirements in 2 CFR 200.211, Information contained in a Federal award.

[84 FR 45635, Aug. 30, 2019, as amended at 86 FR 57531, Oct. 18, 2021]

### § 1402.207 What specific conditions apply?

(a) The following financial assistance award terms and conditions always apply to domestic for-profit entities:

(1) 2 CFR part 25, Universal Identifier and System for Award Management.

(2) 2 CFR part 170, Reporting Subawards and Executive Compensation Information.

(3) 2 CFR part 175, Award Term for Trafficking in Persons.

(4) 2 CFR part 1400, government-wide debarment and suspension (non-procurement).

(5) 2 CFR part 1401, Requirements for Drug-Free Workplace (Financial Assistance).

(6) 43 CFR part 18, New Restrictions on Lobbying. Submission of an application also represents the applicant's certification of the statements in 43 CFR part 18, appendix A, Certification Regarding Lobbying.

(7) 41 U.S.C. 4712, Whistleblower Protection for Contractor and Grantee Employees. The requirement in this paragraph (a)(7) applies to all awards issued after July 1, 2013.

(8) 41 U.S.C. 6306, Prohibition on Members of Congress Making Contracts with the Federal Government. No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit

that may arise therefrom; this paragraph (a)(8) shall not be construed to extend to an award made to a corporation for the public's general benefit.

(9) Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving. Recipients are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the Executive Order.

(10) 2 CFR part 183, Never Contract With the Enemy.

(11) 2 CFR 200.216, Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment.

(12) All applicable Executive orders.

(b) The following financial assistance award terms and conditions always apply to non-profit and domestic for-profit entities. The recipient shall insert the following clause in all subawards and contracts related to the prime award that are over the simplified acquisition threshold, as defined in the Federal Acquisition Regulation:

All awards and related subawards and contracts over the Simplified Acquisition Threshold, and all employees working on applicable awards and related subawards and contracts, are subject to the whistleblower rights and remedies in accordance with the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239).

Recipients, their subrecipients and contractors that are awarded contracts over the Simplified Acquisition Threshold related to an applicable award, shall inform their employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

(c) The following award terms and conditions apply to for-profit recipients as specified in 2 CFR 200.101:

(1) Administrative requirements: 2 CFR part 200, subparts A through D.

(2) Cost principles: 48 CFR part 31, subpart 31.2, Contracts with Commercial Organizations.

(3) Indirect cost rate negotiations. For information on indirect cost rate negotiations, contact the Interior Business Center (IBC) Indirect Cost Services Division by telephone at (916) 566–7111 or by email at *ics@ibc.doi.gov*. Visit the IBC Indirect Cost Services Division website at *http://www.doi.gov/ibc/services/Indirect_Cost_Services/index.cfm* for more information.

[84 FR 45635, Aug. 30, 2019, as amended at 86 FR 57531, Oct. 18, 2021]

**§§ 1402.208–1402.299 [Reserved]**

## Subpart D—Post Federal Award Requirements

### § 1402.300 What are the statutory and national policy requirements?

(a) DOI bureaus and offices will communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.

(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of Federal Funding Accountability and Transparency Act (FFATA), which includes requirements on executive compensation, and also requirements implementing the FFATA for the non-Federal entity at 2 CFR part 25, financial assistance use of universal identifier and system for award management, and 2 CFR part 170, Reporting Subaward and Executive Compensation Information. See also statutory requirements for whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310.

(c) Recipients conducting work outside the United States are responsible for coordinating with appropriate United States and foreign government authorities as necessary to make sure all required licenses, permits, or approvals are obtained before undertaking project activities. DOI does not assume responsibility for recipient compliance with the laws, regulations, policies, or procedures of the foreign country in which the work is conducted.

(d) As required in 54 U.S.C. 307101, World Heritage Convention, prior to the approval of any undertaking outside the United States that may directly and adversely affect a property

that is on the World Heritage List or on the applicable country's equivalent of the National Register of Historic Places, the DOI bureau or office having direct or indirect jurisdiction over the undertaking shall take into account the effect of the undertaking on the property for purposes of avoiding or mitigating any adverse effect.

(e) Foreign entities are responsible for complying with all requirements of the Federal award. For awards to foreign entities, this includes:

(1) 2 CFR part 25, Universal Identifier and System for Award Management, unless the entity meets one or more qualifying conditions and is exempted by the awarding bureau or office as provided for in 2 CFR part 25;

(2) 2 CFR part 170, Reporting Subaward and Executive Compensation Information;

(3) 2 CFR part 175, Award Term for Trafficking in Persons. This term is required in awards to foreign private entities. The term is also required in awards to foreign public entities, if funding could be provided under the award to a foreign private entity as a subrecipient;

(4) 2 CFR part 1400, Nonprocurement Debarment and Suspension. Awards to foreign organizations are covered transactions under the DOI nonprocurement debarment and suspension program. Awards to foreign public entities are not covered transactions;

(5) 43 CFR part 18, New Restrictions on Lobbying. Foreign entities shall file the 43 CFR part 18, appendix A, certification, and a disclosure form, if required, with each application for Federal assistance. See also 31 U.S.C. 1352, Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions;

(6) 48 CFR 3.909–2(a). Federal award recipients are prohibited from requiring employees or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such fraud, waste, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information;

(7) 2 CFR part 183, Never Contract With the Enemy; and

(8) 2 CFR 200.216, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

[84 FR 45635, Aug. 30, 2019, as amended at 86 FR 57531, Oct. 18, 2021]

### §§ 1402.301–1402.314 [Reserved]

### § 1402.315 What are the requirements for availability of data?

(a) All data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, valuation products or other scientific assessments in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual, resulting from a financial assistance agreement is available for use by the Department of the Interior, including being available in a manner that is sufficient for independent verification.

(b) The Federal Government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, or other scientific assessments, produced under a Federal award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, or other scientific assessments, for Federal purposes, including to allow for meaningful third-party evaluation.

(c) Bureaus and offices of the Department of the Interior must include the language in paragraphs (a) and (b) of this section in full text in all NOFOs and financial assistance agreements.

### §§ 1402.316–1402.328 [Reserved]

### § 1402.329 What are the requirements for land acquired under an award?

(a) *Approval prior to land purchases.* Bureaus and offices must ensure compliance with the prior written approval requirements for land acquisition in 2 CFR 200.439. Whenever a recipient is seeking DOI's approval to use award funds to purchase an interest in real property, the OMB-approved governmentwide data elements for collection

of real property reporting information, as of October 29, 2019, SF–429–B, Request to Acquire, Improve, or Furnish, or approved alternate standardized data collection, must be submitted to the bureau or office. The Financial Assistance Officer is responsible for ensuring that this requirement is met. All aspects of the purchase must be in compliance with applicable laws and regulations relating to purchases of land or interests in land.

(b) *Appraisal requirements for land purchases.* (1) Unless a waiver valuation applies in accordance with 49 CFR 24.102(c), land or interests in land that will be acquired under the award must be appraised in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions, (UASFLA or the ''Yellow Book''), developed and promulgated by the Interagency Land Acquisition Conference, 1155 15th Street NW, Suite 1111, Washington, DC 20005, by a real property appraiser licensed or certified by the State or States in which the property is located. The appraisal report shall be reviewed by a qualified review appraiser that meets qualifications established by the DOI Appraisal and Valuation Services Office (AVSO), which is responsible for appraisal and valuation services and policy across the Department. Bureaus and offices shall ensure that funds are not disbursed for purchases of land or interests in land without an appraisal accompanied by a written appraisal review report that complies with standards approved by AVSO. Where appraisals are required to support federally assisted land acquisitions, AVSO has oversight responsibilities for these appraisals, including those purchased through financial assistance actions in the various grant programs within the Department. AVSO will coordinate with grant programs to conduct periodic internal control review of appraisal and appraisal review reports prepared in conjunction with grant applications for land acquisition.

(2) The Director of the Federal Register approves the material referenced in this section for incorporation by reference into this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the Appraisal and Valuation Services Office within the Department of the Interior located at 1849 C St. NW, Washington, DC 20240, (202) 208–3466, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(i) Interagency Land Acquisition Conference, 1155 15th Street NW, Suite 1111, Washington, DC 20005.

(A) Uniform Appraisal Standards for Federal Land Acquisitions, Sixth Edition, 2016.

(B) You may obtain a print copy or interactive electronic version from The Appraisal Foundation at *https://www.appraisalfoundation.org/iMIS/itemDetail?iProductCode=351&Category=PUB* or a read-only version from the U.S. Department of Justice at *https://www.justice.gov/file/408306/download.*

(ii) [Reserved]

(c) *Foreign land acquisition.* Land to be acquired under an award that is located outside the United States must be appraised by an independent real property appraiser licensed or certified in the country in which the property is located in accordance with any in-country appraisal standards, if they exist, or with International Valuation Standards, when such appraisals are available and financially feasible. Otherwise, the non-Federal entity must use the most widely accepted business practice for property valuation in the country where the property is located and provide to the awarding DOI bureau or office a detailed explanation of the methodology used to determine value.

(d) *Requirements for recipient reporting on real property purchases.* (1) For all financial assistance actions where real property is acquired under the Federal award, the recipient must submit reports on the status of the real property. Bureaus and offices must ensure recipients receive written notification of those reporting requirements, including reporting frequency/schedule, report content requirements, and submission instructions, at the time of award.

(2) If the interest in the land will be held for less than 15 years, reports

must be submitted annually. If the interest in the land will be held for 15 years or more, then the recipient must submit the first report within one year of the period of performance end date of the award and then, at a minimum, every five years thereafter.

(3) The reports must be submitted to the Financial Assistance Officer within the period of performance of the award. After the end of the period of performance, reports must be submitted to a designated individual. Each bureau must have a process in place to designate specific individuals to receive, and review and accept the report.

(4) Recipients must use the OMB-approved governmentwide data elements for collection of real property reporting information, as of October 29, 2019, the Real Property Status Report Standard Form (SF) 429–A, General Reporting, to report status of land or interests in land under Federal financial assistance awards. Bureaus or offices may request to use an equivalent reporting format. The Director, Office of Grants Management must approve alternate equivalent formats.

(5) Reports must include, at a minimum, sufficient information to demonstrate that all conditions imposed on the land use are being met, and a signed certification to that fact by the recipient of the financial assistance award.

(6) The Financial Assistance Officer must indicate the reporting schedule, including due dates, in the award document. The schedule must conform with the frequency required in paragraph (d)(2) of this section. For awards issued prior to October 29, 2019, the recipient must contact the program to establish due dates for reports going forward. If there is already a reporting schedule in place, then the recipient and the program shall ensure that the schedule is updated to conform with this part prior to the due date of the next scheduled report.

**§§ 1402.330–1402.413 [Reserved]**

### § 1402.414 What are the negotiated indirect cost rate deviation policies?

(a) This section establishes DOI policies, procedures, and decision making criteria for using an indirect cost rate that differs from the non-Federal entity's negotiated rate or approved rate for DOI awards. These are established in accordance with 2 CFR 200.414(c)(3) or (f).

(b) DOI accepts indirect cost rates that have been reduced or removed voluntarily by the proposed recipient of the award, on an award-specific basis.

(c) For all deviations to the Federal negotiated indirect cost rate, including statutory, regulatory, programmatic, and voluntary, the basis of direct costs against which the indirect cost rate is applied must be:

(1) The same base identified in the recipient's negotiated indirect cost rate agreement, if the recipient has a federally negotiated indirect cost rate agreement; or

(2) The Modified Total Direct Cost (MTDC) base, in cases where the recipient does not have a federally negotiated indirect cost rate agreement or, with prior approval of the awarding bureau or office, when the recipient's federally negotiated indirect cost rate agreement base is only a subset of the MTDC (such as salaries and wages) and the use of the MTDC still results in an overall reduction in the total indirect cost recovered. MTDC is the base defined by 2 CFR 200.68, Modified Total Direct Cost (MTDC).

(d) In cases where the recipient does not have a federally negotiated indirect cost rate agreement, DOI will not use a modified rate based upon total direct cost or other base not identified in the federally negotiated indirect cost rate agreement or defined within 2 CFR 200.68.

(1) *Indirect cost rate deviation required by statute or regulation.* In accordance with 2 CFR 200.414(c)(1), a Federal agency must use a rate other than the Federal negotiated rate where required by Federal statute or regulation. For such instances within DOI, the official award file must document the specific statute or regulation that required the deviation.

(2) *Indirect cost rate reductions used as cost-share.* Instances where the recipient elects to use a rate lower than the federally negotiated indirect cost rate, and uses the balance of the unrecovered indirect costs to meet a cost-

share or matching requirement required by the program and/or statute, are not considered a deviation from 2 CFR 200.414(c), as the federally negotiated indirect cost rate is being applied under the agreement in order to meet the terms and conditions of the award.

(3) *Programmatic indirect cost rate deviation approval process.* Bureaus and offices with DOI approved deviations in place prior to October 29, 2019 are not required to resubmit those for reconsideration following the procedures in this paragraph (d)(3). The following requirements apply for review, approval, and posting of programmatic indirect cost rate waivers:

(i) *Program qualifications.* Programs that have instituted a program-wide requirement and governance process for deviations from federally negotiated indirect cost rates may qualify for a programmatic deviation approval.

(ii) *Deviation requests.* Deviation requests must be submitted by the responsible senior program manager to the DOI Office of Grants Management. The request for deviation approval must include a description of the program, and the governance process for negotiating and/or communicating to recipients the indirect cost rate requirements under the program. The program must make its governance documentation, rate deviations, and other program information publicly available.

(iii) *Approvals.* Programmatic deviations must be approved, in writing, by the Director, Office of Grants Management. Approved deviations will be made publicly available.

(4) *Voluntary indirect cost rate reduction.* On any single award, an applicant and/or proposed recipient may elect to reduce or eliminate the indirect cost rate applied to costs under that award. The election must be voluntary and cannot be required by the awarding official, NOFO, program, or other non-statutory or non-regulatory requirements. For these award-specific and voluntary reductions, DOI can accept the lower rate provided the notice of award clearly documents the recipient's voluntary election. Once DOI has accepted the lower rate, that rate will apply for the duration of the award.

(5) *Unrecovered indirect costs.* In accordance with 2 CFR 200.405, indirect costs not recovered due to deviations to the federally negotiated rate are not allowable for recovery via any other means.

**§§ 1402.415–1402.499 [Reserved]**

## PARTS 1403–1499 [RESERVED]

# CHAPTER XV—ENVIRONMENTAL PROTECTION AGENCY


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# PART 1500—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS


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1500.16 Notice of receipt of Dispute to Affected Entity.
1500.17 Determination of Dispute.


AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 136 *et seq.*, 15 U.S.C. 2601 *et seq.*, 20 U.S.C. 4011 *et seq.*, 33 U.S.C. 1251 *et seq.*, and 1401 *et seq.*, 42 U.S.C. 241, 242b, 243, 246, 300f *et seq.*, 1857 *et seq.*, 6901 *et seq.*, 7401 *et seq.*, and 9601 *et seq.;* 2 CFR part 200.

SOURCE: 79 FR 76050, Dec. 19, 2014, unless otherwise noted.

## Subpart A—Acronyms and Definitions

SOURCE: 85 FR 61573, Sept. 30, 2020, unless otherwise noted.

### § 1500.1 Definitions.

(a) *Participant support costs.* The Environmental Protection Agency (EPA) has supplemented 2 CFR 200.1, *Participant support costs*, to provide that allowable participant support costs under EPA assistance agreements include:

(1) Rebates or other subsidies provided to program participants for purchases and installations of commercially available, standard (''off the shelf'') pollution control equipment or low emission vehicles under the Diesel Emission Reduction Act program or programs authorized by EPA appropriation acts and permitted by terms specified in EPA assistance agreements or guidance, when the program participant rather than the recipient owns the equipment.

(2) Subsidies, rebates, and other payments provided to program beneficiaries to encourage participation in statutorily authorized programs to encourage environmental stewardship and enable the public to participate in EPA funded research, pollution abatement, and other projects or programs to the extent permitted by statutes and terms specified in EPA assistance agreements or guidance.

(b) [Reserved]

## Subpart B—General Provisions

### § 1500.2 Adoption of 2 CFR Part 200.

Under the authority listed above the Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR part 200), as supplemented by this part, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. This part satisfies the requirements of 2

CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by this part. EPA also has programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020]

### § 1500.3 Applicability.

(a) Uniform administrative requirements and cost principles (subparts A through E of 2 CFR part 200 as supplemented by this part) apply to foreign public entities or foreign organizations, except where EPA determines that the application of this part would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government.

(b) Requirements for subrecipient monitoring and management at 2 CFR 200.331 through 200.333 do not apply to loan, loan guarantees, interest subsidies and principal forgiveness, purchases of insurance or local government debt or similar transactions with borrowers by recipients of Clean Water State Revolving Fund (CWSRF) capitalization grants and Drinking Water State Revolving Fund (DWSRF) capitalization grants. Requirements in 2 CFR part 25, Universal Identifier and System for Award Management, 2 CFR part 170, Reporting subaward and executive compensation and internal controls described at 2 CFR 200.303 continue to apply to CWSRF and DWSRF grant recipients and borrowers.

[85 FR 61573, Sept. 30, 2020, as amended at 87 FR 30397, May 19, 2022]

### § 1500.4 Exceptions.

Consistent with 2 CFR 200.102(b):

(a) In the EPA, the Director, Office of Grants and Debarment or designee, is authorized to grant exceptions on a case-by-case basis for non-Federal entities.

(b) The EPA Director or designee is also authorized to approve exceptions, on a class or an individual case basis, to EPA program specific assistance regulations other than those which implement statutory and executive order requirements.

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020]

### § 1500.5 Supersession.

Effective December 26, 2014, this part supersedes the following regulations under Title 40 of the Code of Federal Regulations:

(a) 40 CFR part 30, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.''

(b) 40 CFR part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.''

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020]

## Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

### § 1500.6 Fixed Amount Awards.

In the EPA, programs awarding fixed amount awards will do so in accordance with guidance issued from the Office of Grants and Debarment. (See 2 CFR 200.201(b)).

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020]

## Subpart D—Post Federal Award Requirements.

STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT

### § 1500.7 Retention requirements for records.

(a) In the EPA, some programs require longer retention requirements for records by statute.

(b) When there is a difference between the retention requirements for records of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200.334) and the applicable statute, the non-federal entity will follow to the retention requirements for records in the statute.

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020, as amended at 87 FR 30397, May 19, 2022]

### § 1500.8 Program income.

(a) *Governmental revenues.* Permit fees are governmental revenue and not program income. (See 2 CFR 200.307(c)).

(b) *Use of program income.* The default use of program income for EPA awards is addition even if the amount of program income the non-Federal entity generates exceeds the anticipated amount at time of the award of the assistance agreement. Unless the terms of the agreement provide otherwise, recipients may deduct costs incidental to the generation of program income from gross income to determine program income, provided these costs have not been charged to any Federal award. (See 2 CFR 200.307(b)). The program income shall be used for the purposes and under the conditions of the assistance agreement. (See 2 CFR 200.307(e)(2)).

(c) *Brownfields Revolving Loan.* To continue the mission of the Brownfields Revolving Loan fund, recipients may use EPA grant funding prior to using program income funds generated by the revolving loan fund. Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other brownfield purpose as outlined in their respective closeout agreements.

(d) *Other revolving loan programs.* Recipients of EPA funding for other revolving loan fund programs may use EPA grant funding prior to using program income funds generated by the revolving loan fund. Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other authorized purpose as outlined in their closeout agreement. This paragraph (d) does not apply to EPA's Clean Water State Revolving Fund and Drinking Water State Revolving Fund programs which are subject to their own regulations.

[85 FR 61574, Sept. 30, 2020]

### § 1500.9 Revision of budget and program plans.

*Pre-award Costs.* EPA award recipients may incur allowable project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of EPA. All costs incurred before EPA makes the award are at the recipient's risk. EPA is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs.

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020]

## Procurement Standards

### § 1500.10 General procurement standards.

(a) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients, and their contractors or subcontractors to the maximum daily rate for level 4 of the Executive Schedule unless a greater amount is authorized by law. (These non-Federal entities may, however, pay consultants more than this amount with non-EPA funds.) The limitation in this paragraph (a) applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; recipients will pay these in accordance with their normal travel reimbursement practices.

(b) All contracts between recipients and subrecipients and individual consultants are subject to the procurement standards in subpart D of 2 CFR part 200. Contracts or subcontracts with multi-employee firms for consulting services are not affected by the limitation in paragraph (a) of this section provided the contractor or subcontractor rather than the recipient or subrecipient selects, directs and controls individual employees providing consulting services.

(c) Borrowers under EPA revolving loan fund capitalization grant programs are not subject to paragraphs (a) and (b) of this section.

[85 FR 61574, Sept. 30, 2020]

### § 1500.11 Use of the same architect or engineer during construction.

(a) If the recipient is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(1) The recipient received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(2) The award official approves noncompetitive procurement under 2 CFR 200.320(c)(4) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(3) The recipient attests that:

(i) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a contract for services during construction; and

(ii) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(iii) No employee, officer or agent of the recipient, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(iv) None of the recipient's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to contracts.

(b) However, if the recipient uses the procedures in paragraph (a) of this section to retain an architect or engineer, any Step 3 contracts between the architect or engineer and the grantee must meet all other procurement provisions in 2 CFR 200.317 through 200.327.

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020, as amended at 87 FR 30397, May 19, 2022]

## PERFORMANCE AND FINANCIAL MONITORING AND REPORTING

### § 1500.12 Quality Assurance.

(a) Quality assurance applies to all assistance agreements that involve environmentally related data operations, including environmental data collection, production or use.

(b) Recipients shall develop a written quality assurance system commensurate with the degree of confidence needed for the environmentally related data operations.

(c) If the recipient complies with EPA's quality policy, the system will be presumed to be in compliance with the quality assurance system requirement. The recipient may also comply with the quality assurance system requirement by complying with American National Standard ASQ/ANSI E4:2014: Quality management systems for environmental information and technology programs.

(d) The recipient shall submit the written quality assurance system for EPA review. Upon EPA's written approval, the recipient shall implement the EPA-approved quality assurance system.

(e) EPA Quality Policy is available at: *https://www.epa.gov/quality*.

(f) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51.

The material is available for inspection at the Environmental Protection Agency's Headquarters Library, Room 3340, EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20004, (202) 566–0556. A copy is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(1) American Society for Quality, 600 North Plankinton Avenue, Milwaukee, WI 53201, 1–800–248–1946, *http://asq.org*.

(i) American National Standard ASQ/ANSI E4:2014: Quality management systems for environmental information

and technology programs—Requirements with guidance for use, approved February 4, 2014.

(ii) [Reserved]

(2) [Reserved]

[79 FR 76050, Dec. 19, 2014, as amended at 80 FR 61088, Oct. 9, 2015. Redesignated at 85 FR 61573, Sept. 30, 2020, as amended at 87 FR 30397, May 19, 2022]

## Subpart E—Disputes

### § 1500.13 Purpose and scope of this subpart.

(a) This section provides the process for the resolution of pre-award and post-award assistance agreement disputes as described in § 1500.14, except for:

(1) Assistance agreement competition-related disputes which are covered by EPA's Grant Competition Dispute Resolution Procedures; and,

(2) Any appeal process relating to an award official's determination that an entity is not qualified for award that may be developed pursuant to guidance implementing Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417, as amended).

(b) Pre-award and post-award disagreements between affected entities and EPA related to an assistance agreement should be resolved at the lowest level possible. If an agreement cannot be reached, absent any other applicable statutory or regulatory dispute provisions, affected entities must follow the dispute procedures outlined in this subpart.

(c) Determinations affecting assistance agreements made under certain Agency decision-making processes are not subject to review under the procedures in this subpart or the Agency's procedures for resolving assistance agreement competition-related disputes. These determinations include, but are not limited to:

(1) Decisions on requests for exceptions under § 1500.4;

(2) Bid protest decisions under 2 CFR 200.318(k);

(3) National Environmental Policy Act decisions under 40 CFR part 6;

(4) Policy decisions of the EPA Internal Audit Dispute Resolution Process (formerly known as Audit Resolution Board);

(5) Suspension and Debarment Decisions under 2 CFR parts 180 and 1532;

(6) Decisions to decline to fund noncompetitive applications or not to award incremental or supplemental funding based on the availability of funds or agency priorities;

(7) Decisions on requests for reconsideration of specific award conditions under 2 CFR 200.208;

(8) Decisions to deny requests for no-cost extensions under 2 CFR 200.308(e)(2), 40 CFR 35.114(b), and 40 CFR 35.514(b); and

(9) Denials of requests for EPA approval of procurement through noncompetitive proposals under 2 CFR 200.320(c)(4).

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020; 85 FR 61574, Sept. 30, 2020]

### § 1500.14 Definitions.

As used in this subpart:

(a) *Action Official (AO)* is the EPA official who authors the Agency Decision to the Affected Entity regarding a pre-award or post-award matter.

(b) *Affected Entity* is an entity that applies for and/or receives Federal financial assistance from EPA including but not limited to: State and local governments, Indian Tribes, Intertribal Consortia, Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and Individuals.

(c) *Agency Decision* is the agency's initial pre-award or post-award assistance agreement determination that may be disputed in accordance with this subpart. The Agency Decision is sent by the Action Official (AO) to the Affected Entity electronically and informs them of their dispute rights and identifies the Dispute Decision Official (DDO). An Agency Decision based on audit findings serves as EPA's *Management decision* as defined in 2 CFR part 200.1.

(d) *Dispute* is a disagreement by an Affected Entity with a specific Agency Decision submitted to the DDO in accordance with this subpart.

(e) *Dispute Decision Official (DDO)* is the designated agency official responsible for issuing a decision resolving a Dispute.

(1) The DDO for a Headquarters Dispute is the Director of the Grants and Interagency Agreement Management Division in the Office of Grants and Debarment or designee. To provide for a fair and impartial review, the AO for the challenged Agency Decision may not serve as the Headquarters DDO.

(2) The DDO for a Regional Assistance Agreement Dispute is the Regional Administrator or the official designated by the Regional Administrator to issue the written decision resolving the Dispute. To provide for a fair and impartial review, the AO for the challenged Agency Decision may not serve as the Regional DDO.

[79 FR 76050, Dec. 19, 2014. Redesignated at 85 FR 61573, Sept. 30, 2020; 85 FR 61574, Sept. 30, 2020, as amended at 87 FR 30397, May 19, 2022]

### § 1500.15 Submission of Dispute.

An Affected Entity or its authorized representative may dispute an Agency Decision by electronically submitting a Dispute to the DDO identified in the Agency Decision. In order for the DDO to consider the Dispute, it must satisfy the following requirements:

(a) *Timeliness.* The DDO must receive the Dispute no later than 30 calendar days from the date the Agency Decision is electronically sent to the Affected Entity. The DDO will dismiss any Dispute received after the 30-day period unless the DDO grants an extension of time to submit the Dispute. The Affected Entity must submit a written request for extension to the DDO before the expiration of the 30-day period. The DDO may grant a one-time extension of up to 30 calendar days when justified by the situation, which may include the unusual complexity of the Dispute or because of exigent circumstances.

(b) *Method of submission.* The Affected Entity must submit the Dispute electronically via email to the DDO, with a copy to the AO, using the email addresses specified in the Agency Decision within the 30-day period stated in paragraph (a) of this section.

(c) *Contents of Dispute.* The Dispute submitted to the DDO must include:

(1) A copy of the disputed Agency Decision;

(2) A detailed statement of the specific legal and factual grounds for the Dispute, including copies of any supporting documents;

(3) The specific remedy or relief the Affected Entity seeks under the Dispute; and

(4) The name and contact information, including email address, of the Affected Entity's designated point of contact for the Dispute.

[85 FR 61575, Sept. 30, 2020]

### § 1500.16 Notice of receipt of Dispute to Affected Entity.

Within 15 calendar days of receiving the Dispute, the DDO will provide the Affected Entity a written notice, sent electronically, acknowledging receipt of the Dispute.

(a) *Timely Disputes.* If the Dispute was timely submitted, the notice of acknowledgement may identify any additional information or documentation that is required for a thorough consideration of the Dispute. The notice should provide no more than 30 calendar days for the Affected Entity to provide the requested information. If it is not feasible to identify such information or documentation in the notice the DDO may request it at a later point in time prior to issuance of the Dispute decision.

(b) *Untimely Disputes.* If the DDO did not receive the Dispute within the required 30-day period, or any extension of it, the DDO will notify the Affected Entity that the Dispute is being dismissed as untimely and the Agency Decision of the AO becomes final. The dismissal of an untimely Dispute constitutes the final agency action. In appropriate circumstances, the DDO may, as a matter of discretion, consider an untimely Dispute if doing so would be in the interests of fairness and equity.

[85 FR 61575, Sept. 30, 2020]

### § 1500.17 Determination of Dispute.

(a) In determining the merits of the Dispute, the DDO will consider the record related to the Agency Decision, any documentation that the Affected Entity submits with its Dispute, any additional documentation submitted by the Affected Entity in response to the DDO's request under §1500.16(a), and any other information the DDO determines is relevant to the Dispute

provided the DDO gives notice of that information to the Affected Entity. The Affected Entity may not on its own initiative submit any additional documents except in the support of a request for reconsideration under paragraph (c) of this section.

(b) The DDO will issue the Dispute decision within 180 calendar days from the date the Dispute is received by the DDO unless a longer period is necessary based on the complexity of the legal, technical, and factual issues presented. The DDO will notify the Affected Entity if the expected decision will not be issued within the 180-day period and if feasible will indicate when the decision is expected to be issued. The DDO will issue the Dispute decision electronically and advise the Affected Entity of procedures for requesting reconsideration. The DDO's decision will constitute the final agency action unless the Affected Entity electronically petitions the DDO for reconsideration within 15 calendar days of issuance of the DDO Decision. The Affected Entity must include a detailed statement of the factual and legal grounds warranting reversal or modification of the DDO decision. In addition, the Affected Entity may submit additional documents that were not previously provided to the DDO.

(c) If a petition for reconsideration is submitted, the DDO's will advise the Affected Entity within 15 calendar days of receipt of the petition whether the DDO Decision will be reconsidered. The DDO will issue this determination electronically. DDO's will only grant a reconsideration petition if the Affected Entity provides relevant and material evidence that was not available to the Affected Entity at the time the Dispute was submitted or to correct a clear and prejudicial error of fact or law. Denial of a petition for reconsideration constitutes final agency action and the DDO will advise the Affected Entity of the reasons for denying the reconsideration in writing.

(d) If the DDO grants a reconsideration petition, the DDO will issue a revised DDO Decision within 30 calendar days of acceptance of the reconsideration petition unless a longer period is necessary based on the complexity of the legal, technical, and factual issues presented. The DDO will issue the revised DDO Decision electronically. The revised DDO Decision and any new material considered by the DDO in making the revised DDO Decision will become part of the record of the Dispute. The revised DDO Decision will constitute final agency action.

(e) The DDO may consider untimely filed reconsideration petitions only if necessary, to correct a DDO Decision that is manifestly unfair and inequitable in light of relevant and material evidence that the Affected Entity could not have discovered during the 15-calendar day period for petitioning for reconsideration. This evidence must be submitted within six months of the date of the DDO Decision. The DDO will advise the Affected Entity within 30 days of receipt of an untimely filed reconsideration petition whether the DDO will accept the petition. Denial of an untimely filed reconsideration petition constitutes final agency action.

[85 FR 61575, Sept. 30, 2020, as amended at 87 FR 30397, May 19, 2022]

## PARTS 1501–1531 [RESERVED]

## PART 1532—NONPROCUREMENT DEBARMENT AND SUSPENSION

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AUTHORITY: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 7401 *et seq.;* Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

SOURCE: 72 FR 2422, Jan. 19, 2007, unless otherwise noted.

### § 1532.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Environmental Protection Agency (EPA) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the EPA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

### § 1532.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970;

(b) Respondent in an EPA suspension or debarment action;

(c) EPA debarment or suspension official; or

(d) EPA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 1532.30 What policies and procedures must I follow?

The EPA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., §1532.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, EPA policies and procedures are those in the OMB guidance.

## Subpart A—General

### § 1532.137 Who in the EPA may grant an exception to let an excluded person participate in a covered transaction?

The EPA Debarring Official has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135. If the EPA Debarring Official grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

## Subpart B—Covered Transactions

### § 1532.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the EPA under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed $25,000. This extends the coverage of the EPA nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 1532.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 1532.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–F [Reserved]

## Subpart G—Suspension

### § 1532.765 How may I appeal my EPA suspension?

(a) If the EPA suspending official issues a decision under 2 CFR 180.755 to continue your suspension after you

present information in opposition to that suspension under 2 CFR 180.720, you can ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under 2 CFR 180.755 or paragraph (a)(1) of this section. However, the OGD Director can reverse the suspending official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the suspension pending review of the suspending official's decision.

(d) The EPA suspending official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

## Subpart H—Debarment

### § 1532.890 How may I appeal my EPA debarment?

(a) If the EPA debarring official issues a decision under 2 CFR 180.870 to debar you after you present information in opposition to a proposed debarment under 2 CFR 180.815, you can ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official's decision to debar you within 30 days of your receipt of the debarring official's decision under 2 CFR 180.870 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official's decision only where the OGD Director finds that the decision is based on a clear error of material fact or law, or where the OGD Director finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) A review under paragraph (a)(2) of this section is solely within the discretion of the OGD Director who may also stay the debarment pending review of the debarring official's decision.

(d) The EPA debarring official and the OGD Director must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

## Subpart I—Definitions

### § 1532.995 Principal (EPA supplement to government-wide definition at 2 CFR 180.995).

In addition to those listed in 2 CFR 180.995, other examples of individuals who are principals in EPA covered transactions include:

(a) Principal investigators;

(b) Technical or management consultants;

(c) Individuals performing chemical or scientific analysis or oversight;

(d) Professional service providers such as doctors, lawyers, accountants, engineers, etc.;

(e) Individuals responsible for the inspection, sale, removal, transportation, storage or disposal of solid or hazardous waste or materials;

(f) Individuals whose duties require special licenses;

(g) Individuals that certify, authenticate or authorize billings; and

(h) Individuals that serve in positions of public trust.

## Subpart J—Statutory Disqualification and Reinstatement Under the Clean Air Act and Clean Water Act

### § 1532.1100 What does this subpart do?

This subpart explains how the EPA administers section 306 of the Clean Air Act (CAA) (42 U.S.C. 7606) and section 508 of the Clean Water Act (CWA) (33 U.S.C. 1368), which disqualify persons convicted for certain offenses under those statutes (see § 1532.1105), from eligibility to receive certain contracts, subcontracts, assistance, loans and other benefits (see coverage under the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4 and subparts A through I of 2 CFR part 180). It also explains: the procedures for seeking reinstatement of a person's eligibility under the CAA or CWA; the criteria and standards that apply to EPA's decision-making process; and requirements of award officials and others involved in Federal procurement and nonprocurement activities in carrying out their responsibilities under the CAA and CWA.

### § 1532.1105 Does this subpart apply to me?

(a) Portions of this subpart apply to you if you are convicted, or likely to be convicted, of any offense under section 7413(c) of the CAA or section 1319(c) of the CWA.

(b) Portions of this subpart apply to you if you are the EPA debarring official, a Federal procurement or nonprocurement award official, a participant in a Federal procurement or nonprocurement program that is precluded from entering into a covered transaction with a person disqualified under the CAA or CWA, or if you are a Federal department or agency anticipating issuing an exception to a person otherwise disqualified under the CAA or CWA.

### § 1532.1110 How will a CAA or CWA conviction affect my eligibility to participate in Federal contracts, subcontracts, assistance, loans and other benefits?

If you are convicted of any offense described in § 1532.1105, you are automatically disqualified from eligibility to receive any contract, subcontract, assistance, sub-assistance, loan or other nonprocurement benefit or transaction that is prohibited by a Federal department or agency under the Governmentwide debarment and suspension system (i.e. covered transactions under subpart A through I of 2 CFR part 180, or prohibited awards under 48 CFR part 9, subpart 9.4), if you:

(a) Will perform any part of the transaction or award at the facility giving rise to your conviction (called the violating facility); and

(b) You own, lease or supervise the violating facility.

### § 1532.1115 Can the EPA extend a CAA or CWA disqualification to other facilities?

The CAA specifically authorizes the EPA to extend a CAA disqualification to other facilities that are owned or operated by the convicted person. The EPA also has authority under subparts A through I of 2 CFR part 180, or under 48 CFR part 9, subpart 9.4, to take discretionary suspension and debarment actions on the basis of misconduct leading to a CAA or CWA conviction, or for activities that the EPA debarring official believes were designed to improperly circumvent a CAA or CWA disqualification.

### § 1532.1120 What is the purpose of CAA or CWA disqualification?

As provided for in Executive Order 11738 (3 CFR, 1973 Comp., p. 799), the purpose of CAA and CWA disqualification is to enforce the Federal Government's policy of undertaking Federal procurement and nonprocurement activities in a manner that improves and enhances environmental quality by promoting effective enforcement of the CAA or CWA.

### § 1532.1125 How do award officials and others know if I am disqualified?

If you are convicted under these statutes, the EPA enters your name and address and that of the violating facility into the Excluded Parties List System (EPLS) as soon as possible after the EPA learns of your conviction. In addition, the EPA enters other information describing the nature of your

disqualification. Federal award officials and others who administer Federal programs consult the EPLS before entering into or approving procurement and nonprocurement transactions. Anyone may access the EPLS through the internet, currently at *http://www.epls.gov*.

### § 1532.1130 How does disqualification under the CAA or CWA differ from a Federal discretionary suspension or debarment action?

(a) CAA and CWA disqualifications are exclusions mandated by statute. In contrast, suspensions and debarments imposed under subparts A through I of 2 CFR part 180 or under 48 CFR part 9, subpart 9.4, are exclusions imposed at the discretion of Federal suspending or debarring officials. This means that if you are convicted of violating the CAA or CWA provisions described under §1532.1105, ordinarily your name and that of the violating facility is placed into the EPLS before you receive a confirmation notice of the listing, or have the opportunity to discuss the disqualification with, or seek reinstatement from, the EPA.

(b) CAA or CWA disqualification applies to both the person convicted of the offense, and to the violating facility during performance of an award or covered transaction under the Federal procurement and nonprocurement suspension and debarment system. It is the EPA's policy to carry out CAA and CWA disqualifications in a manner which integrates the disqualifications into the Governmentwide suspension and debarment system. Whenever the EPA determines that the risk presented to Federal procurement and nonprocurement activities on the basis of the misconduct which gives rise to a person's CAA or CWA conviction exceeds the coverage afforded by mandatory disqualification, the EPA may use its discretionary authority to suspend or debar a person under subparts A through I of 2 CFR part 180, or under 48 CFR part 9, subpart 9.4.

### § 1532.1135 Does CAA or CWA disqualification mean that I must remain ineligible?

You must remain ineligible until the EPA debarring official certifies that the condition giving rise to your conviction has been corrected. If you desire to have your disqualification terminated, you must submit a written request for reinstatement to the EPA debarring official and support your request with persuasive documentation. For information about the process for reinstatement see §§1532.1205 and 1532.1300.

### § 1532.1140 Can an exception be made to allow me to receive an award even though I may be disqualified?

(a) After consulting with the EPA debarring official, the head of any Federal department or agency (or designee) may exempt any particular award or a class of awards with that department or agency from CAA or CWA disqualification. In the event an exemption is granted, the exemption must:

(1) Be in writing; and

(2) State why the exemption is in the paramount interests of the United States.

(b) In the event an exemption is granted, the exempting department or agency must send a copy of the exemption decision to the EPA debarring official for inclusion in the official record.

### § 1532.1200 How will I know if I am disqualified under the CAA or CWA?

There may be several ways that you learn about your disqualification. You are legally on notice by the statutes that a criminal conviction the CAA or CWA automatically disqualifies you. As a practical matter, you may learn about your disqualification from your defense counsel, a Federal contract or award official, or from someone else who sees your name in the EPLS. As a courtesy, the EPA will attempt to notify you and the owner, lessor or supervisor of the violating facility that your names have been entered into the EPLS. The EPA will inform you of the procedures for seeking reinstatement and give you the name of a person you can contact to discuss your reinstatement request.

### § 1532.1205 What procedures must I follow to have my procurement and nonprocurement eligibility reinstated under the CAA or CWA?

(a) You must submit a written request for reinstatement to the EPA debarring official stating what you believe the conditions were that led to your conviction, and how those conditions have been corrected, relieved or addressed. Your request must include documentation sufficient to support all material assertions you make. The debarring official must determine that all the technical and non-technical causes, conditions and consequences of your actions have been sufficiently addressed so that the Government can confidently conduct future business activities with you, and that your future operations will be conducted in compliance with the CAA and CWA.

(b) You may begin the reinstatement process by having informal discussions with the EPA representative named in your notification of listing. Having informal dialogue with that person will make you aware of the EPA concerns that must be addressed. The EPA representative is not required to negotiate conditions for your reinstatement. However, beginning the reinstatement process with informal dialogue increases the chance of achieving a favorable outcome, and avoids unnecessary delay that may result from an incomplete or inadequate reinstatement request. It may also allow you to resolve your disqualification by reaching an agreement with the EPA debarring official under informal procedures. Using your informal option first does not prevent you from submitting a formal reinstatement request with the debarring official at any time.

### § 1532.1210 Will anyone else provide information to the EPA debarring official concerning my reinstatement request?

If you request reinstatement under § 1532.1205, the EPA debarring official may obtain review and comment on your request by anyone who may have information about, or an official interest in, the matter. For example, the debarring official may consult with the EPA Regional offices, the Department of Justice or other Federal agencies, or state, tribal or local governments. The EPA debarring official will make sure that you have an opportunity to address important allegations or information contained in the administrative record before making a final decision on your request for reinstatement.

### § 1532.1215 What happens if I disagree with the information provided by others to the EPA debarring official on my reinstatement request?

(a) If your reinstatement request is based on factual information (as opposed to a legal matter or discretionary conclusion) that is different from the information provided by others or otherwise contained in the administrative record, the debarring official will decide whether those facts are genuinely in dispute, and material to making a decision. If so, a fact-finding proceeding will be conducted in accordance with 2 CFR 180.830 through 180.840, and the debarring official will consider the findings when making a decision on your reinstatement request.

(b) If the basis for your disagreement with the information contained in the administrative record relates to a legal issue or discretionary conclusion, or is not a genuine dispute over a material fact, you will not have a fact-finding proceeding. However, the debarring official will allow you ample opportunity to support your position for the record and present matters in opposition to your continued disqualification. A summary of any information you provide orally, if not already recorded, should also be submitted to the debarring official in writing to assure that it is preserved for the debarring official's consideration and the administrative record.

### § 1532.1220 What will the EPA debarring official consider in making a decision on my reinstatement request?

(a) The EPA debarring official will consider all information and arguments contained in the administrative record in support of, or in opposition to, your request for reinstatement, including any findings of material fact.

(b) The debarring official will also consider any mitigating or aggravating factors that may relate to your conviction or the circumstances surrounding

it, including any of those factors that appear in 2 CFR 180.860 that may apply to your situation.

(c) Finally, if disqualification applies to a business entity, the debarring official will consider any corporate or business attitude, policies, practices and procedures that contributed to the events leading to conviction, or that may have been implemented since the date of the misconduct or conviction. You can obtain any current policy directives issued by the EPA that apply to CAA or CWA disqualification or reinstatement by contacting the Office of the EPA Debarring Official, U.S. EPA, Office of Grants and Debarment (3901R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

### § 1532.1225 When will the EPA debarring official make a decision on my reinstatement request?

(a) The EPA debarring official will make a decision regarding your reinstatement request under § 1532.1205(a), when the administrative record is complete, and he or she can determine whether the condition giving rise to the CAA or CWA conviction has been corrected-usually within 45 days of closing the administrative record.

(b) A reinstatement request is not officially before the debarring official while you are having informal discussions under § 1532.1205(b).

### § 1532.1230 How will the EPA debarring official notify me of the reinstatement decision?

The EPA debarring official will notify you of the reinstatement decision in writing, using the same methods for communicating debarment or suspension action notices under 2 CFR 180.615.

### § 1532.1300 Can I resolve my eligibility status under terms of an administrative agreement without having to submit a formal reinstatement request?

(a) The EPA debarring official may, at any time, resolve your CAA or CWA eligibility status under the terms of an administrative agreement. Ordinarily, the debarring official will not make an offer to you for reinstatement until after the administrative record for decision is complete, or contains enough information to enable him or her to make an informed decision in the matter.

(b) Any resolution of your eligibility status under the CAA or CWA resulting from an administrative agreement must include a certification that the condition giving rise to the conviction has been corrected.

(c) The EPA debarring official may enter into an administrative agreement to resolve CAA or CWA disqualification issues as part of a comprehensive criminal plea, civil or administrative agreement when it is in the best interest of the United States to do so.

### § 1532.1305 What are the consequences if I mislead the EPA in seeking reinstatement or fail to comply with my administrative agreement?

(a) Any certification of correction issued by the EPA debarring official whether the certification results from a reinstatement decision under §§ 1532.1205(a) and 1532.1230, or from an administrative agreement under §§ 1532.1205(b) and 1532.1300, is conditioned upon the accuracy of the information, representations or assurances made during development of the administrative record.

(b) If the EPA debarring official finds that he or she has certified correction of the condition giving rise to a CAA or CWA conviction or violation on the basis of a false, misleading, incomplete or inaccurate information; or if a person fails to comply with material condition of an administrative agreement, the EPA debarring official may take suspension or debarment action against the person(s) responsible for the misinformation or noncompliance with the agreement as appropriate. If anyone provides false, inaccurate, incomplete or misleading information to EPA in an attempt to obtain reinstatement, the EPA debarring official will refer the matter to the EPA Office of Inspector General for potential criminal or civil action.

### § 1532.1400 How may I appeal a decision denying my request for reinstatement?

(a) If the EPA debarring official denies your request for reinstatement under the CAA or CWA, you can ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; and/ or

(2) You may request the Director, Office of Grants and Debarment (OGD Director), to review the debarring official's denial within 30 days of your receipt of the debarring official's decision under §1532.1230 or paragraph (a)(1) of this section. However, the OGD Director can reverse the debarring official's decision denying reinstatement only where the OGD Director finds that there is a clear error of material fact or law, or where the OGD Director finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion.

(b) A request for review under this section must be in writing and state the specific findings you believe to be in error and include the reasons or legal bases for your position.

(c) A review under this section is solely within the discretion of the OGD Director.

(d) The OGD Director must notify you of his or her decision under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

### §1532.1500 If I am reinstated, when will my name be removed from the EPLS?

If your eligibility for procurement and nonprocurement participation is restored under the CAA or CWA, whether by decision, appeal, or by administrative agreement, the EPA will remove your name and that of the violating facility from the EPLS, generally within 5 working days of your reinstatement.

### §1532.1600 What definitions apply specifically to actions under this subpart?

In addition to definitions under subpart A through I of 2 CFR part 180 that apply to this part as a whole, the following two definitions apply specifically to CAA and CWA disqualifications under this subpart:

(a) Person means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

(b) Violating facility means any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations that gives rise to a CAA or CWA conviction, and is a location at which or from which a Federal contract, subcontract, loan, assistance award or other covered transactions may be performed. If a site of operations giving rise to a CAA or CWA conviction contains or includes more than one building, plant, installation, structure, mine, vessel, floating craft, or other operational element, the entire location or site of operation is regarded as the violating facility unless otherwise limited by the EPA.

# PART 1536—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

1536.10 What does this part do?
1536.20 Does this part apply to me?
1536.30 What policies and procedures must I follow?

**Subpart A—Purpose and Coverage [Reserved]**

**Subpart B—Requirements for Recipients Other Than Individuals**

1536.225 Whom in the Environmental Protection Agency does a recipient other than an individual notify about a criminal drug conviction?

**Subpart C—Requirements for Recipients Who Are Individuals**

1536.300 Whom in the Environmental Protection Agency does a recipient who is an individual notify about a criminal drug conviction?

**Subpart D—Responsibilities of Agency Awarding Officials**

1536.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

**Subpart E—Violations of This Part and Consequences**

1536.500 Who in the Environmental Protection Agency determines that a recipient

other than an individual violated the requirements of this part?
1536.505 Who in the Environmental Protection Agency determines that a recipient who is an individual violated the requirements of this part?

AUTHORITY: 41 U.S.C. 701–707.

SOURCE: 75 FR 80288, Dec. 22, 2010, unless otherwise noted.

### § 1536.10 What does this part do?

This part requires that the award and administration of Environmental Protection Agency grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for the Environmental Protection Agency's grants and cooperative agreements; and

(b) Establishes Environmental Protection Agency policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

### § 1536.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (*see* table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of a Environmental Protection Agency grant or cooperative agreement; or

(b) Environmental Protection Agency awarding official.

### § 1536.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| (1) 2 CFR 182.225(a) | § 1536.225 | Whom in the Environmental Protection Agency a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace. |
| (2) 2 CFR 182.300(b) | § 1536.300 | Whom in the Environmental Protection Agency a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| (3) 2 CFR 182.500 | § 1536.500 | Who in the Environmental Protection Agency is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| (4) 2 CFR 182.505 | § 1536.505 | Who in the Environmental Protection Agency is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, Environmental Protection Agency policies and procedures are the same as those in the OMB guidance.

## Subpart A—Purpose and Coverage [Reserved]

## Subpart B—Requirements for Recipients Other Than Individuals

### § 1536.225 Whom in the Environmental Protection Agency does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the EPA

award official from each Environmental Protection Agency office from which it currently has an award.

## Subpart C—Requirements for Recipients Who Are Individuals

### § 1536.300 Whom in the Environmental Protection Agency does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify the EPA award official from each Environmental Protection Agency office from which it currently has an award.

## Subpart D—Responsibilities of Agency Awarding Officials

### § 1536.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR Subtitle B, Chapter XV, Part 1536, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

## Subpart E—Violations of This Part and Consequences

### § 1536.500 Who in the Environmental Protection Agency determines that a recipient other than an individual violated the requirements of this part?

The EPA Administrator or designee is the official authorized to make the determination under 2 CFR 182.500.

### § 1536.505 Who in the Environmental Protection Agency determines that a recipient who is an individual violated the requirements of this part?

The EPA Administrator or designee is the official authorized to make the determination under 2 CFR 182.505.

## PARTS 1537–1599 [RESERVED]

# CHAPTER XVI—US International Development Finance Corporation


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# PART 1600—NONPROCUREMENT DEBARMENT AND SUSPENSION

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1600.10 What does this part do?
1600.20 Does this part apply to me?
1600.30 What regulations must I follow?

Subpart A—General

1600.137 Who in DFC may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

1600.215 Which nonprocurement transactions are not covered transactions?
1600.220 What contracts and subcontracts are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

1600.332 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

1600.437 What method do I use to communicate to a participant the requirements for participating in a covered transaction?

Subparts E–F [Reserved]

Subpart G—Suspension

1600.765 How may I request reconsideration of my DFC suspension?

Subpart H—Debarment

1600.890 How may I request reconsideration of my DFC debarment?

Subpart I—Definitions

1600.930 Debarring official.
1600.1010 Suspending official.

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

SOURCE: 89 FR 34953, May 1, 2024, unless otherwise noted.

## § 1600.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the U.S. International Development Finance Corporation (DFC) regulations for non-procurement debarment and suspension. It thereby gives regulatory effect for DFC to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR, 1986 Comp., p. 189); Executive Order 12689, ''Debarment and Suspension'' (3 CFR, 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (31 U.S.C. 6101 note).

## § 1600.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see 2 CFR part 180, subpart B, and the definition of ''non-procurement transaction'' at 2 CFR 180.970);

(b) Respondent in a DFC suspension or debarment action;

(c) DFC suspending or debarring official; and

(d) DFC investment, guarantee, insurance or grant official authorized to enter into any type of non-procurement transaction that is a covered transaction.

## § 1600.30 What regulations must I follow?

The DFC regulations that you must follow are the regulations specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180 as that section is supplemented by the section in this part with the same section number or by additional provisions with no corresponding section number. For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, DFC regulations are those in the OMB guidance.

## Subpart A—General

### § 1600.137 Who in DFC may grant an exception to let an excluded person participate in a covered transaction?

The Chief Executive Officer (CEO) of DFC or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the CEO of DFC or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the Governmentwide policy in Executive Order 12549.

## Subpart B—Covered Transactions

### § 1600.215 Which nonprocurement transactions are not covered transactions?

In addition to the nonprocurement transactions which are not covered transactions under 2 CFR 180.215, any nonprocurement transaction entered into under a primary tier nonprocurement transaction that does not require DFC explicit prior consent is not a covered transaction under 2 CFR 180.215(g)(2).

### § 1600.220 What contracts and subcontracts are covered transactions?

First-tier procurements (*i.e.*, primary contracts) under a covered nonprocurement transaction are covered transactions. Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (see also optional lower tier coverage in the figure in the appendix to 2 CFR part 180), DFC does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement under a covered nonprocurement transaction. Moreover, for purposes of determining whether a procurement contract is included as a covered transaction, the threshold in 2 CFR 180.220(b) is increased from $25,000 to the ''simplified acquisition threshold'' as defined in 48 CFR 2.101.

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 1600.332 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

You, as a participant, must include a term or condition in lower-tier transactions that are covered transactions, requiring lower-tier participants to comply with the OMB guidance in 2 CFR part 180, subpart C, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 1600.437 What method do I use to communicate to a participant the requirements for participating in a covered transaction?

To communicate to a participant the requirements described in 2 CFR 180.435, you must include provisions in the contractual documentation of the transaction to ensure compliance with 2 CFR part 180, subpart C, as supplemented by subpart C of this part. The provisions must also require the participant to include similar terms or conditions of compliance in lower-tier covered transactions.

## Subparts E–F [Reserved]

## Subpart G—Suspension

### § 1600.765 How may I request reconsideration of my DFC suspension?

(a) If the DFC suspending official issues a decision under 2 CFR 180.755 to continue your suspension after you present information in opposition to that suspension under 2 CFR 180.720, you can ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) The suspending official must notify you of their decisions under this

section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

## Subpart H—Debarment

### § 1600.890 How may I request reconsideration of my DFC debarment?

(a) If the DFC debarring official issues a decision under 2 CFR 180.870 to debar you after you present information in opposition to a proposed debarment under 2 CFR 180.815, you can ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) DFC may debar a person or entity for refusing to engage in efforts to remediate identified environmental, social, and human rights harm stemming from their activities, including harm that may be identified through a DFC Office of Accountability complaints process.

(d) The debarring official must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

## Subpart I—Definitions

### § 1600.930 Debarring official.

The debarring official for DFC is the Vice President & Chief Administrative Officer, Office of Administration, or designee as delegated in Agency policy.

### § 1600.1010 Suspending official.

The suspending official for DFC is the Vice President & Chief Administrative Officer, Office of Administration, or designee as delegated in Agency policy.

# PARTS 1601–1699 [RESERVED]

# CHAPTER XVIII—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION


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# PART 1800—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

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1800.1 Authority.
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Subpart A—Acronyms and Definitions

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1800.210 Pre-award costs.
1800.211 Information contained in a Federal award.

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STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT

1800.306 Cost sharing or matching.

PROPERTY STANDARDS

1800.312 Federally-owned and exempt property.
1800.315 Intangible property.

AUTHORITY: 51 U.S.C. 20113 (e), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and 2 CFR part 200.

SOURCE: 80 FR 54701, Sept. 11, 2015, unless otherwise noted.

## § 1800.1 Authority.

The National Aeronautics and Space Administration (NASA) awards grants and cooperative agreements under the authority of 51 U.S.C. 20113 (e), the National Aeronautics and Space Act. This part 1800 is issued under the authority of 51 U.S.C. 20113 (e), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and 2 CFR part 200.

## § 1800.2 Purpose.

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through F and applicable appendices of 2 CFR part 200 (as revised in April 2024), as supplemented by this part, as the NASA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards. It thereby gives regulatory effect for NASA to the OMB guidance as supplemented by this part.

[89 FR 75948, Sept. 17, 2024]

## § 1800.3 Applicability.

(a) This part establishes policies and procedures for grants and cooperative agreements awarded by NASA to non-Federal entities, for-profit organization, foreign organizations, and foreign public entities as allowed by 2 CFR 200.101. For supplemental guidance, NASA has adopted section numbers that correspond to those in the OMB guidance in 2 CFR part 200.

(1) Non-Federal entities must follow the policies and procedures appearing in subparts A through F and applicable appendices of 2 CFR part 200 and as supplemented by this part.

(2) Foreign organizations and foreign public entities must follow the policies and procedures appearing in subparts A through E and applicable appendices of 2 CFR part 200 and as supplemented by this part.

(3) U.S. and foreign for-profit organizations must follow the policies and procedures appearing in subparts A through D and applicable appendices of 2 CFR part 200 and as supplemented by this part. The Federal Acquisition Regulation (FAR) at 48 CFR parts 30 and 31, takes precedence over the cost principles in 2 CFR part 200, subpart E for Federal awards to U.S. and foreign for-profit organizations.

(b) Throughout this part, the term ''award'' refers to both ''grant'' and ''cooperative agreement'' unless otherwise indicated.

(c)(1) In general, research with foreign organizations and foreign public entities will not be conducted through grants or cooperative agreements, but instead will be accomplished on a no-exchange-of-funds basis. In these cases, NASA enters into agreements undertaking projects of international scientific collaboration. NASA's policy on performing research with foreign organizations and foreign public entities on a no-exchange-of-funds basis is set forth at NASA FAR Supplement (NFS) 1835.016–70 and 1835.016–72. In rare instances, NASA may enter into an

international agreement under which funds will be transferred to a foreign recipient.

(2) Grants or cooperative agreements awarded to foreign organizations and foreign public entities are made on an exceptional basis only. Awards require the prior approval of the Headquarters Office of International and Interagency Relations and the Headquarters Office of the General Counsel. Requests to issue awards to foreign organizations are to be coordinated through the Office of Procurement, Procurement and Grants Policy Division.

[89 FR 75948, Sept. 17, 2024]

### § 1800.4 Amendment.

This part will be amended by publication of changes in the FEDERAL REGISTER. Changes will be issued as final rules.

### § 1800.5 Publication.

The official site for accessing the NASA grant and cooperative agreement policies, including notices, internal guidance, certifications, and other source information is on the internet at *https://www.nasa.gov/general/grants-policy-and-compliance-team/*.

[89 FR 75948, Sept. 17, 2024]

## Subpart A—Acronyms and Definitions

### § 1800.10 Acronyms.

The following acronyms supplement the acronyms set forth at 2 CFR 200.0:

NASA National Aeronautics and Space Administration
NFS NASA FAR Supplement

[89 FR 75948, Sept. 17, 2024]

## Subpart B—Pre-Federal Award Requirements and Contents of Federal Awards

### § 1800.210 Pre-award costs.

As authorized by 2 CFR 200.308, Revision of budget and program plans, NASA waives the approval requirement for pre-award costs of 90 days or less. For more information on NASA's pre-award cost policy, see NASA's policy documents at *https://www.nasa.gov/general/grants-policy-and-compliance-team/*.

[89 FR 75948, Sept. 17, 2024]

### § 1800.211 Information contained in a Federal award.

NASA waives the requirement for the inclusion of indirect cost rates on any notice of Federal award for for-profit organizations.

[89 FR 75948, Sept. 17, 2024]

## Subpart C—Post Federal Award Requirements

STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT

### § 1800.306 Cost sharing or matching.

In some cases, NASA research projects require cost sharing or matching. Where cost sharing or matching is required, recipients must secure and document matching funds to receive the Federal award.

[85 FR 71817, Nov. 12, 2020]

PROPERTY STANDARDS

### § 1800.312 Federally-owned and exempt property.

Under the authority of the Chiles Act, 31 U.S.C. 6301 to 6308, NASA has decided to vest title to tangible personal property acquired with Federal funds in nonprofit institutions of higher education and nonprofit organizations whose primary purpose is conducting scientific research without further obligation to NASA, including reporting requirements. Award recipients that are not nonprofit institutions of higher education or nonprofit organizations whose primary purpose is conducting scientific research shall adhere to regulations at 2 CFR 200.312 through 200.316.

[85 FR 71817, Nov. 12, 2020]

### § 1800.315 Intangible property.

Due to the substantial involvement on the part of NASA under a cooperative agreement, intellectual property may be produced by Federal employees and NASA contractors tasked to perform NASA assigned activities. Title to intellectual property created under the

cooperative agreement by NASA or its contractors will initially vest with the creating party or parties. Certain rights may be exchanged with the recipient.

## PARTS 1801–1879 [RESERVED]

## PART 1880—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

1880.10 What does this part do?
1880.20 Does this part apply to me?
1880.30 What policies and procedures must I follow?

Subpart A—General

1880.137 Who in NASA may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

1880.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

1880.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

1880.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subparts E–J [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 42 U.S.C. 2473(c)(1).

SOURCE: 72 FR 19783, Apr. 20, 2007, unless otherwise noted.

### § 1880.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the NASA policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for NASA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

### § 1880.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970);

(b) Respondent in a NASA suspension or debarment action;

(c) NASA debarment or suspension official; or

(d) NASA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 1880.30 What policies and procedures must I follow?

The NASA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, §1880.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, NASA policies and procedures are those in the OMB guidance.

## Subpart A—General

### § 1880.137 Who in NASA may grant an exception to let an excluded person participate in a covered transaction?

The Chief Acquisition Officer has the authority to grant an exception to let

an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

## Subpart B—Covered Transactions

### § 1880.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

NASA extends coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement action, to all lower tier subcontracts, at all dollar values, consistent with OMB guidance at 2 CFR 180.220(c) and the figure in the appendix at 2 CFR part 180. NASA does not permit subcontracting to suspended or debarred entities at any tier, at any dollar amount.

[78 FR 13211, Feb. 27, 2013]

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 1880.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 1880.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–J [Reserved]

## PART 1881 [RESERVED]

# PART 1882—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

1882.5 What does this part do?

Subpart A—Purpose and Coverage

1882.120 Are any of my Federal assistance awards exempt from this part?

Subparts B–D [Reserved]

Subpart E—Violations of This Part and Consequences

1882.500 How are violations of this part determined for recipients other than individuals?

1882.505 How are violations of this part determined for recipients who are individuals?

1882.515 Are there any exceptions to those actions?

Subpart F [Reserved]

AUTHORITY: 41 U.S.C. 701 *et seq.;* 51 U.S.C. 20113(e).

SOURCE: 79 FR 56487, Sept. 22, 2014, unless otherwise noted.

### § 1882.5 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through F of 2 CFR part 182, as supplemented by this part, as the NASA policies and procedures for implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants and cooperative agreements. It thereby gives regulatory effect for NASA to the OMB guidance. Further, it supplements the OMB guidance with NASA-specific regulation.

[79 FR 56487, Sept. 22, 2014. Redesignated at 79 FR 62797, Oct. 21, 2014]

## Subpart A—Purpose and Coverage

### § 1882.120 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award for which the Assistant Administrator for Procurement determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

## Subparts B–D [Reserved]

## Subpart E—Violations of This Part and Consequences

### § 1882.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Assistant Administrator for Procurement determines, in writing, that—

(a) The recipient has violated the requirements of subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

### § 1882.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the Assistant Administrator for Procurement determines, in writing, that—

(a) The recipient has violated the requirements of subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

### § 1882.515 Are there any exceptions to those actions?

The Assistant Administrator for Procurement (AA) may waive with respect to a particular award, in writing, a suspension of payments under an award or a suspension or termination of an award. The Chief Acquisition Officer (CAO) may approve an award to a suspended or debarred entity if the CAO determines that such a waiver would be in the public interest. These exception authorities cannot be delegated to any other official.

## Subpart F [Reserved]

# PARTS 1883–1899 [RESERVED]

# CHAPTER XIX—U.S. AGENCY FOR GLOBAL MEDIA


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# PART 1900—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

1900.1 Adoption of 2 CFR part 200.
1900.2 [Reserved]

AUTHORITY: 5 U.S.C. 301; 2 CFR part 200

SOURCE: 89 FR 99696, Dec. 11, 2024, unless otherwise noted.

## § 1900.1 Adoption of 2 CFR Part 200.

The United States Agency for Global Media adopts the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth at 2 CFR part 200. Thus, this part gives regulatory effect to the terms of 2 CFR part 200 (as effective October 1, 2024).

## § 1900.2 [Reserved]

# PARTS 1901–1999 [Reserved]

# CHAPTER XX—UNITED STATES NUCLEAR REGULATORY COMMISSION


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# PART 2000—NONPROCUREMENT DEBARMENT AND SUSPENSION

## Subpart A—General

Sec.
2000.10 What does this part do?
2000.20 Does this part apply to me?
2000.30 What policies and procedures must I follow?
2000.135 Who in the Nuclear Regulatory Commission may grant an exception to let an excluded person participate in a covered transaction?

## Subpart B—Covered Transactions

2000.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

## Subpart C—Responsibilities of Participants Regarding Transactions

2000.330 What method must be used to pass requirements down to participants at lower tiers?

## Subparts D–H [Reserved]

## Subpart I—Definitions

2000.930 Debarring official.
2000.1010 Suspending official.

AUTHORITY: 5 U.S.C. 301; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

SOURCE: 75 FR 27924, May 19, 2010, unless otherwise noted.

## Subpart A—General

### § 2000.10 What does this part do?

This part promulgates a regulation adopting the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, establishing the United States Nuclear Regulatory Commission (NRC) policies and procedures for nonprocurement debarment and suspension. NRC thereby gives regulatory effect to the OMB guidance. It also supplements the OMB guidance by identifying NRC implementing officials and identifying how to pass these requirements through to other entities.

### § 2000.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to:

(a) Participant or principal in a ''covered transaction'';

(b) Respondent in an NRC nonprocurement suspension or debarment action;

(c) NRC debarment or suspension official; or

(d) NRC grants officer, agreements officer, or other official authorized to enter into a covered nonprocurement transaction.

### § 2000.30 What policies and procedures must I follow?

(a) The NRC policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR part 180, and those in this part. The NRC has closely tracked OMB's numbering scheme. For example, the contracts under a nonprocurement transaction that are covered transactions that are in section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) are found in § 2000.220.

(b) For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, NRC requirements are those in the OMB guidance at 2 CFR part 180.

### § 2000.135 Who in the Nuclear Regulatory Commission may grant an exception to let an excluded person participate in a covered transaction?

The Director, Office of Administration or another official designated by the Director, has the authority to grant a written exception to let an excluded person participate in a covered transaction, as provided in guidance at 2 CFR 180.135. The Director or other official designated by the Director shall explain the reason(s) for deviating from the governmentwide policy.

## Subpart B—Covered Transactions

### § 2000.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

The NRC nonprocurement suspension and debarment requirements apply

only to first-tier procurement contracts under a covered nonprocurement transaction.

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 2000.330 What method must be used to pass requirements down to participants at lower tiers?

A participant in a covered transaction must include a term or condition in any lower-tier covered transaction to require the participant of that transaction to—

(a) Comply with subpart C of the OMB guidance in 2 CFR part 180; and

(b) Include a similar term or condition in any covered transaction into which it enters at the next lower tier.

## Subparts D–H [Reserved]

## Subpart I—Definitions

### § 2000.930 Debarring official.

The Debarring Official for the United States Nuclear Regulatory Commission is the Director, Office of Administration.

### § 2000.1010 Suspending official.

The suspending official for the United States Nuclear Regulatory Commission is the Director, Office of Administration.

## PARTS 2001–2099 [RESERVED]

# CHAPTER XXII—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE


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| 2246–2299 | [Reserved] | |

# PART 2200—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.
2200.10 What does this part do?
2200.20 Does this part apply to me?
2200.30 What policies and procedures must I follow?
2200.137 Who in the Corporation for National and Community Service may grant an exception to let an excluded person participate in a covered transaction?
2200.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?
2200.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?
2200.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 22 U.S.C. 2503(b).

SOURCE: 72 FR 28826, May 23, 2007, unless otherwise noted.

### § 2200.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Corporation for National and Community Service policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Corporation for National and Community Service to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

### § 2200.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction.'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970.

(b) Respondent in a Corporation for National and Community Service suspension or debarment action;

(c) Corporation for National and Community Service debarment or suspension official; or

(d) Corporation for National and Community Service grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 2200.30 What policies and procedures must I follow?

The Corporation for National and Community Service policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, Sec. 2200.220). For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, Corporation for National and Community Service policies and procedures are those in the OMB guidance.

### § 2200.137 Who in the Corporation for National and Community Service may grant an exception to let an excluded person participate in a covered transaction?

The Chief Executive Officer (or another official designated by the Chief Executive Officer) has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

### § 2200.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), Corporation for National

and Community Service does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

### § 2200.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with Subpart C of the OMB guidance in 2 CFR part 180.

### § 2200.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you as an agency official must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## PART 2205—IMPLEMENTATION OF AND EXEMPTIONS TO 2 CFR

Sec.

2205.100 Adoption of 2 CFR part 200.
2205.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.
2205.306 Cost sharing or matching.
2205.332 Fixed amount subawards.
2205.414 Indirect (F&A) costs.

AUTHORITY: 42 U.S.C. 12571(d), 12571(e)(2)(B), 12581(l), 12581a(a), 12616(c)(2), 12651c(c), 12651d(h), 12651g(b), 12653(a), 12653(h), 12653o(a), and 12657(a); 2 CFR part 200; 45 CFR 2521.95, and 2540.110.

SOURCE: 79 FR 76076, Dec. 19, 2014, unless otherwise noted.

### § 2205.100 Adoption of 2 CFR Part 200.

Under the authority listed above, the Corporation for National and Community Service adopts the Office of Management and Budget's (OMB) Guidance in 2 CFR part 200, except as specified in this part. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance for recipients of awards from the Corporation.

### § 2205.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(a) The Corporation will determine the appropriate instrument in accordance with its authorities under the national service laws, and in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–6308), as appropriate.

(b) The Corporation and pass through entities may also provide fixed amount awards in the manner and in the amounts permitted under the national service laws.

### § 2205.306 Cost sharing or matching.

(a) Shared costs or matching funds must meet the criteria of 2 CFR 200.306(b), with the exception of 2 CFR 200.306(b)(5). Federal funds from other agencies may be used as match or cost sharing as authorized by 42 U.S.C. 12571(e) under the national service laws.

### § 2205.332 Fixed amount subawards.

Fixed amount subawards may be made in the manner and in amounts determined under the national service laws, as authorized by the Corporation, without respect to the Simplified Acquisition Threshold.

### § 2205.414 Indirect (F&A) costs.

Administrative costs for programs funded under subtitles B and C of the National and Community Service Act of 1990, as amended, shall be subject to 45 CFR 2521.95 and 2540.110.

## PART 2245—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

2245.10 What does this part do?
2245.20 Does this part apply to me?
2245.30 What policies and procedures must I follow?

### Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

2245.225 Whom in the Corporation does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients Who Are Individuals

2245.300 Whom in the Corporation does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

2245.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E—Violations of this Part and Consequences

2245.500 Who in the Corporation determines that a recipient other than an individual violated the requirements of this part?

2245.505 Who in the Corporation determines that a recipient who is an individual violated the requirements of this part?

Subpart F [Reserved]

AUTHORITY: 41 U.S.C. 701–707; 42 U.S.C. 12644.

SOURCE: 75 FR 22206, Apr. 28, 2010, unless otherwise noted.

## § 2245.10 What does this part do?

This part requires that the award and administration of the Corporation's grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for the Corporation's grants and cooperative agreements; and

(b) Establishes the Corporation's policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Government-wide implementing regulations.

## § 2245.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of a Corporation grant or cooperative agreement; or

(b) A Corporation awarding official.

## § 2245.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| (1) 2 CFR 182.225(a) | § 2245.225 | Whom in the Corporation a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace. |
| (2) 2 CFR 182.300(b) | § 2245.300 | Whom in the Corporation a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| (3) 2 CFR 182.500 | § 2245.500 | Who in the Corporation is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| (4) 2 CFR 182.505 | § 2245.505 | Who in the Corporation is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, the Corporation's policies and procedures are the same as those in the OMB guidance.

## Subpart A—Purpose and Coverage [Reserved]

## Subpart B—Requirements for Recipients Other Than Individuals

### § 2245.225 Whom in the Corporation does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the Corporation's awarding official or other designee.

## Subpart C—Requirements for Recipients Who Are Individuals

### § 2245.300 Whom in the Corporation does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify the Corporation's awarding official or other designee.

## Subpart D—Responsibilities of Agency Awarding Officials

### § 2245.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in subpart B (or subpart C, if the recipient is an individual) of 2245, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

## Subpart E—Violations of this Part and Consequences

### § 2245.500 Who in the Corporation determines that a recipient other than an individual violated the requirements of this part?

The Corporation's Chief Executive Officer or designee is authorized to make the determination under 2 CFR 182.500.

### § 2245.505 Who in the Corporation determines that a recipient who is an individual violated the requirements of this part?

The Corporation's Chief Executive Officer or designee is authorized to make the determination under 2 CFR 182.500.

## Subpart F [Reserved]

## PARTS 2246–2299 [RESERVED]

# CHAPTER XXIII—SOCIAL SECURITY ADMINISTRATION


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| 2301–2335 | [Reserved] | |
| 2336 | Nonprocurement debarment and suspension | 583 |
| 2339 | Requirements for drug-free workplace (financial assistance) | 584 |
| 2340–2399 | [Reserved] | |

# PART 2300—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

AUTHORITY: 5 U.S.C. 301; 2 CFR part 200, and as noted in specific sections.

SOURCE: 79 FR 76078, Dec. 19, 2014, unless otherwise noted.

### § 2300.10 Applicable regulations.

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 shall apply to the Social Security Administration.

### §§ 2300.11–2300.2335 [Reserved]

## PARTS 2301–2335 [RESERVED]

# PART 2336—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

2336.10 What does this part do?
2336.20 Does this part apply to me?
2336.30 What policies and procedures must I follow?

**Subpart A—General**

2336.137 Who in the SSA may grant an exception to let an excluded person participate in a covered transaction?

**Subpart B—Covered Transactions**

2336.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

**Subpart C—Responsibilities of Participants Regarding Transactions**

2336.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

**Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

2336.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

**Subparts E–J [Reserved]**

AUTHORITY: 42 U.S.C. 902(a)(5); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

SOURCE: 72 FR 46140, Aug. 17, 2007, unless otherwise noted.

### § 2336.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the SSA policies and procedures for nonprocurement debarment and suspension. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

### § 2336.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970);

(b) Respondent in an SSA suspension or debarment action;

(c) SSA debarment or suspension official; or

(d) SSA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 2336.30 What policies and procedures must I follow?

The SSA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220), as supplemented by section 220 in this part (i.e., § 2336.220). For

any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, SSA policies and procedures are those in the OMB guidance.

## Subpart A—General

### § 2336.137 Who in the SSA may grant an exception to let an excluded person participate in a covered transaction?

(a) Within the Social Security Administration, the Commissioner or the designated agency debarment official may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Commissioner or the designated agency debarment official grants an exception, the exception must be in writing and state the reason(s) for deviating from the OMB guidance at 2 CFR 180.135.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

## Subpart B—Covered Transactions

### § 2336.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see option lower tier coverage in the figure in the appendix to 2 CFR part 180), SSA does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 2336.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 2336.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–J [Reserved]

# PART 2339—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

2339.10 What does this part do?
2339.20 Does this part apply to me?
2339.30 What policies and procedures must I follow?

Subpart A [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

2339.225 Who in the Social Security Administration does a recipient other than an individual notify about a criminal drug conviction?

Subpart C [Reserved]

Subpart D—Responsibilities of Agency Awarding Officials

2339.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E—Violations of this Part and Consequences

2339.500 Who in the Social Security Administration determines that a recipient other than an individual violated the requirements of this part?

Subpart F [Reserved]

AUTHORITY: 41 U.S.C. 701–707.

SOURCE: 75 FR 31274, June 3, 2010, unless otherwise noted.

### § 2339.10 What does this part do?

This part requires that the award and administration of Social Security Administration (SSA) grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (subparts A through F of 2 CFR part 182) for SSA's grants and cooperative agreements; and

(b) Establishes SSA's policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Government-wide implementing regulations.

### § 2339.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are—

(a) A recipient of an SSA grant or cooperative agreement; or

(b) An SSA awarding official.

### § 2339.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table.

| Section of OMB guidance in 2 CFR | Section in this part where supplemented, 2 CFR | What the supplementation clarifies |
|---|---|---|
| (1) 182.225(a) | § 2339.225 | Who in SSA a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace. |
| (2) 182.300(b) | § 2339.300 | Who in SSA a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| (3) 182.500 | § 2339.500 | Who in SSA is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| (4) 182.505 | § 2339.505 | Who in SSA is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |

(c) *Sections of the OMB guidance that this part does not supplement.* Our policies and procedures are the same as those in the OMB guidance for any section not included in the table in paragraph (b) of this section.

## Subpart A [Reserved]

## Subpart B—Requirements for Recipients Other Than Individuals

### § 2339.225 Who in the Social Security Administration does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the Commissioner of Social Security or designee.

## Subpart C [Reserved]

## Subpart D—Responsibilities of Agency Awarding Officials

### § 2339.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

You must include the following term or condition in the award:

*Drug-free workplace.* You, as the recipient, must comply with drug-free workplace requirements in Subpart B,

which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

## Subpart E—Violations of this Part and Consequences

### § 2339.500 Who in the Social Security Administration determines that a recipient other than an individual violated the requirements of this part?

The Commissioner of Social Security or designee will make the determination.

## Subpart F [Reserved]

## PARTS 2340–2399 [RESERVED]

# CHAPTER XXIV—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT


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# PART 2400—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

AUTHORITY: 42 U.S.C. 3535(d); 2 CFR part 200.

SOURCE: 79 FR 76078, Dec. 19, 2014, unless otherwise noted.

### § 2400.101 Applicable regulations.

Unless excepted under 24 CFR chapters I through IX, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, set forth in 2 CFR part 200, shall apply to Federal Awards made by the Department of Housing and Urban Development to non-Federal entities.

# PARTS 2401–2423 [RESERVED]

# PART 2424—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.


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## Subpart A—General


2424.137 Who in HUD may grant an exception to let an excluded person participate in a covered transaction?


## Subpart B—Covered Transactions


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## Subpart C—Responsibilities of Participants Regarding Transactions


2424.300 What must I do before I enter into a covered transaction with another person at the next lower tier (HUD supplement to governmentwide definition at 2 CFR 180.300)?
2424.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?


## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions


2424.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?


## Subparts E–F [Reserved]

## Subpart G—Suspension


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## Subpart J—Limited Denial of Participation


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2424.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?
2424.1165 How is a limited denial of participation reported?


AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 72 FR 73487, Dec. 27, 2007, unless otherwise noted.

### § 2424.10 What does this part do?

In this part, HUD adopts, as HUD policies, procedures, and requirements for nonprocurement debarment and suspension, the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by this part. This adoption thereby gives regulatory effect for HUD to the OMB guidance, as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

### § 2424.20 Does this part apply to me?

This part and, through this part, pertinent portions of subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)), apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970, as supplemented by § 2424.970 of this part);

(b) Respondent in a HUD suspension or debarment action;

(c) HUD debarment or suspension official; or

(d) HUD grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 2424.30 What policies and procedures must I follow?

The HUD policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220), as supplemented by section 220 in this part (i.e., § 2424.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, HUD policies and procedures are those in the OMB guidance.

## Subpart A—General

### § 2424.137 Who in HUD may grant an exception to let an excluded person participate in a covered transaction?

The Secretary or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Secretary or a designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

## Subpart B—Covered Transactions

### § 2424.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by HUD under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed $25,000. This extends the coverage of the HUD nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180).

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 2424.300 What must I do before I enter into a covered transaction with another person at the next lower tier (HUD supplement to governmentwide definition at 2 CFR 180.300)?

(a) You, as a participant, are responsible for determining whether you are entering into a covered transaction with an excluded or disqualified person. You may decide the method by which you do so.

(1) You may, but are not required to, check the Excluded Parties List System (EPLS).

(2) You may, but are not required to, collect a certification from that person.

(b) In the case of an employment contract, HUD does not require employers to check the EPLS prior to making salary payments pursuant to that contract.

### § 2424.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

To communicate the requirements to lower-tier participants, you must include a term or condition in the transaction requiring compliance with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 2424.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant to: comply with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and include a similar term or condition in lower-tier covered transactions.

## Subparts E–F [Reserved]

## Subpart G—Suspension

### § 2424.747 Who conducts fact finding for HUD suspensions?

In all HUD suspensions, the official who shall conduct additional proceedings where disputed material facts are challenged shall be a hearing officer.

## Subpart H—Debarment

### § 2424.842 Who conducts fact finding for HUD debarments?

In all HUD debarments, the official who shall conduct additional proceedings where disputed material facts are challenged shall be a hearing officer.

## Subpart I—Definitions

### § 2424.952 Hearing officer.

*Hearing Officer* means an Administrative Law Judge or Office of Appeals Judge authorized by HUD's Secretary or by the Secretary's designee to conduct proceedings under this part.

### § 2424.970 Nonprocurement transaction (HUD supplement to governmentwide definition at 2 CFR 180.970).

In the case of employment contracts that are covered transactions, each salary payment under the contract is a separate covered transaction.

### § 2424.995 Principal (HUD supplement to governmentwide definition at 2 CFR 180.995).

A person who has a critical influence on, or substantive control over, a covered transaction, whether or not employed by the participant. Persons who have a critical influence on, or substantive control over, a covered transaction may include, but are not limited to:

(a) Loan officers;

(b) Staff appraisers and inspectors;

(c) Underwriters;

(d) Bonding companies;

(e) Borrowers under programs financed by HUD or with loans guaranteed, insured, or subsidized through HUD programs;

(f) Purchasers of properties with HUD-insured or Secretary-held mortgages;

(g) Recipients under HUD assistance agreements;

(h) Ultimate beneficiaries of HUD programs;

(i) Fee appraisers and inspectors;

(j) Real estate agents and brokers;

(k) Management and marketing agents;

(l) Accountants, consultants, investment bankers, architects, engineers, and attorneys who are in a business relationship with participants in connection with a covered transaction under a HUD program;

(m) Contractors involved in the construction or rehabilitation of properties financed by HUD, with HUD-insured loans or acquired properties, including properties held by HUD as mortgagee-in-possession;

(n) Closing agents;

(o) Turnkey developers of projects financed by or with financing insured by HUD;

(p) Title companies;

(q) Escrow agents;

(r) Project owners;

(s) Administrators of hospitals, nursing homes, and projects for the elderly financed or insured by HUD; and

(t) Developers, sellers, or owners of property financed with loans insured under Title I or Title II of the National Housing Act.

### § 2424.1017 Ultimate beneficiary.

Ultimate beneficiaries of HUD programs include, but are not limited to, subsidized tenants and subsidized mortgagors, such as those assisted under Section 8 Housing Assistance Payment contracts, by Section 236 Rental Assistance, or by Rent Supplement payments.

## Subpart J—Limited Denial of Participation

### § 2424.1100 What is a limited denial of participation?

A limited denial of participation excludes a specific person from participating in a specific program, or programs, within a HUD field office's geographic jurisdiction, for a specific period of time. A limited denial of participation is normally issued by a HUD field office, but may be issued by a Headquarters office. The decision to impose a limited denial of participation is discretionary and based on the best interests of the federal government.

### § 2424.1105 Who may issue a limited denial of participation?

The Secretary designates HUD officials who are authorized to impose a limited denial of participation, affecting any participant and/or their affiliates, except mortgagees approved by the Federal Housing Administration (FHA).

### § 2424.1110 When may a HUD official issue a limited denial of participation?

(a) An authorized HUD official may issue a limited denial of participation against a person, based upon adequate evidence of any of the following causes:

(1) Approval of an applicant for insurance would constitute an unsatisfactory risk;

(2) There are irregularities in a person's past performance in a HUD program;

(3) The person has failed to maintain the prerequisites of eligibility to participate in a HUD program;

(4) The person has failed to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) The person has failed to satisfy, upon completion, the requirements of an assistance agreement or contract;

(6) The person has deficiencies in ongoing construction projects;

(7) The person has falsely certified in connection with any HUD program, whether or not the certification was made directly to HUD;

(8) The person has committed any act or omission that would be cause for debarment under 2 CFR 180.800;

(9) The person has violated any law, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee;

(10) The person has made or procured to be made any false statement for the purpose of influencing in any way an action of the Department; or

(11) Imposition of a limited denial of participation by any other HUD office.

(b) Filing of a criminal Indictment or Information shall constitute adequate

evidence for the purpose of limited denial of participation actions. The Indictment or Information need not be based on offenses against HUD.

(c) Imposition of a limited denial of participation by any other HUD office shall constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for an additional conference or further hearing.

(d) An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

### § 2424.1115 When does a limited denial of participation take effect?

A limited denial of participation is effective immediately upon issuance of the notice.

### § 2424.1120 How long may a limited denial of participation last?

A limited denial of participation may remain in effect up to 12 months.

### § 2424.1125 How does a limited denial of participation start?

A limited denial of participation is made effective by providing the person, and any specifically named affiliate, with notice:

(a) That the limited denial of participation is being imposed;

(b) Of the cause(s) under § 2424.1110 for the sanction;

(c) Of the potential effect of the sanction, including the length of the sanction and the HUD program(s) and geographic area affected by the sanction;

(d) Of the right to request, in writing, within 30 days of receipt of the notice, a conference under § 2424.1130; and

(e) Of the right to contest the limited denial of participation under § 2424.1130.

### § 2424.1130 How may I contest my limited denial of participation?

(a) Within 30 days after receiving a notice of limited denial of participation, you may request a conference with the official who issued such notice. The conference shall be held within 15 days after the Department's receipt of the request for a conference, unless you waive this time limit. The official or designee who imposed the sanction shall preside. At the conference, you may appear with a representative and may present all relevant information and materials to the official or designee. Within 20 days after the conference, or within 20 days after any agreed-upon extension of time for submission of additional materials, the official or designee shall, in writing, advise you of the decision to terminate, modify, or affirm the limited denial of participation. If all or a portion of the remaining period of exclusion is affirmed, the notice of affirmation shall advise you of the opportunity to contest the notice and to request a hearing before a Departmental Hearing Officer. You have 30 days after receipt of the notice of affirmation to request this hearing. If the official or designee does not issue a decision within the 20-day period, you may contest the sanction before a Departmental Hearing Officer. Again, you have 30 days from the expiration of the 20-day period to request this hearing. If you request a hearing before the Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., B–133 Portals 200, Washington DC 20410–0500.

(b) You may skip the conference with the official and you may request a hearing before a Departmental Hearing Officer. This must also be done within 30 days after receiving a notice of limited denial of participation. If you opt to have a hearing before a Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., B–133 Portals 200, Washington DC 20410–0500. The hearing before the Departmental Hearing Officer

is more formal than the conference before the sanctioning official described above. The Departmental Hearing Officer will conduct the hearing in accordance with 24 CFR part 26, subpart A. The Departmental Hearing Officer will issue findings of fact and make a recommended decision. The sanctioning official will then make a final decision, as promptly as possible, after the Departmental Hearing Officer's recommended decision is issued. The sanctioning official may reject the recommended decision or any findings of fact, only after specifically determining that the decision or any of the facts are arbitrary, capricious, or clearly erroneous.

(c) In deciding whether to terminate, modify, or affirm a limited denial of participation, the Departmental official or designee may consider the factors listed at 2 CFR 180.860. The Departmental Hearing Officer may also consider the factors listed at 2 CFR 180.860 in making any recommended decision.

### § 2424.1135 Do Federal agencies coordinate limited denial of participation actions?

Federal agencies do not coordinate limited denial of participation actions. As stated in § 2424.1100, a limited denial of participation is a HUD-specific action and applies only to HUD activities.

### § 2424.1140 What is the scope of a limited denial of participation?

The scope of a limited denial of participation is as follows:

(a) A limited denial of participation generally extends only to participation in the program under which the cause arose. A limited denial of participation may, at the discretion of the authorized official, extend to other programs, initiatives, or functions within the jurisdiction of an Assistant Secretary. The authorized official, however, may determine that where the sanction is based on an indictment or conviction, the sanction shall apply to all programs throughout HUD.

(b) For purposes of this subpart, participation includes receipt of any benefit or financial assistance through grants or contractual arrangements; benefits or assistance in the form of loan guarantees or insurance; and awards of procurement contracts.

(c) The sanction may be imposed for a period not to exceed 12 months, and shall be effective within the geographic jurisdiction of the office imposing it, unless the sanction is imposed by an Assistant Secretary or Deputy Assistant Secretary, in which case the sanction may be imposed on either a nationwide or a more restricted basis.

### § 2424.1145 May HUD impute the conduct of one person to another in a limited denial of participation?

For purposes of determining a limited denial of participation, HUD may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* HUD may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval, or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

(b) *Conduct imputed from an organization to an individual or between individuals.* HUD may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed participated in, had knowledge of, or had reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* HUD may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association, or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control, or influence the activities of the organization responsible for the improper conduct. Acceptance

of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

### § 2424.1150 What is the effect of a suspension or debarment on a limited denial of participation?

If you have submitted a request for a hearing pursuant to § 2424.1130 of this subpart, and you also receive, pursuant to subpart G or H of this part, a notice of proposed debarment or suspension that is based on the same transaction(s) or the same conduct as the limited denial of participation, as determined by the debarring or suspending official, the following rules shall apply:

(a) During the 30-day period after you receive a notice of proposed debarment or suspension, during which you may elect to contest the debarment under 2 CFR 180.815, or the suspension pursuant to 2 CFR 180.720, all proceedings in the limited denial of participation, including discovery, are automatically stayed.

(b) If you do not contest the proposed debarment pursuant to 2 CFR 180.815, or the suspension pursuant to 2 CFR 180.720, the final imposition of the debarment or suspension shall also constitute a final decision with respect to the limited denial of participation, to the extent that the debarment or suspension is based on the same transaction(s) or conduct as the limited denial of participation.

(c) If you contest the proposed debarment pursuant to 2 CFR 180.815, or the suspension pursuant to 2 CFR 180.720, then:

(1) Those parts of the limited denial of participation and the debarment or suspension based on the same transaction(s) or conduct, as determined by the debarring or suspending official, shall be immediately consolidated before the debarring or suspending official;

(2) Proceedings under the consolidated portions of the limited denial of participation shall be stayed before the hearing officer until the suspending or debarring official makes a determination as to whether the consolidated matters should be referred to a hearing officer. Such a determination must be made within 90 days of the date of the issuance of the suspension or proposed debarment, unless the suspending/debarring official extends the period for good cause.

(i) If the suspending or debarring official determines that there is a genuine dispute as to material facts regarding the consolidated matter, the entire consolidated matter will be referred to the hearing officer hearing the limited denial of participation, for additional proceedings pursuant to 2 CFR 180.750 or 180.845.

(ii) If the suspending or debarring official determines that there is no dispute as to material facts regarding the consolidated matter, jurisdiction of the hearing officer under 2 CFR part 2424, subpart J, to hear those parts of the limited denial of participation based on the same transaction[s] or conduct as the debarment or suspension, as determined by the debarring or suspending official, will be transferred to the debarring or suspending official, and the hearing officer responsible for hearing the limited denial of participation shall transfer the administrative record to the debarring or suspending official.

(3) The suspending or debarring official shall hear the entire consolidated case under the procedures governing suspensions and debarments, and shall issue a final decision as to both the limited denial of participation and the suspension or debarment.

### § 2424.1155 What is the effect of a limited denial of participation on a suspension or a debarment?

The imposition of a limited denial of participation does not affect the right of the Department to suspend or debar any person under this part.

### § 2424.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?

If the cause for the limited denial of participation is resolved before the expiration of the 12-month period, the official who imposed the sanction may terminate it.

### § 2424.1165 How is a limited denial of participation reported?

When a limited denial of participation has been made final, or the period

for requesting a conference pursuant to §2424.1130 has expired without receipt of such a request, the official imposing the limited denial of participation shall notify the Director of the Compliance Division in the Departmental Enforcement Center of the scope of the limited denial of participation.

# PART 2429—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

2429.10 What does this part do?
2429.20 Does this part apply to me?
2429.30 What policies and procedures must I follow?

Subpart A [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

2429.225 Whom in HUD does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients Who Are Individuals

2429.300 Whom in HUD does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

2429.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E—Violations of This Part and Consequences

2429.500 Who in HUD determines that a recipient other than an individual violated the requirements of this part?
2429.505 Who in HUD determines that a recipient who is an individual violated the requirements of this part?

Subpart F [Reserved]

AUTHORITY: 41 U.S.C. 701–707; 42 U.S.C. 3535(d).

SOURCE: 76 FR 45166, July 28, 2011, unless otherwise noted.

## §2429.10 What does this part do?

This part requires that the award and administration of HUD grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707) (referred to as the Act in this part) that applies to grants. This part:

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for HUD grants and cooperative agreements; and

(b) Establishes HUD policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for governmentwide implementing regulations.

## §2429.20 Does this part apply to me?

This part, and through this part, pertinent portions of the OMB guidance in subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a:

(a) Recipient of a HUD grant or cooperative agreement; or

(b) HUD awarding official.

## §2429.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures of the OMB guidance, as supplemented by this part.

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| (1) 2 CFR 182.225(a) ..... | §2429.225 ..... | Whom in HUD must a recipient other than an individual notify if an employee is convicted for a violation of a criminal drug statute in the workplace? |

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| (2) 2 CFR 182.300(b) ..... | § 2429.300 ..... | Whom in HUD must a recipient who is an individual notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity? |
| (3) 2 CFR 182.500 ..... | § 2429.500 ..... | Who in HUD is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part? |
| (4) 2 CFR 182.505 ..... | § 2429.505 ..... | Who in HUD is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part? |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, HUD policies and procedures are the same as those in the OMB guidance.

## Subpart A [Reserved]

## Subpart B—Requirements for Recipients Other Than Individuals

### § 2429.225 Whom in HUD does a recipient other than an individual notify about a criminal conviction?

A recipient other than an individual who is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each HUD office with which it currently has an award.

## Subpart C—Requirements for Recipients Who Are Individuals

### § 2429.300 Whom in HUD does a recipient who is an individual notify about a criminal conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each HUD office with which he or she currently has an award.

## Subpart D—Responsibilities of Agency Awarding Officials

### § 2429.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

*Drug-free workplace.* You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of part 2429, which adopts the governmentwide implementation (2 CFR part 182) of sections 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

## Subpart E—Violations of This Part and Consequences

### § 2429.500 Who in HUD determines that a recipient other than an individual violated the requirements of this part?

The Secretary or designee is the official authorized to make the determination under 2 CFR 182.500.

### § 2429.505 Who in HUD determines that a recipient who is an individual violated the requirements of this part?

The Secretary or designee is the official authorized to make the determination under 2 CFR 182.505.

## Subpart F [Reserved]

## PARTS 2430–2499 [RESERVED]

# CHAPTER XXV—NATIONAL SCIENCE FOUNDATION


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# PART 2500—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

AUTHORITY: 42 U.S.C. 1861, *et seq.;* 2 CFR part 200.

SOURCE: 79 FR 76079, Dec. 19, 2014, unless otherwise noted.

### § 2500.100 Adoption of 2 CFR Part 200.

Under the Authority cited above, NSF has formally adopted 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (''the Uniform Guidance''). The Foundation's implementation document, the NSF Proposal & Award Policies & Procedures Guide, may be found at: *http://www.nsf.gov/publications/pub_summ.jsp?ods_key=papp*.

NSF's implementation includes the following deviation from the Uniform Guidance:

Award Cash Management System—NSF is continuing collection of award financial information through the implementation of the Award Cash Management Service (ACM$) and the Program Income Worksheet. ACM$ replaced the NSF Federal Financial Report (FFR) and the NSF FastLane Cash Request process with a single web based user interface. ACM$ is used to collect award level detail financial information at the time of each payment request submitted by the awardee institution. The Program Income Worksheet is used to collect program income financial information from awardee institutions on an annual basis. ACM$ and the Program Income Worksheet utilize approved government-wide data elements from the FFR for the collection of financial information as provided for in the Uniform Guidance paragraph 505(c) and prescribed in 2 CFR 200.327. The requirement for Federal agencies to use the FFR data elements for cash management and financial reporting was publically announced in FEDERAL REGISTER on August 13, 2008.

## PARTS 2501–2519 [RESERVED]

# PART 2520—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

2520.10 What does this part do?
2520.20 Does this part apply to me?
2520.30 What policies and procedures must I follow?

**Subpart A—General**

2520.137 Who in NSF may grant an exception to let an excluded person participate in a covered transaction?

**Subpart B—Covered Transactions**

2520.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

**Subpart C—Responsibilities of Participants Regarding Transactions**

2520.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

**Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

2520.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

**Subparts E–I [Reserved]**≤

AUTHORITY: 42 U.S.C. 1870(a); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 72 FR 4944, Feb. 2, 2007, unless otherwise noted.

### § 2520.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the NSF policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for NSF to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

### § 2520.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see Subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970).

(b) Respondent in an NSF suspension or debarment action.

(c) NSF debarment or suspension official.

(d) NSF grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 2520.30 What policies and procedures must I follow?

The NSF policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 2520.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, NSF policies and procedures are those in the OMB guidance.

## Subpart A—General

### § 2520.137 Who in NSF may grant an exception to let an excluded person participate in a covered transaction?

The NSF Director and the Deputy Director have the authority to grant an exception to let an excluded person participate in a covered transaction.

## Subpart B—Covered Transactions

### § 2520.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), NSF does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 2520.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 2520.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–I [Reserved]

# PARTS 2521–2599 [RESERVED]

# CHAPTER XXVI—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION


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# PART 2600—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

2600.100 Adoption of 2 CFR part 200.
2600.101 Indirect costs exception to 2 CFR 200.414.
2600.102 Additional NARA grant administration policies.

AUTHORITY: 5 U.S.C. 301; 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506; 75 FR 66317 (Oct. 28, 2010); 2 CFR 200.

SOURCE: 79 FR 76079, Dec. 19, 2014, unless otherwise noted.

## § 2600.100 Adoption of 2 CFR Part 200.

Under the authority listed above, the National Archives and Records Administration (NARA), through its National Historical Publications and Records Commission (NHPRC), adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except regarding indirect costs (see § 2600.101). Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for NARA and NHPRC.

## § 2600.101 Indirect costs exception to 2 CFR 200.414.

As approved by the Archivist of the United States, the National Archives does not permit grant recipients to use allocated funds from NARA or NHPRC for indirect costs. Grant recipients may use cost sharing to cover indirect costs instead. NARA's policies on indirect costs are located at *http://www.archives.gov/nhprc*, and are included in grant opportunity announcements.

(Authority: 44 U.S.C. 2103–04, 2 CFR part 200)

## § 2600.102 Additional NARA grant administration policies.

Grant recipients must also follow NARA grant administration policies and procedures set out in 36 CFR parts 1202, 1206, 1208, 1211, and 1212.

# PARTS 2601–2699 [RESERVED]

# CHAPTER XXVII—SMALL BUSINESS ADMINISTRATION


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| 2702–2799 | [Reserved] | |

# PART 2700—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

2700.10 What does this part do?
2700.20 Does this part apply to me?
2700.30 What policies and procedures must I follow?

**Subpart A—General**

2700.137 Who in the Small Business Administration may grant an exception to let an excluded person participate in a covered transaction?

**Subpart B—Covered Transactions**

2700.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

**Subpart C—Responsibilities of Participants Regarding Transactions**

2700.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

**Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

2700.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

**Subparts E–F [Reserved]**

**Subpart G—Suspension**

2700.765 How may I appeal my suspension?

**Subpart H—Debarment**

2700.890 How may I appeal my debarment?

**Subpart I—Definitions**

2700.930 Debarring official (SBA supplement to government-wide definition at 2 CFR 180.930).
2700.995 Principal (SBA supplement to government-wide definition at 2 CFR 180.995).
2700.1010 Suspending official (SBA supplement to government-wide definition at 2 CFR 180.1010).

**Subpart J [Reserved]**

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989, 1986 Comp., p. 235); 15 U.S.C. 634(b)(6).

SOURCE: 72 FR 39728, July 20, 2007, unless otherwise noted.

## § 2700.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the SBA policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for SBA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189); Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (31 U.S.C. 6101 note).

## § 2700.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970);

(b) Respondent in an SBA suspension or debarment action;

(c) SBA debarment or suspension official; or

(d) SBA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

## § 2700.30 What policies and procedures must I follow?

The SBA policies and procedures you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 of this part (i.e., § 2700.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that

has no corresponding section in this part, SBA policies and procedures are those in the OMB guidance.

## Subpart A—General

### § 2700.137 Who in the Small Business Administration may grant an exception to let an excluded person participate in a covered transaction?

The Director of the Office of Credit Risk Management may grant an exception permitting an excluded person to participate in a particular covered transaction under SBA's financial assistance programs. For all other Agency programs, the Associate General Counsel for Procurement Law may grant such an exception.

[72 FR 39728, July 20, 2007, as amended at 73 FR 43348, July 25, 2008]

## Subpart B—Covered Transactions

### § 2700.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.22(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the SBA under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed $25,000. This extends the coverage of the SBA nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.200(c) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180)

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 2700.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You, as a participant, must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this part.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 2700.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–F [Reserved]

## Subpart G—Suspension

### § 2700.765 How may I appeal my suspension?

(a) If the SBA suspending official issues a decision under §180.755 to continue your suspension after you present information in opposition to that suspension under §180.720, you may ask for review of the suspending official's decision in two ways:

(1) You may ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; or

(2) You may request that the SBA Office of Hearings and Appeals (OHA) review the suspending official's decision to continue your suspension within 30 days of your receipt of the suspending official's decision under §180.755 or paragraph (a)(1) of this section. However, OHA may reverse the suspending official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the suspending official's decision was arbitrary, capricious, or an abuse of discretion. You may appeal the suspending official's decision without requesting reconsideration, or you may appeal the decision

of the suspending official on reconsideration. The procedures governing OHA appeals are set forth in 13 CFR part 134.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA, in its discretion, may stay the suspension pending review of the suspending official's decision.

(d) The SBA suspending official and OHA must notify you of their decision under this section, in writing, using the notice procedures set forth at §§ 180.615 and 180.975.

## Subpart H—Debarment

### § 2700.890 How may I appeal my debarment?

(a) If the SBA debarring official issues a decision under § 180.870 to debar you after you present information in opposition to a proposed debarment under § 180.815, you may ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; or

(2) You may request that the SBA Office of Hearings and Appeals (OHA) review the debarring official's decision to debar you within 30 days of your receipt of the debarring official's decision under § 180.870 or paragraph (a)(1) of this section. However, OHA may reverse the debarring official's decision only where OHA finds that the decision is based on a clear error of material fact or law, or where OHA finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion. You may appeal the debarring official's decision without requesting reconsideration, or you may appeal the decision of the debarring official on reconsideration. The procedures governing OHA appeals are set forth in 13 CFR part 134.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) OHA, in its discretion, may stay the debarment pending review of the debarring official's decision.

(d) The SBA debarring official and OHA must notify you of their decision under this section, in writing, using the notice procedures set forth at §§ 180.615 and 180.975.

## Subpart I—Definitions

### § 2700.930 Debarring official (SBA supplement to government-wide definition at 2 CFR 180.930).

For SBA, the debarring official for financial assistance programs is the Director of the Office of Credit Risk Management; for all other programs, the debarring official is the Associate General Counsel for Procurement Law.

[72 FR 39728, July 20, 2007, as amended at 73 FR 43348, July 25, 2008]

### § 2700.995 Principal (SBA supplement to government-wide definition at 2 CFR 180.995).

*Principal* means—

(a) Other examples of individuals who are principals in SBA covered transactions include:

(1) Principal investigators.

(2) Securities brokers and dealers under the section 7(a) Loan, Certified Development Company (CDC) and Small Business Investment Company (SBIC) programs.

(3) Applicant representatives under the section 7(a) Loan, CDC, SBIC, Small Business Development Center (SBDC), and section 7(j) programs.

(4) Providers of professional services under the section 7(a) Loan, CDC, SBIC, SBDC, and section 7(j) programs.

(5) Individuals that certify, authenticate or authorize billings.

(b) [Reserved]

### § 2700.1010 Suspending official (SBA supplement to government-wide definition at 2 CFR 180.1010).

For SBA, the suspending official for financial assistance programs is the Director of the Office of Credit Risk Management; for all other programs, the suspending official is the Associate General Counsel for Procurement Law.

[72 FR 39728, July 20, 2007, as amended at 73 FR 43348, July 25, 2008]

## Subpart J [Reserved]

# PART 2701—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.
2701.1 Adoption of 2 CFR part 200.
2701.74 Pass-through entity.
2701.92 Subaward.
2701.93 Subrecipient.
2701.112 Conflict of Interest.
2701.414 Indirect (F&A) Costs.
2701.503 Relation to other audit requirements.
2701.513 Responsibilities.
2701.600 Other regulatory guidance.

AUTHORITY: 15 U.S.C. 634(b)(6), 2 CFR part 200.

SOURCE: 79 FR 76080, Dec. 19, 2014, unless otherwise noted.

### § 2701.1 Adoption of 2 CFR Part 200.

(a) Under the authority listed above, the U.S. Small Business Administration adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except for 2 CFR 200.74, 200.92, and 200.93. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Administration.

### § 2701.74 Pass-through entity.

SBA will only make awards to pass-through entities where expressly authorized by statute.

### § 2701.92 Subaward.

SBA will only permit pass-through entities to make awards to subrecipients where expressly authorized by statute.

### § 2701.93 Subrecipient.

SBA will only permit non-Federal entities to receive subawards where expressly authorized by statute.

### § 2701.112 Conflict of Interest.

The following conflict of interest policies apply to all SBA awards of financial assistance:

(a) Where an employee or contractor of a non-Federal entity providing assistance under an SBA award also provides services in exchange for pay in her or his private capacity, that employee or contractor may not accept as a client for her or his private services any individual or firm she or he assists under an SBA award.

(b) No non-Federal entity providing assistance under an SBA award (nor any subrecipient, employee, or contractor of such an entity) may give preferential treatment to any client referred to it by an organization with which it has a financial, business, or other relationship.

(c) Except where otherwise provided for by law, no non-Federal entity may seek or accept an equity stake in any firm it assists under the auspices of an SBA award. Additionally, no principal, officer, employee, or contractor of such an entity (nor any of their Close or Secondary Relatives as those terms are defined by 13 CFR 108.50) may seek or accept an equity stake or paid position in any firm the entity assists under an SBA award.

### § 2701.414 Indirect (F&A) Costs.

(a) When determining whether a deviation from a negotiated indirect cost rate is justified, SBA will consider the following factors:

(1) The degree to which a non-Federal entity has been able to defray its overhead expenses via those indirect costs it has recovered under other, concurrent SBA awards;

(2) The amount of funding that must be devoted to conducting program activities in order for a project to result in meaningful outcomes; and

(3) The amount of project funds that will remain available for conducting program activities after a negotiated rate is applied.

(b) After conducting the analysis required in paragraph (a) above, the head of each SBA grant program office will determine in writing whether there is sufficient justification to deviate from a negotiated indirect cost rate.

(c) Where SBA determines that deviation from a negotiated rate is justified, it will provide a copy of that determination to OMB and will inform potential applicants of the deviation in the corresponding funding announcement.

### § 2701.503 Relation to other audit requirements.

Non-Federal entities that are not subject to the requirements of the Single Audit Act and that are performing projects under SBA awards will be required to submit copies of their audited financial statements for their most recently completed fiscal year. Costs associated with the auditing of a non-Federal entity's financial statements may be included in its negotiations for an indirect cost rate agreement in accordance with 2 CFR 200.425.

### § 2701.513 Responsibilities.

For SBA, the Single Audit Senior Accountable Official is the Deputy Chief Operating Officer. The Single Audit Liaison is the Director, Office of Grants Management.

[81 FR 1115, Jan. 11, 2016]

### § 2701.600 Other regulatory guidance.

(a) In addition to the general regulations set forth above and those contained in 2 CFR part 200, the program-specific regulations governing the operation of SBA's individual grant programs may be found in title 13 of the Code of Federal Regulations beginning at the sections noted below:

(1) New Markets Venture Capital program—13 CFR 108.2000.

(2) Program for Investment in Microentrepreneurs (PRIME)—13 CFR 119.1.

(3) Microloan program—13 CFR 120.700.

(4) 7(j) Management and Technical Assistance program—13 CFR 124.701.

(5) Small Business Development Center program—13 CFR 130.100.

(b) [Reserved]

## PARTS 2702–2799 [RESERVED]

# CHAPTER XXVIII—DEPARTMENT OF JUSTICE


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# PART 2800—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS BY THE DEPARTMENT OF JUSTICE

Sec.

2800.101 Adoption of 2 CFR part 200.
2800.313 Equipment.
2800.314 Supplies.

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509; 28 U.S.C. 530C(a)(4); 42 U.S.C. 3789; 2 CFR part 200.

SOURCE: 79 FR 76081, Dec. 19, 2014, unless otherwise noted.

### § 2800.101 Adoption of 2 CFR part 200.

Under the authority listed above, the Department of Justice adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except as otherwise may be provided by this Part. Unless expressly provided otherwise, any reference in this part to any provision of law not in this part shall be understood to constitute a general reference and thus to include any subsequent changes to the provision.

[81 FR 61982, Sept. 8, 2016]

### § 2800.313 Equipment.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90–351, section 808 (42 U.S.C. 3789), creates a special rule for disposition and use of equipment and supplies purchased by funds made available under that Title, which rule, where applicable, supersedes any conflicting provisions of 2 CFR 200.313. Section 808 currently provides that such equipment and supplies shall vest in the criminal justice agency or nonprofit organization that purchased the property if such agency or nonprofit certifies to the appropriate State office (as indicated in the statute) that it will use the property for criminal justice purposes, and further provides that, if such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

### § 2800.314 Supplies.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90–351, section 808 (42 U.S.C. 3789) creates a special rule for disposition and use of equipment and supplies purchased by funds made available under that Title, which rule, where applicable, supersedes any conflicting provisions of § 200.314. Section 808 currently provides that such equipment and supplies shall vest in the criminal justice agency or nonprofit organization that purchased the property if such agency or nonprofit certifies to the appropriate State office (as indicated in the statute) that it will use the property for criminal justice purposes, and further provides that, if such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

## PARTS 2801–2866 [RESERVED]

# PART 2867—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

2867.10 What does this part do?
2867.20 To whom does this part apply?
2867.30 What policies and procedures must be followed?

### Subpart A—General

2867.137 Who in the Department of Justice may grant an exception to let an excluded person participate in a covered transaction?

### Subpart B—Covered Transactions

2867.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

### Subpart C—Responsibilities of Participants Regarding Transactions

2867.332 What method must a participant use to pass requirements down to participants at lower tiers with whom the participant intends to do business?

### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

2867.437 What method must be used to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

### Subparts E–J [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

SOURCE: 72 FR 11286, Mar. 13, 2007, unless otherwise noted.

#### § 2867.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Justice policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Department of Justice to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

#### § 2867.20 To whom does this part apply?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to any—

(a) Participant or principal in a ''covered transaction'' (sees subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970 (as supplemented by subpart B of this part));

(b) Respondent in a Department of Justice suspension or debarment action;

(c) Department of Justice debarment or suspension official;

(d) Department of Justice grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

#### § 2867.30 What policies and procedures must be followed?

The Department of Justice policies and procedures that must be followed are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § 2867.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, Department of Justice policies and procedures are those in the OMB guidance.

## Subpart A—General

#### § 2867.137 Who in the Department of Justice may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Justice, the Attorney General or designee has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

## Subpart B—Covered Transactions

#### § 2867.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), the Department of Justice does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 2867.332 What method must a participant use to pass requirements down to participants at lower tiers with whom the participant intends to do business?

A participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 2867.437 What method must be used to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, the communication must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–J [Reserved]

## PARTS 2868–2899 [RESERVED]

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# PART 2900—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

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AUTHORITY: 5 U.S.C. 301; 2 CFR 200.

SOURCE: 79 FR 76081, Dec. 19, 2014, unless otherwise noted.

## Subpart A—Acronyms and Definitions

### § 2900.1 Budget.

In the DOL, approval of the budget as awarded does not constitute prior approval of those items requiring prior approval, including those items the Federal Awarding agency specifies as requiring prior approval. See § 200.407 and § 2900.16 for more information about prior written approval (prior approval) (see 2 CFR 200.1).

[80 FR 81440, Dec. 30, 2015, as amended at 86 FR 22108, Apr. 27, 2021]

### § 2900.2 Non-Federal entity.

In the DOL, Non-Federal entity means a state, local government, Indian tribe, institution of higher education (IHE), for-profit entity, foreign public entity, foreign organization or nonprofit organization that carries out a Federal award as a recipient or subrecipient (see 2 CFR 200.1).

[86 FR 22108, Apr. 27, 2021]

### § 2900.3 Questioned cost.

In the DOL, in addition to the guidance contained in 2 CFR 200.1, a questioned cost means a cost that is questioned by an auditor, Federal Project Officer, Grant Officer, or other authorized Awarding agency representative because of an audit or monitoring finding:

(a) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;

(b) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(c) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

(d) Questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A–123 Appendix C (see also the definition of improper payment in 2 CFR 200.1).

[79 FR 76081, Dec. 19, 2014, as amended at 80 FR 81440, Dec. 30, 2015; 86 FR 22108, Apr. 27, 2021]

## Subpart B—General Provisions

### § 2900.4 Adoption of 2 CFR part 200.

Under the authority listed above, the Department of Labor adopts the Office of Management and Budget (OMB) Guidance in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR part 200), as supplemented by this part, as Department of Labor policies and procedures for financial assistance administration. This part gives regulatory effect to the OMB guidance as supplemented by this part. The DOL also has programmatic and administrative regulations located in titles 20 and 29 of the CFR.

[86 FR 22108, Apr. 27, 2021]

## Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

### § 2900.5 Federal awarding agency review of risk posed by applicants.

In addition to the guidance set forth in 2 CFR 200.206(b), in evaluating risks of applicants, DOL also considers audits and monitoring reports containing findings and issues of noncompliance or questioned costs, in addition to reports and findings from audits performed under Subpart F—Audit Requirements of 2 CFR 200 or the reports and findings of any other available audits (see 2 CFR 200.206(b)).

[86 FR 22108, Apr. 27, 2021]

## Subpart D—Post Federal Award Requirements

### § 2900.6 Advance payment.

In the DOL, except as authorized under 2 CFR 200.208, the non-Federal entity must be paid in advance (see 2 CFR 200.305(b)(1)).

[86 FR 22108, Apr. 27, 2021]

### § 2900.7 Federal payment.

In addition to the guidance set forth in 2 CFR 200.305(b), for Federal awards from the Department of Labor, the non-Federal entity should liquidate existing advances before it requests additional advances.

[80 FR 81440, Dec. 30, 2015, as amended at 86 FR 22108, Apr. 27, 2021]

### § 2900.8 Cost sharing or matching.

In addition to the guidance set forth in 2 CFR 200.306(b), for Federal awards from the Department of Labor, the non-Federal entity accounts for funds used for cost sharing or match within their accounting systems as the funds are expended.

### § 2900.9 Revision of budget and program plans.

In the DOL, approval of the budget as awarded does not constitute prior approval of those items requiring prior approval, including those items the Federal awarding agency specifies as requiring prior approval (see 2 CFR 200.407 and 2 CFR 200.308(a)).

[86 FR 22108, Apr. 27, 2021]

### § 2900.10 Prior approval requests.

In addition to the guidance set forth in 2 CFR 200.308(c), for Federal awards from the Department of Labor, the non-Federal entity must request prior approval actions at least 30 days prior to the effective date of the requested action (see 2 CFR 200.407).

[86 FR 22108, Apr. 27, 2021]

### § 2900.11 Revision of budget and program plans including extension of the period of performance.

In addition to the guidance set forth in 2 CFR 200.308(b), for Federal awards from the Department of Labor, the non-Federal entity must request prior approval for an extension to the period of performance.

[86 FR 22108, Apr. 27, 2021]

### § 2900.12 Revision of budget and program plans approval from Grant Officers.

In the DOL, unless otherwise noted in the grant agreement or cooperative agreement, prior written approval for revision of budget and program plans must come from the Grant Officer (see 2 CFR 200.308(d)).

[86 FR 22108, Apr. 27, 2021]

### § 2900.13 Intangible property.

In addition to the guidance set forth in 2 CFR 200.315(d), the Department of Labor requires intellectual property developed under a discretionary Federal award process to be in a format readily accessible and available for open licensing to the public. An open license allows subsequent users to copy, distribute, transmit and adapt the copyrighted work and requires such users to attribute the work in the manner specified by the recipient.

[86 FR 22108, Apr. 27, 2021]

### § 2900.14 Financial reporting.

In addition to the guidance set forth in 2 CFR 200.328, for Federal awards from the Department of Labor, the DOL awarding agency will prescribe whether the report will be on a cash or an accrual basis. If the DOL awarding agency requires reporting on an accrual basis and the recipient's accounting system is not on the accrual basis, the recipient will not be required to convert its accounting system, but must develop and report such accrual information through best estimates based on an analysis of the documentation on hand.

[79 FR 76081, Dec. 19, 2014, as amended at 86 FR 22108, Apr. 27, 2021]

### § 2900.15 Closeout.

In addition to the guidance set forth in 2 CFR 200.344(b), for Federal awards from the Department of Labor, the non-Federal entity must liquidate all financial obligations and/or accrued expenditures incurred under the Federal award. For non-Federal entities reporting on an accrual basis and operating on an expenditure period, unless otherwise noted in the grant agreement or cooperative agreement, the only liquidation that can occur during closeout is the liquidation of accrued expenditures (NOT financial obligations) for goods and/or services received during the grant period.

[86 FR 22108, Apr. 27, 2021]

## Subpart E—Cost Principles

### § 2900.16 Prior written approval (prior approval).

In addition to the guidance set forth in 2 CFR 200.407, for Federal awards from the Department of Labor, the non-Federal entity must request prior written approval which should include the timeframe or scope of the agreement and be submitted not less than 30 days before the requested action is to occur. Unless otherwise noted in the grant agreement or cooperative agreement, the Grant Officer is the only official with the authority to provide prior written approval (prior approval). Items included in the statement of work or budget as awarded does not constitute prior approval.

[80 FR 81441, Dec. 30, 2015, as amended at 86 FR 22109, Apr. 27, 2021]

### § 2900.17 Adjustment of negotiated IDC rates.

In the DOL, in addition to the requirements under 2 CFR 200.411(a)(2), adjustments to indirect cost rates resulting from a determination of unallowable costs being included in the rate proposal may result in the reissuance of negotiated rate agreement.

### § 2900.18 Contingency provisions.

In addition to the guidance set forth in 2 CFR 200.433(c), for Federal awards from the Department of Labor, excepted citations include 2 CFR 200.334 Retention requirements for records, and 2 CFR 200.335 Requests for transfers of records.

[86 FR 22109, Apr. 27, 2021]

### § 2900.19 Student activity costs.

In the Department of Labor, the provisions of 2 CFR 200.469 apply unless the activities meet a program requirement and have prior written approval from the Federal awarding agency.

## Subpart F—Audit Requirements

### § 2900.20 Federal Agency Audit Responsibilities.

In the DOL, in addition to 2 CFR 200.513, the department employs a collaborative resolution process with non-federal entities.

(a) *Department of Labor Cooperative Audit Resolution Process.* The DOL official(s) responsible for resolution shall promptly evaluate findings and recommendations reported by auditors and the corrective action plan developed by the recipient to determine proper actions in response to audit findings and recommendations. The process of audit resolution includes at a minimum an initial determination, an informal resolution period, and a final determination.

(1) *Initial determination.* After the conclusion of any comment period for audits provided the recipient/contractor, the responsible DOL official(s) shall make an initial determination on the allowability of questioned costs or activities, administrative or systemic findings, and the corrective actions outlined by the recipient. Such determination shall be based on applicable statutes, regulations, administrative directives, or terms and conditions of the grant/contract award instrument.

(2) *Informal resolution.* The recipient/contractor shall have a reasonable period of time (as determined by the DOL official(s) responsible for audit resolution) from the date of issuance of the initial determination to informally resolve those matters in which the recipient/contractor disagrees with the decisions of the responsible DOL official(s).

(3) *Final determination.* After the conclusion of the informal resolution period, the responsible DOL official(s) shall issue a final determination that:

(i) As appropriate, indicate that efforts to informally resolve matters contained in the initial determination have either been successful or unsuccessful;

(ii) Lists those matters upon which the parties continue to disagree;

(iii) Lists any modifications to the factual findings and conclusions set forth in the initial determination;

(iv) Lists any sanctions and required corrective actions; and

(v) Sets forth any appeal rights.

(4) *Time limit.* Insofar as possible, the requirements of this section should be met within 180 days of the date the final approved audit report is received by the DOL official(s) responsible for audit resolution.

[79 FR 76081, Dec. 19, 2014, as amended at 80 FR 81441, Dec. 30, 2015]

### § 2900.21 Management decision.

In the DOL, ordinarily, a management decision is issued within six months of receipt of an audit from the audit liaison of the Office of the Inspector General and is extended an additional six months when the audit contains a finding involving a subrecipient of the pass-through entity being audited. The pass-through entity responsible for issuing a management decision must do so within twelve months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and should begin corrective action no later than upon receipt of the audit report. (See 2 CFR 200.521(d)).

[80 FR 81441, Dec. 30, 2015]

### § 2900.22 Audit Requirements—Appeal Process for Department of Labor Recipients.

In the DOL, the DOL grantor agencies shall determine which of the two appeal options set forth in paragraphs (a) and (b) of this section the recipient may use to appeal the final determination of the grant officer. All awards within the same Federal financial assistance program shall follow the same appeal procedure.

(a) Appeal to the head of the grantor agency, or his/her designee, for which the audit was conducted.

(1) *Jurisdiction.* (i) Request for hearing. Within 21 days of receipt of the grant officer's final determination, the recipient may transmit, by certified mail, return receipt requested, a request for hearing to the head of the grantor agency, or his/her designee, as noted in the final determination. A copy must also be sent to the grant officer who signed the final determination.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested.

Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary of Labor and shall not be subject to further review.

(2) *Conduct of hearings.* The grantor agency shall establish procedures for the conduct of hearings by the head of the grantor agency, or his/her designee.

(3) *Decision of the head of the grantor agency, or his/her designee.* The head of the grantor agency, or his/her designee, should render a written decision no later than 90 days after the closing of the record. This decision constitutes final action of the Secretary.

(b) *Appeal to the DOL Office of Administrative Law Judges.* (1) *Jurisdiction.* (i) *Request for hearing.* Within 21 days of receipt of the grant officer's final determination, the recipient may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street NW., Suite 400, Washington, DC 20001, with a copy to the grant officer who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

(ii) *Statement of issues.* The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) *Failure to request review.* When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary and shall not be subject to further review.

(2) *Conduct of hearings.* The DOL Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR part 18, shall govern the conduct of hearings under paragraph (b) of this section.

(3) *Decision of the administrative law judge.* The administrative law judge should render a written decision no later than 90 days after the closing of the record.

(4) *Filing exceptions to decision.* The decision of the administrative law judge shall constitute final action by the Secretary of Labor, unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary, specifically identifying the procedure or finding of fact, law, or policy with which exception is taken. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary, unless the Secretary, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(5) *Review by the Secretary of Labor.* Any case accepted for review by the Secretary shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary.

## PARTS 2901–2997 [RESERVED]

## PART 2998—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

2998.10 What does this part do?
2998.20 Does this part apply to me?
2998.30 What policies and procedures must I follow?

### Subpart A—General

2998.137 Who in the DOL may grant an exception to let an excluded person participate in a covered transaction?

### Subpart B—Covered Transactions

2998.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

### Subpart C—Responsibilities of Participants Regarding Transactions

2998.332 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

2998.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

### Subparts E–J [Reserved]

AUTHORITY: 5 U.S.C. 301; E.O. 12549 (3 CFR, 1986 Comp., p.189); E.O. 12689 (3 CFR, 1989 Comp., p.235); sec 2455 Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

SOURCE: 81 FR 25586, Apr. 29, 2016, unless otherwise noted.

#### § 2998.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Labor (DOL) policies and procedures for non-procurement debarment and suspension. It thereby gives regulatory effect for DOL to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189); Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, 103 (31 U.S.C. 6101 note).

#### § 2998.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''non-procurement transaction'' at 2 CFR 180.970);

(b) Respondent in a Department of Labor suspension or debarment action;

(c) Department of Labor debarment or suspension official; or

(d) Department of Labor grants officer, agreements officer, or other official authorized to enter into any type of non-procurement transaction that is a covered transaction.

#### § 2998.30 What policies and procedures must I follow?

(a) The Department of Labor's policies and procedures that you must follow are specified in:

(1) Each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180; and

(2) The supplement to each section of the OMB guidance that is found in this part under the same section number. (The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, Sec. 2998.220)).

(b) For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, the Department of Labor's policies and procedures are those in the OMB guidance.

## Subpart A—General

#### § 2998.137 Who in DOL may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Labor, the Secretary of Labor or designee has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135. If any designated official grants an exception, the exception must be in writing and state the reason(s) for deviating from the government-wide policy in Executive Order 12549.

## Subpart B—Covered Transactions

#### § 2998.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Labor under a covered non-procurement transaction. This extends the coverage of the Department of Labor non-procurement suspension

and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in the appendix to 2 CFR part 180).

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 2998.332 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

You, as a participant, must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 2998.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with Subpart C of 2 CFR part 180, and supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–J [Reserved]

# PART 2999 [RESERVED]

# CHAPTER XXX—DEPARTMENT OF HOMELAND SECURITY


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# PART 3000—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.
3000.10 What does this part do?
3000.20 Does this part apply to me?
3000.30 What policies and procedures must I follow?

Subpart A—General

3000.137 Who in the Department of Homeland Security may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

3000.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

3000.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Department of Homeland Security Officials Regarding Transactions

3000.437 What method do I use to communicate to a participant the requirements described in the Office of Management and Budget guidance at 2 CFR 180.435?

Subparts E–I [Reserved]

AUTHORITY: Sec. 2455, Public Law 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; Public Law 107–296, 116 Stat. 2135.

SOURCE: 74 FR 34497, July 16, 2009, unless otherwise noted.

### § 3000.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Homeland Security policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Department of Homeland Security to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

### § 3000.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see Subpart B of 2 CFR Part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970);

(b) Respondent in a Department of Homeland Security suspension or debarment action;

(c) Department of Homeland Security debarment or suspension official;

(d) Department of Homeland Security grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 3000.30 What policies and procedures must I follow?

The Department of Homeland Security policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR Part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § 3000.220). For any section of OMB guidance in Subparts A through I of 2 CFR Part 180 that has no corresponding section in this part, Department of Homeland Security policies and procedures are those in the OMB guidance.

## Subpart A—General

### § 3000.137 Who in the Department of Homeland Security may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Homeland Security, the Secretary of Homeland Security has delegated the authority

to grant an exception to let an excluded person participate in a covered transaction to the Head of the Contracting Activity for each DHS component as provided in the OMB guidance at 2 CFR 180.135.

## Subpart B—Covered Transactions

### § 3000.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Department of Homeland Security extends coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 3000.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant in a covered transaction must include a term or condition in any lower-tier covered transaction into which you enter, to require the participant of that transaction to—

(a) Comply with Subpart C of the OMB guidance in 2 CFR part 180; and

(b) Include a similar term or condition in any covered transaction into which it enters at the next lower tier.

## Subpart D—Responsibilities of Department of Homeland Security Officials Regarding Transactions

### § 3000.437 What method do I use to communicate to a participant the requirements described in the Office of Management and Budget guidance at 2 CFR 180.435?

You as a DHS component official must include a term or condition in each covered transaction into which you enter, to communicate to the participant the requirements to—

(a) Comply with subpart C of the OMB guidance in 2 CFR part 180; and

(b) Include a similar term or condition in any lower-tier covered transactions into which the participant enters.

## Subparts E–I [Reserved]

# PART 3001—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

3001.10 What does this part do?
3001.20 Does this part apply to me?
3001.30 What policies and procedures must I follow?

**Subpart A—Purpose and Coverage [Reserved]**

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3001.605 Award.
3001.661 Reimbursable Agreement.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 701–707; OMB Guidance for Drug-Free Workplace Requirements, codified at 2 CFR part 182.

SOURCE: 76 FR 10207, Feb. 24, 2011, unless otherwise noted.

### § 3001.10 What does this part do?

This part requires that the award and administration of Department of Homeland Security (DHS) grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance, as supplemented by this part (Subparts A through F of 2 CFR part 182) for DHS's grants and cooperative agreements; and

(b) Establishes DHS policies and procedures, as supplemented by this part, for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Government-wide implementing regulations.

### § 3001.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (*see* table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of a DHS grant or cooperative agreement; or

(b) DHS awarding official.

### § 3001.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* This part supplements the OMB guidance in 2 CFR part 182 as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

| Section of OMB ≤guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| 2 CFR 182.225(a) | § 3001.225 | Who in DHS a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace. |
| 2 CFR 182.300(b) | § 3001.300 | Who in DHS a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| 2 CFR 182.400 | § 3001.400 | What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance. |
| 2 CFR 182.500 | § 3001.500 | Who in DHS is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| 2 CFR 182.505 | § 3001.505 | Who in DHS is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| 2 CFR 182.510 | § 3001.510 | What actions the Federal Government will take against a recipient determined to have violated 2 CFR part 182, as implemented by this part. |
| 2 CFR 182.605 | § 3001.605 | What types of assistance are included in the definition of ''award.'' |
| None | § 3001.661 | What types of assistance are included in the definition of ''reimbursable agreement.'' |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, DHS policies and procedures are the same as those in the OMB guidance.

## Subpart A—Purpose and Coverage [Reserved]

## Subpart B—Requirements for Recipients Other Than Individuals

### § 3001.225 Who in DHS does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the DHS Office of Inspector General and each DHS office from which the recipient currently has an award.

## Subpart C—Requirements for Recipients Who Are Individuals

### § 3001.300 Who in DHS does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify the DHS Office of Inspector General and each DHS office from which the recipient currently has an award.

## Subpart D—Responsibilities of Agency Awarding Officials

### § 3001.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR part 3001, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

## Subpart E—Violations of This Part and Consequences

### § 3001.500 Who in DHS determines that a recipient other than an individual violated the requirements of this part?

The Secretary of Homeland Security, or his or her official designee, will make the determination that a recipient other than an individual violated the requirements of this part.

### § 3001.505 Who in DHS determines that a recipient who is an individual violated the requirements of this part?

The Secretary of Homeland Security, or his or her official designee, will make the determination that a recipient who is an individual violated the requirements of this part.

### § 3001.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated 2 CFR part 182, as implemented by this part, the agency will take one or more of the following actions—

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under 2 CFR part 180 and 2 CFR part 3000, for a period not to exceed five years.

## Subpart F—Definitions

### § 3001.605 Award.

*Award* means an award of financial assistance by a Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant, cooperative agreement or reimbursable agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under 2 CFR part 182 and specifies uniform administrative requirements.

(b) The term ''award'' does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

(8) Other Transactional Authority Award.

### § 3001.661 Reimbursable Agreement.

*Reimbursable Agreement* means an award in which the recipient is reimbursed for expenditures only, and is not eligible for advance payments.

# PART 3002—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

AUTHORITY: 31 U.S.C. 503, 2 CFR part 200, and as noted in specific sections.

SOURCE: 79 FR 76084, Dec. 19, 2014, unless otherwise noted.

## § 3002.10 Adoption of 2 CFR Part 200.

Under the authority listed above, the Department of Homeland Security adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

# PARTS 3003–3099 [RESERVED]

# CHAPTER XXXI—INSTITUTE OF MUSEUM AND LIBRARY SERVICES


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## PARTS 3100–3184 [RESERVED]

# PART 3185—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

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3185.20 Does this part apply to me?
3185.30 What policies and procedures must I follow?

### Subpart A—General

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### Subpart B—Covered Transactions

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### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

3185.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

### Subparts E–I [Reserved]

AUTHORITY: 20 U.S.C. 9103(f); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 73 FR 46529, Aug. 11, 2008, unless otherwise noted.

### § 3185.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Institute of Museum and Library Services (IMLS) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for IMLS to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

### § 3185.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970.

(b) Respondent in an IMLS suspension or debarment action.

(c) IMLS debarment or suspension official;

(d) IMLS grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 3185.30 What policies and procedures must I follow?

The IMLS policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 3185.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, IMLS policies and procedures are those in the OMB guidance.

## Subpart A—General

### § 3185.137 Who in the IMLS may grant an exception to let an excluded person participate in a covered transaction?

The IMLS Director has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

## Subpart B—Covered Transactions

### § 3185.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180), IMLS does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 3185.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 3185.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–I [Reserved]

# PART 3186—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

3186.10 What does this part do?
3186.20 Does this part apply to me?
3186.30 What policies and procedures must I follow?

### Subpart A—Purpose and Coverage [Reserved]

### Subpart B—Requirements for Recipients Other Than Individuals

3186.225 Whom in the IMLS does a recipient other than an individual notify about a criminal drug conviction?

### Subpart C—Requirements for Recipients Who Are Individuals

3186.300 Whom in the IMLS does a recipient who is an individual notify about a criminal drug conviction?

### Subpart D—Responsibilities of Agency Awarding Officials

3186.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

### Subpart E—Violations of this Part and Consequences

3186.500 Who in the IMLS determines that a recipient other than an individual violated the requirements of this part?
3186.505 Who in the IMLS determines that a recipient who is an individual violated the requirements of this part?

AUTHORITY: 41 U.S.C. 701–707.

SOURCE: 75 FR 39134, July 8, 2010, unless otherwise noted.

### § 3186.10 What does this part do?

This part requires that the award and administration of IMLS grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for the IMLS's grants and cooperative agreements; and

(b) Establishes IMLS policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

### § 3186.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of an IMLS grant or cooperative agreement; or

(b) IMLS awarding official.

### § 3186.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| (1) 2 CFR 182.225(a) ..... | § 3186.225 ..... | Whom in the IMLS a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace. |
| (2) 2 CFR 182.300(b) ..... | § 3186.300 ..... | Whom in the IMLS a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| (3) 2 CFR 182.500 ..... | § 3186.500 ..... | Who in the IMLS is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| (4) 2 CFR 182.505 ..... | § 3186.505 ..... | Who in the IMLS is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, IMLS policies and procedures are the same as those in the OMB guidance.

## Subpart A—Purpose and Coverage [Reserved]

## Subpart B—Requirements for Recipients Other Than Individuals

### § 3186.225 Whom in the IMLS does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each IMLS office from which it currently has an award.

## Subpart C—Requirements for Recipients Who Are Individuals

### § 3186.300 Whom in the IMLS does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each IMLS office from which it currently has an award.

## Subpart D—Responsibilities of Agency Awarding Officials

### § 3186.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR part 3186, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

## Subpart E—Violations of this Part and Consequences

### § 3186.500 Who in the IMLS determines that a recipient other than an individual violated the requirements of this part?

The IMLS Chief Financial Officer is the official authorized to make the determination under 2 CFR 182.500.

### § 3186.505 Who in the IMLS determines that a recipient who is an individual violated the requirements of this part?

The IMLS Chief Financial Officer is the official authorized to make the determination under 2 CFR 182.505.

# PART 3187—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

3187.1 Adoption of 2 CFR part 200.

Subpart A—Scope, Definitions, and Eligibility

3187.2 Applicable regulations and scope of this part.
3187.3 Definition of a museum.
3187.4 Other definitions.
3187.5 Museum eligibility and burden of proof—Who may apply.
3187.6 Related institutions.
3187.7 Basic materials which an applicant must submit to be considered for funding.

Subpart B—General Application, Selection and Award Procedures

APPLICATIONS

3187.8 Deadline date and method for submitting applications.

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3187.9 Rejection of an application.
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Subpart C—General Conditions Which Must Be Met

COMPLIANCE WITH LEGAL REQUIREMENTS

3187.11 Compliance with statutes, regulations, approved application and Federal award.

NONDISCRIMINATION

3187.12 Federal statutes and regulations on nondiscrimination.

EVALUATION

3187.13 Federal evaluation—Cooperation by a non-Federal entity.

ALLOWABLE COSTS

3187.14 Subawards
3187.15 Allowable costs.

AUTHORITY: 20 U.S.C. 9101–9176, 9103(h); 20 U.S.C. 80r–5; 2 CFR part 200.

SOURCE: 79 FR 76088, Dec. 19, 2014, unless otherwise noted.

### § 3187.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the Institute of Museum and Library Services (IMLS) adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, with the additions that are provided below. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for IMLS.

## Subpart A—Scope, Definitions, and Eligibility

### § 3187.2 Applicable regulations and scope of this part.

(a) Except as set forth in this 2 CFR part 3187, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 shall apply to awards from funds appropriated to the Institute of Museum and Library Services (the ''Institute'' or ''IMLS'').

(b) The IMLS authorizing statutes, including 20 U.S.C. 9101 *et seq.* and 20 U.S.C. 80r–5, (''IMLS Statutes'') are controlling in the event of any conflict between the IMLS Statutes and the regulations in 2 CFR part 200.

### § 3187.3 Definition of a museum.

For the purpose of this part:

(a) Museum means a public, tribal, or private nonprofit institution which is organized on a permanent basis for essentially educational, cultural heritage, or aesthetic purposes and which, using a professional staff:

(1) Owns or uses tangible objects, either animate or inanimate;

(2) Cares for these objects; and

(3) Exhibits them to the general public on a regular basis.

(i) An institution that exhibits objects to the general public for at least 120 days a year shall be deemed to meet this requirement.

(ii) An institution that exhibits objects by appointment may meet this requirement if it can establish, in light of the facts under all the relevant circumstances, that this method of exhibition does not unreasonably restrict the accessibility of the institution's exhibits to the general public.

(b) The term ''museum'' in paragraph (a) of this section includes museums that have tangible and digital collections. Museums include, but are not limited to, the following types of institutions, if they otherwise satisfy the provisions of this section:

(1) Aquariums;

(2) Arboretums;

(3) Botanical gardens;

(4) Art museums;

(5) Children's museums;

(6) General museums;

(7) Historic houses and sites;

(8) History museums;

(9) Nature centers;

(10) Natural history and anthropology museums;

(11) Planetariums;

(12) Science and technology centers;

(13) Specialized museums; and

(14) Zoological parks.

(c) For the purposes of this section, an institution uses a professional staff if it employs at least one staff member, or the fulltime equivalent, whether paid or unpaid primarily engaged in the acquisition, care, or exhibition to the public of objects owned or used by the institution.

(d)(1) Except as set forth in paragraph (d)(2) of this section, an institution exhibits objects to the general public for the purposes of this section if such exhibition is a primary purpose of the institution.

(2) An institution that does not have as a primary purpose the exhibition of objects to the general public but which can demonstrate that it exhibits objects to the general public on a regular basis as a significant, separate, distinct, and continuing portion of its activities, and that it otherwise meets the requirements of this section, may be determined to be a museum under this section. In order to establish its eligibility, such an institution must provide information regarding the following:

(i) The number of staff members devoted to museum functions as described in paragraph (a) of this section.

(ii) The period of time that such museum functions have been carried out by the institution over the course of the institution's history.

(iii) Appropriate financial information for such functions presented separately from the financial information of the institution as a whole.

(iv) The percentage of the institution's total space devoted to such museum functions.

(v) Such other information as the Director requests.

(3) The Director uses the information furnished under paragraph (d)(2) of this section in making a determination regarding the eligibility of such an institution under this section.

(e) For the purpose of this section, an institution exhibits objects to the public if it exhibits the objects through facilities which it owns or operates.

[79 FR 76088, Dec. 19, 2014, as amended at 84 FR 27704, June 14, 2019]

### § 3187.4 Other definitions.

The following other definitions apply in this part:

*Act* means The Museum and Library Services Act, Pub. L. 104–208 (20 U.S.C. 9101–9176), as amended.

*Collection* includes objects owned, used or loaned by a museum as well as those literary, archival and documentary resources specifically required for the study and interpretation of these objects.

*Director* means the Director of the Institute of Museum and Library Services.

*Institute* or *IMLS* means the Institute of Museum and Library Services established under Section 203 of the Act.

*Museum services* means services provided by a museum, primarily exhibiting objects to the general public, and including but not limited to preserving and maintaining its collections, and providing educational and other programs to the public through the use of its collections and other resources.

### § 3187.5 Museum eligibility and burden of proof—Who may apply.

(a) A museum located in any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau may apply for a Federal award under the Act.

(b) A public or private nonprofit agency which is responsible for the operation of a museum may, if necessary, apply on behalf of the museum.

(c) A museum operated by a department or agency of the Federal Government is not eligible to apply.

(d) An applicant has the burden of establishing that it is eligible for assistance under these regulations.

### § 3187.6 Related institutions.

(a) If two or more institutions are under the common control of one agency or institution or are otherwise organizationally related and apply for assistance under the Act, the Director determines under all the relevant circumstances whether they are separate museums for the purpose of establishing eligibility for assistance under these regulations. *See* § 3187.5 (Museum eligibility and burden of proof—Who may apply).

(b) IMLS regards the following factors, among others, as showing that a related institution is a separate museum:

(1) The institution has its own governing body;

(2) The institution has budgetary autonomy; and

(3) The institution has administrative autonomy.

### § 3187.7 Basic materials which an applicant must submit to be considered for funding.

(a) *Application.* To apply for an IMLS Federal award, an applicant must submit the designated application form containing all information requested.

(b) *IRS letter.* An applicant applying as a private, nonprofit institution must submit a copy of the letter from the Internal Revenue Service indicating the applicant's eligibility for nonprofit status under the applicable provision of the Internal Revenue Code of 1954, as amended.

## Subpart B—General Application, Selection and Award Procedures

APPLICATIONS

### § 3187.8 Deadline date and method for submitting applications.

(a) The notice of funding opportunity sets the deadline date and method(s) for applications to be submitted to the Institute.

(b) If the application notice permits mailing of an application, an applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director.

(c) If the application notice permits mailing of an application, and the application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not date cancelled by the U.S. Postal Service.

SELECTION AND AWARD PROCEDURES

### § 3187.9 Rejection of an application.

(a) The Director rejects an application if:

(1) The applicant is not eligible;

(2) The applicant fails to comply with procedural rules that govern the submission of the application;

(3) The application does not contain the information required;

(4) The application cannot be funded under the authorizing statute or implementing regulations.

(b) If the Director rejects an application under this section, the Director informs the applicant and explains why the application was rejected.

### § 3187.10 Rejection for technical deficiency—appeal.

An applicant whose application is rejected because of technical deficiency may appeal such rejection in writing to the Director within 10 business days of electronic or postmarked notice of rejection, whichever is earlier.

## Subpart C—General Conditions Which Must Be Met

COMPLIANCE WITH LEGAL REQUIREMENTS

### § 3187.11 Compliance with statutes, regulations, approved application and Federal award.

(a) A recipient and subrecipient, as applicable, shall comply with the relevant statutes, regulations, and the approved application and Federal award, and shall use Federal funds in accordance therewith.

(b) No act or failure to act by an official, agent, or employee of the Institute can affect the authority of the Director to enforce regulations.

(c) In any circumstance for which waiver is provided, the determination of the Director shall be final.

NONDISCRIMINATION

### § 3187.12 Federal statutes and regulations on nondiscrimination.

(a) Each recipient and subrecipient, as applicable, shall comply with the relevant nondiscrimination statutes and public policy requirements including, but not limited to, the following:

| Subject | Statute |
|---|---|
| Discrimination on the basis of race, color or national origin | Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4). |
| Discrimination on the basis of sex | Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683). |
| Discrimination on the basis of disability | Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). |
| Discrimination on the basis of age | The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107). |

(b) *Regulations under section 504 of the Rehabilitation Act of 1973.* The Institute applies the regulations in 45 CFR part 1170, issued by the National Endowment for the Humanities and relating to nondiscrimination on the basis of handicap in federally assisted programs and activities, in determining the compliance with section 504 of the Rehabilitation Act of 1973 as it applies to recipients of Federal financial assistance from the Institute. These regulations apply to each program or activity that receives such assistance. In applying these regulations, references to the *Endowment* or the *agency* shall be deemed to be references to the Institute and references to the *Chairman* shall be deemed to be references to the Director.

[79 FR 76088, Dec. 19, 2014, as amended at 84 FR 22944, May 21, 2019]

EVALUATION

### § 3187.13 Federal evaluation—Cooperation by a non-Federal entity.

A non-Federal entity shall cooperate in any evaluation by the Director of the particular IMLS Federal financial assistance program in which the non-Federal entity has participated.

ALLOWABLE COSTS

### § 3187.14 Subawards.

(a) A recipient may not make a subaward unless expressly authorized

by the Institute. In the event the Institute authorizes a subaward, the recipient shall:

(1) Ensure that the subaward includes any clauses required by Federal law as well as any program-related conditions imposed by the Institute;

(2) Ensure that the subrecipient is aware of the applicable legal and program requirements; and

(3) Monitor the activities of the subrecipient as necessary to ensure compliance with Federal law and program requirements.

(b) A recipient may contract for supplies, equipment, and services, subject to applicable law, including but not limited to applicable Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200.

### § 3187.15 Allowable costs.

(a) Determination of costs allowable under a Federal award is made in accordance with the government-wide cost principles in the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200.

(b) No costs shall be allowed for the purchase of any object to be included in the collection of a museum, except library, literary, or archival material specifically required for a designated activity under a Federal award under the Act.

## PARTS 3188–3199 [RESERVED]

# CHAPTER XXXII—NATIONAL ENDOWMENT FOR THE ARTS


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## PARTS 3200–3253 [RESERVED]

# PART 3254—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

3254.10 What does this part do?
3254.20 Does this part apply to me?
3254.30 What policies and procedures must I follow?

**Subpart A—General**

3254.137 Who in the NEA may grant an exception to let an excluded person participate in a covered transaction?

**Subpart B—Covered Transactions**

3254.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

**Subpart C—Responsibilities of Participants Regarding Transactions**

3254.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

**Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

3254.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

**Subparts E–I [Reserved]**

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 72 FR 6141, Feb. 9, 2007, unless otherwise noted.

### § 3254.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the National Endowment for the Arts (NEA) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the NEA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

### § 3254.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970.

(b) Respondent in a NEA suspension or debarment action.

(c) NEA debarment or suspension official;

(d) NEA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

### § 3254.30 What policies and procedures must I follow?

The NEA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., §3254.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, NEA policies and procedures are those in the OMB guidance.

## Subpart A—General

### § 3254.137 Who in the NEA may grant an exception to let an excluded person participate in a covered transaction?

The NEA Chairman has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

## Subpart B—Covered Transactions

### § 3254.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see options lower tier coverage in the figure in the appendix to 2 CFR part 180), NEA does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 3254.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 3254.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–I [Reserved]

# PART 3255—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

AUTHORITY: 5 U.S.C. 301, 20 U.S.C. 954, 2 CFR part 200.

SOURCE: 79 FR 76090, Dec. 19, 2014, unless otherwise noted.

### § 3255.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the National Endowment for the Arts (NEA) adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the NEA.

# PART 3256—REQUIREMENTS FOR DRUG–FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

3256.100 What does this part do?
3256.105 Does this part apply to me?
3256.110 What policies and procedures must I follow?

## Subpart A [Reserved]

## Subpart B—Requirements for Recipients Other Than Individuals

3256.200 Whom in the NEA does a recipient other than an individual notify about a criminal drug conviction?

## Subpart C—Requirements for Recipients Who Are Individuals

3256.300 Whom in the NEA does a recipient who is an individual notify about a criminal drug conviction?

## Subpart D—Responsibilities of NEA Awarding Officials

3256.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

## Subpart E—Violations of This Part and Consequences

3256.500 Who in the NEA determines that a recipient other than an individual violated the requirements of this part?

3256.505 Who in the NEA determines that a recipient who is an individual violated the requirements of this part?

### Subpart F [Reserved]

AUTHORITY: 41 U.S.C. 701 *et seq.*

SOURCE: 80 FR 33156, June 11, 2015, unless otherwise noted.

#### § 3256.100 What does this part do?

This part requires that the award and administration of NEA grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (subparts A through F of 2 CFR part 182) for the NEA's grants and cooperative agreements; and

(b) Establishes NEA policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

#### § 3256.105 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of an NEA grant or cooperative agreement; or

(b) NEA awarding official.

#### § 3256.110 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in the applicable sections of the OMB guidance in subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the guidance in 2 CFR part 182, this part supplements four sections of that guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| (1) 2 CFR 182.225(a) | § 3256.200 | Whom in the NEA a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace. |
| (2) 2 CFR 182.300(b) | § 3256.300 | Whom in the NEA a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| (3) 2 CFR 182.500 | § 3256.500 | Who in the NEA is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| (4) 2 CFR 182.505 | § 3256.505 | Who in the NEA is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, the NEA's policies and procedures are the same as those in the OMB guidance.

## Subpart A [Reserved]

## Subpart B—Requirements for Recipients Other Than Individuals

#### § 3256.200 Whom in the NEA does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the NEA

awarding official or other designee for each award that it currently has.

## Subpart C—Requirements for Recipients Who Are Individuals

### § 3256.300 Whom in the NEA does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify the NEA awarding official or other designee for each award that he or she currently has.

## Subpart D—Responsibilities of NEA Awarding Officials

### § 3256.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award: Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in subpart B (or subpart C, if the recipient is an individual) of this part, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

## Subpart E—Violations of This Part and Consequences

### § 3256.500 Who in the NEA determines that a recipient other than an individual violated the requirements of this part?

The Chairman of the National Endowment for the Arts is the official authorized to make the determination under 2 CFR 182.500.

### § 3256.505 Who in the NEA determines that a recipient who is an individual violated the requirements of this part?

The Chairman of the National Endowment for the Arts is the official authorized to make the determination under 2 CFR 182.505.

## Subpart F [Reserved]

## PARTS 3257–3299 [RESERVED]

# CHAPTER XXXIII—NATIONAL ENDOWMENT FOR THE HUMANITIES


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| 3373 | Requirements for drug-free workplace (financial assistance) | 658 |
| 3374 | Uniform administrative requirements, cost principles, and audit requirements for Federal awards | 660 |
| 3375–3399 | [Reserved] | |

## PARTS 3300–3368 [RESERVED]

## PART 3369—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

3369.10 What does this part do?
3369.20 Does this part apply to me?
3369.30 What policies and procedures must I follow?

### Subpart A—General

3369.137 Who in the NEH may grant an exception to let an excluded person participate in a covered transaction?

### Subpart B—Covered Transactions

3369.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

### Subpart C—Responsibilities of Participants Regarding Transactions

3369.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

3369.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

### Subparts E–I [Reserved]

AUTHORITY: 20 U.S.C. 959(a)(1); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 72 FR 9236, Mar. 1, 2007, unless otherwise noted.

### § 3369.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the National Endowment for the Humanities (NEH) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the NEH to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

### § 3369.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970).

(b) Respondent in a NEH suspension or debarment action.

(c) NEH debarment or suspension official;

(d) NEH grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

### § 3369.30 What policies and procedures must I follow?

The NEH policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § 3369.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, NEH policies and procedures are those in the OMB guidance.

## Subpart A—General

### § 3369.137 Who in the NEH may grant an exception to let an excluded person participate in a covered transaction?

The NEH Chairman has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

## Subpart B—Covered Transactions

### § 3369.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), NEH does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 3369.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 3369.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–I [Reserved]

# PART 3373—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

3373.10 What does this part do?
3373.20 Does this part apply to me?
3373.30 What policies and procedures must I follow?

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

3373.225 Whom in the NEH does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients Who Are Individuals

3373.300 Whom in the NEH does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

3373.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E—Violations of This Part and Consequences

3373.500 Who in the NEH determines that a recipient other than an individual violated the requirements of this part?
3373.505 Who in the NEH determines that a recipient who is an individual violated the requirements of this part?

Subpart F—Definitions [Reserved]

AUTHORITY: 41 U.S.C. 701–707.

SOURCE: 75 FR 52858, Aug. 30, 2010, unless otherwise noted.

### § 3373.10 What does this part do?

This part requires that the award and administration of NEH grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F

of 2 CFR part 182) for the NEH's grants and cooperative agreements; and

(b) Establishes NEH policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

### § 3373.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (*see* table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of a NEH grant or cooperative agreement; or

(b) NEH awarding official.

### § 3373.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---|---|---|
| (1) 2 CFR 182.225(a) | § 3373.225 | Whom in the NEH a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace. |
| (2) 2 CFR 182.300(b) | § 3373.300 | Whom in the NEH a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| (3) 2 CFR 182.500 | § 3373.500 | Who in the NEH is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| (4) 2 CFR 182.505 | § 3373.505 | Who in the NEH is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, NEH policies and procedures are the same as those in the OMB guidance.

## Subpart A—Purpose and Coverage [Reserved]

## Subpart B—Requirements for Recipients Other Than Individuals

### § 3373.225 Whom in the NEH does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the Director, Office of Grant Management, NEH.

## Subpart C—Requirements for Recipients Who Are Individuals

### § 3373.300 Whom in the NEH does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify the Director, Office of Grant Management, NEH.

## Subpart D—Responsibilities of Agency Awarding Officials

### § 3373.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

*Drug-free workplace.* You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR Part 3373, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

## Subpart E—Violations of This Part and Consequences

### § 3373.500 Who in the NEH determines that a recipient other than an individual violated the requirements of this part?

The NEH General Counsel is the agency official authorized to make the determination under 2 CFR 182.500.

### § 3373.505 Who in the NEH determines that a recipient who is an individual violated the requirements of this part?

The NEH General Counsel is the agency official authorized to make the determination under 2 CFR 182.505.

## Subpart F—Definitions [Reserved]

# PART 3374—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

AUTHORITY: 5 U.S.C. 301, 20 U.S.C. 956, 2 CFR part 200.

SOURCE: 79 FR 76091, Dec. 19, 2014, unless otherwise noted.

### § 3374.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the National Endowment for the Humanities (NEH) adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for NEH.

# PARTS 3375–3399 [RESERVED]

# CHAPTER XXXIV—DEPARTMENT OF EDUCATION


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| 3474 | Uniform administrative requirements, cost principles, and audit requirements for Federal awards | 663 |
| 3485 | Nonprocurement debarment and suspension | 666 |
| 3486–3499 | [Reserved] | |

## PARTS 3400–3473 [RESERVED]

# PART 3474—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

3474.1 Adoption of 2 CFR part 200.
3474.5 How exceptions are made to 2 CFR part 200.
3474.10 Clarification regarding 2 CFR 200.207.
3474.15 Contracting with faith-based organizations and nondiscrimination.
3474.20 Open licensing requirement for competitive grant programs.
3474.21 Severability.

AUTHORITY: 20 U.S.C. 1221e–3, 3474; 42 U.S.C. 2000bb *et seq.;* E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806; and 2 CFR part 200, unless otherwise noted.

SOURCE: 79 FR 76091, Dec. 19, 2014, unless otherwise noted.

### § 3474.1 Adoption of 2 CFR part 200.

(a) The Department of Education adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, except for 2 CFR 200.102(a) and 2 CFR 200.207(a). Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

(b) The authority for all of the provisions in 2 CFR part 200 as adopted in this part is listed as follows.

(Authority: 20 U.S.C. 1221e–3, 3474, and 2 CFR part 200.)

### § 3474.5 How exceptions are made to 2 CFR part 200.[1]

(a) With the exception of Subpart F—Audit Requirements of 2 CFR part 200, the Secretary of Education, after consultation with OMB, may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part will be permitted only in unusual circumstances.

(b) Exceptions for classes of Federal awards or non-Federal entities will be published on the OMB Web site at *www.whitehouse.gov/omb*.

(Authority: 20 U.S.C. 1221e–3, 3474, and 2 CFR part 200)

### § 3474.10 Clarification regarding 2 CFR 200.207.[2]

The Secretary or a pass-through entity may, in appropriate circumstances, designate the specific conditions established under 2 CFR 200.207 as ''high-risk conditions'' and designate a non-Federal entity subject to specific conditions established under § 200.207 as ''high–risk''.

(Authority: 20 U.S.C. 1221e–3, 3474, and 2 CFR part 200)

### § 3474.15 Contracting with faith-based organizations and nondiscrimination.

(a) This section establishes responsibilities that grantees and subgrantees have in selecting contractors to provide direct Federal services under a program of the Department. Grantees and subgrantees must ensure compliance by their subgrantees with the provisions of this section and any implementing regulations or guidance.

(b)(1) A faith-based organization is eligible to contract with grantees and subgrantees, including States, on the same basis as any other private organization.

(2)(i) In selecting providers of goods and services, grantees and subgrantees, including States—

(A) May not discriminate for or against a private organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization; and

(B) Must ensure that the award of contracts is free from political interference, or even the appearance of such interference, and is done on the basis of merit, not on the basis of religion or religious belief, or lack thereof.

(ii) Notices or announcements of award opportunities and notices of

[1] C. Ref. 2 CFR 200.102.

[2] C. Ref. 2 CFR 200.205, 200.207.

award or contracts must include language substantially similar to that in appendices A and B, respectively, to 34 CFR part 75.

(3) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a grantee or subgrantee in administering Federal financial services from the Department may require faith-based organizations to provide assurances or notices if they are not required of non-faith-based organizations. Any restrictions on the use of grant funds must apply equally to faith-based and non-faith-based organizations. All organizations that participate in Department programs or services, including organizations with religious character, motives, or affiliation, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct Federal financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(4) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a grantee or subgrantee may disqualify faith-based organizations from participating in Department-funded programs or services on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(5) Nothing in this section may be construed to preclude the Department from making an accommodation with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(6) Neither a State nor the Department may disqualify an organization from participating in any Department program for which it is otherwise eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the Department has determined that it would deny the accommodation.

(c)(1) The provisions of 34 CFR 75.532 and 76.532 that apply to a faith-based organization that is a grantee or subgrantee also apply to a faith-based organization that contracts with a grantee or subgrantee, including a State.

(2) The requirements referenced under paragraph (c)(1) of this section do not apply to a faith-based organization that provides goods or services to a beneficiary under a program supported only by indirect Federal financial assistance, as defined in 34 CFR 75.52(c)(3) and 76.52(c)(3).

(d)(1) A private organization that provides direct Federal services under a program of the Department and engages in explicitly religious activities, such as worship, religious instruction, or proselytization, must offer those activities separately in time or location from any programs or services funded by the Department through a contract with a grantee or subgrantee, including a State. Attendance or participation in any such explicitly religious activities by beneficiaries of the programs and services supported by the contract must be voluntary.

(2) The limitations on explicitly religious activities under paragraph (d)(1) of this section do not apply to a faith-based organization that provides services to a beneficiary under a program supported only by indirect Federal financial assistance, as defined in 34 CFR 75.52(c)(3) and 76.52(c)(3).

(e)(1) A faith-based organization that contracts with a grantee or subgrantee, including a State, will retain its independence, autonomy, right of expression, religious character, and authority over its governance. A faith-based organization that receives Federal financial assistance from the Department does not lose the protections of law.

(2) A faith-based organization that contracts with a grantee or subgrantee, including a State, may, among other things—

(i) Retain religious terms in its name;

(ii) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(iii) Use its facilities to provide services without concealing, removing, or altering religious art, icons, scriptures, or other symbols from these facilities;

(iv) Select its board members on the basis of their acceptance of or adherence to the religious tenets of the organization; and

(v) Include religious references in its mission statement and other chartering or governing documents.

(f) A private organization that contracts with a grantee or subgrantee, including a State, may not discriminate against a beneficiary or prospective beneficiary in the provision of program goods or services, or in outreach activities related to such goods or services, on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(g) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a), is not forfeited when the organization contracts with a grantee or subgrantee.

(h) No grantee or subgrantee receiving funds under any Department program or service shall construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

[85 FR 82125, Dec. 17, 2020, as amended at 89 FR 15701, Mar. 4, 2024]

### § 3474.20 Open licensing requirement for competitive grant programs.

For competitive grants awarded in competitions announced after February 21, 2017:

(a) A grantee or subgrantee must openly license to the public the rights set out in paragraph (b)(1) of this section in any grant deliverable that is created wholly or in part with Department competitive grant funds, and that constitutes a new copyrightable work; provided, however, that when the deliverable consists of modifications to pre-existing works, the license shall extend only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works.

(b)(1) With respect to copyrightable work identified in paragraph (a) of this section, the grantee or subgrantee must grant to the public a worldwide, non-exclusive, royalty-free, perpetual, and irrevocable license to—

(i) Access, reproduce, publicly perform, publicly display, and distribute the copyrightable work;

(ii) Prepare derivative works and reproduce, publicly perform, publicly display and distribute those derivative works; and

(iii) Otherwise use the copyrightable work, provided that in all such instances attribution is given to the copyright holder.

(2) Grantees and subgrantees may select any open licenses that comply with the requirements of this section, including, at the grantee's or subgrantee's discretion, a license that limits use to noncommercial purposes. The open license also must contain—

(i) A symbol or device that readily communicates to users the permissions granted concerning the use of the copyrightable work;

(ii) Machine-readable code for digital resources;

(iii) Readily accessed legal terms; and

(iv) The statement of attribution and disclaimer specified in 34 CFR 75.620(b).

(c) A grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate the openly licensed copyrightable works identified in paragraph (a) of this section.

(d)(1) The requirements of paragraphs (a), (b), and (c) of this section do not apply to—

(i) Grants that provide funding for general operating expenses;

(ii) Grants that provide support to individuals (*e.g.*, scholarships, fellowships);

(iii) Grant deliverables that are jointly funded by the Department and another Federal agency if the other Federal agency does not require the open licensing of its grant deliverables for the relevant grant program;

(iv) Copyrightable works created by the grantee or subgrantee that are not created with Department grant funds;

(v) Peer-reviewed scholarly publications that arise from any scientific research funded, either fully or partially, from grants awarded by the Department;

(vi) Grantees or subgrantees under the Ready To Learn Television Program, as defined in the Elementary and Secondary Education Act of 1965, as amended, Title II, Subpart 3, Sec. 2431, 20 U.S.C. 6775;

(vii) A grantee or subgrantee that has received an exception from the Secretary under 2 CFR 3474.5 and 2 CFR 200.102 (*e.g.*, where the Secretary has determined that the grantee's dissemination plan would likely achieve meaningful dissemination equivalent to or greater than the dissemination likely to be achieved through compliance with paragraph (a) or (b) of this section, or compliance with paragraph (a) or (b) of this section would impede the grantee's ability to form the required partnerships necessary to carry out the purpose of the grant); and

(viii) Grantees or subgrantees for which compliance with these requirements would conflict with, or materially undermine the ability to protect or enforce, other intellectual property rights or obligations of the grantee or subgrantee, in existence or under development, including those provided under 15 U.S.C. 1051, *et seq.*, 18 U.S.C. 1831–1839, and 35 U.S.C. 200, *et seq*.

(2) The requirements of paragraphs (a), (b), and (c) of this section do not alter any applicable rights in the grant deliverable available under 17 U.S.C. 106A, 203 or 1202, 15 U.S.C. 1051, *et seq.*, or State law.

(e) The license set out in paragraph (b)(1) of this section shall not extend to any copyrightable work incorporated in the grant deliverable that is owned by a party other than the grantee or subgrantee, unless the grantee or subgrantee has acquired the right to provide such a license in that work.

(f) *Definition*. For purposes of this section,

(1) A *grant deliverable* is a final version of a work, including any final version of program support materials necessary to the use of the deliverable, developed to carry out the purpose of the grant, as specified in the grant announcement.

(2) A *derivative work* means a *derivative work* as defined in the Copyright Act, 17 U.S.C. 101.

[82 FR 7397, Jan. 19, 2017]

### § 3474.21 Severability.

If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

[85 FR 82126, Dec. 17, 2020]

## PART 3485—NONPROCUREMENT DEBARMENT AND SUSPENSION

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APPENDIX A TO PART 3485—COVERED TRANSACTIONS

AUTHORITY: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474, unless otherwise noted.

SOURCE: 77 FR 18673, Mar. 28, 2012, unless otherwise noted.

### § 3485.12 What does this part do?

(a)(1) The Department of Education (the ''Department'' or ''ED'') adopts subparts A through I of the Office of Management and Budget guidance in 2 CFR part 180. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR part 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR part 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

(2) The table of contents for this part contains only those sections in part 3485 that include supplements to the guidance in part 180 and new sections needed to implement the guidance for the Department's programs. In those sections of the OMB guidance that are supplemented, the section in part 3485 includes both the text of the OMB guidance that is not affected by the change and any additional paragraphs that need to be added to the OMB guidance. For example, § 180.220 of this title contains only paragraphs (a) and (b). The text of § 3485.220, which supplements § 180.220 to extend lower-tier transactions to certain transactions below the primary tier, includes both the text of paragraph (a) and (b) of § 180.220 and the text of added paragraph (c).

(3) In those sections in part 180 that do not have paragraph designations and that the Department supplements, the section in this part implementing the OMB guidance designates the undesignated paragraph from part 180 as paragraph (a) and the first supplemental paragraph as paragraph (b). For example, 2 CFR 180.330 includes an undesignated lead in paragraph and two subparagraphs designated (a) and (b). In § 3485.330, the undesignated paragraph in 2 CFR 180.330 is designated paragraph (a) and the two subparagraphs are designated paragraphs (1) and (2). The added paragraphs are designated paragraph (b) and (c).

(b) The authority for all the provisions in 2 CFR part 180 as adopted in this part is listed as follows.

AUTHORITY: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474, unless otherwise noted.)

### § 3485.22 Does this part apply to me?

This part applies to you if you are—

(a) A participant or principal in a ''covered transaction'' (see subpart B of this part and the definition of ''nonprocurement transaction'' in § 180.970 of this title).

(b) A respondent in a suspension or debarment action of the Department.

(c) An ED deciding official; or

(d) An ED officer authorized to enter into any type of nonprocurement transaction that is a covered transaction.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

### § 3485.32 What policies and procedures must I follow?

The Department's policies and procedures that you must follow are the policies and procedures specified in this part and in Subparts A through I of 2 CFR part 180. The contracts that are covered transactions, for example, are specified in § 3485.220. Section 180.205 of this title does not require supplementation, so it is not included in the table of contents for this part and is not separately stated in this part.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

## Subpart A—General

### § 3485.137 May the Department grant an exception to let an excluded person participate in a covered transaction?

(a) Yes, the Secretary delegates to the ED Deciding Official the authority under this section to grant an exception permitting an excluded person to participate in a particular covered transaction.

(b) If the ED Deciding Official grants an exception, the exception must be in writing and state the reason(s) for deviating from the Governmentwide policy in Executive Order 12549.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

## Subpart B—Covered Transactions

### § 3485.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part—

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions.

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under § 180.210 of this title, and the amount of the contract is expected to equal or exceed $25,000.

(2) The contract requires the consent of an official of a Federal agency. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the Appendix to Part 3485—Covered Transactions.

(3) The contract is for Federally-required audit services.

(4) The contract is to perform services as a third party servicer in connection with a title IV, HEA program.

(c) In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by ED under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed $25,000. This extends the coverage of the ED nonprocurement suspension and

debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower tier coverage in the figure in Appendix A to Part 3485—Covered Transactions).

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 3485.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless another Federal agency responsible for the transaction grants an exception under § 180.135 of this title or ED grants an exception under § 3485.137.

(c) If you are a title IV, HEA participant, you may not continue a title IV, HEA transaction with an excluded person after the effective date of the exclusion unless permitted by 34 CFR 668.26, 682.702, or 668.94, as applicable.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

### § 3485.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless another Federal agency responsible for the transaction grants an exception under § 180.135 of this title or, if ED took the action, an ED deciding official grants an exception under § 3485.137.

(c) If you are a title IV, HEA participant—

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

### § 3485.330 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

(a) Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

(1) Comply with this subpart as a condition of participation in the transaction. You must do so using the method specified in paragraph (b) of this section; and

(2) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.

(b) To communicate the requirements in this part to a participant, you must include a term or condition in the transaction that requires the participant's compliance with part 180, subpart C, of this title, as adopted at § 3485.12, and requires the participant to include a similar term or condition in lower-tier covered transactions.

(c) The failure of a participant to include a requirement to comply with Subpart C of 2 CFR part 180 in the agreement with a lower tier participant does not affect the lower tier participant's responsibilities under this part.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

## Subpart D—Responsibilities of the Department's Officials Regarding Transactions

### § 3485.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as a Federal agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 3485.137.

(c) *Title IV, HEA transactions.* If you are a title IV, HEA participant—

(1) You may not renew or extend the term of any contract or agreement for the services of an excluded person as a principal with respect to a title IV, HEA transaction; and

(2) You may not continue to use the services of that excluded person as a principal under this kind of an agreement or arrangement more than 90 days after you learn of the exclusion or after the close of the Federal fiscal year in which the exclusion takes effect, whichever is later.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

### § 3485.437 What method do I use to communicate to a participant the requirements described in § 180.435 of this title?

To communicate the requirements in this part to a participant, you must include a term or condition in the transaction that requires the participant's compliance with part 180, subpart C, of this title, as adopted at § 3485.12 and requires the participant to include a similar term or condition in lower-tier covered transactions.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

## Subpart E [Reserved]

## Subpart F—General Principles Relating to Suspension and Debarment Actions

### § 3485.611 What procedures do we use for a suspension or debarment action involving a title IV, HEA transaction?

(a) If we suspend a title IV, HEA participant under Executive Order 12549, we use the following procedures to ensure that the suspension prevents participation in title IV, HEA transactions:

(1) The notification procedures in § 180.715 of this title.

(2) Instead of the procedures in §§ 180.720 through 180.760 of this title, the procedures in 34 CFR part 668, subpart G, or 34 CFR part 682, subpart D or G, as applicable.

(3) In addition to the findings and conclusions required by 34 CFR part 668, subpart G, or 34 CFR part 682, subpart D or G, the suspending official, and, on appeal, the Secretary determines whether there is sufficient cause

for suspension as explained in § 180.700 of this title.

(b) If we debar a title IV, HEA participant under E.O. 12549, we use the following procedures to ensure that the debarment also precludes participation in title IV, HEA transactions:

(1) The notification procedures in §§ 180.805 and 180.870 of this title.

(2) Instead of the procedures in §§ 180.810 through 180.885 of this title, the procedures in 34 CFR part 668, subpart G, or 34 CFR part 682, subpart D or G, as applicable.

(3) On appeal from a decision debarring a title IV, HEA participant, we issue a final decision after we receive any written materials from the parties.

(4) In addition to the findings and conclusions required by 34 CFR part 668, subpart G, or 34 CFR part 682, subpart D or G, the debarring official, and, on appeal, the Secretary determines whether there is sufficient cause for debarment as explained in § 180.800 of this title.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

### § 3485.612 When does an exclusion by another agency affect the ability of the excluded person to participate in a title IV, HEA transaction?

(a) If a title IV, HEA participant is debarred by another agency under E.O. 12549, using procedures described in paragraph (d) of this section, that party is not eligible to enter into title IV, HEA transactions for the duration of the debarment.

(b)(1) If a title IV, HEA participant is suspended by another agency under E.O. 12549 or under a proposed debarment under the Federal Acquisition Regulation (FAR) (48 CFR part 9, subpart 9.4), using procedures described in paragraph (d) of this section, that party is not eligible to enter into title IV, HEA transactions for the duration of the suspension.

(2)(i) The suspension of title IV, HEA eligibility as a result of suspension by another agency lasts for at least 60 days.

(ii) If the excluded party does not object to the suspension, the 60-day period begins on the 35th day after that agency issues the notice of suspension.

(iii) If the excluded party objects to the suspension, the 60-day period begins on the date of the decision of the suspending official.

(3) The suspension of title IV, HEA eligibility does not end on the 60th day if—

(i) The excluded party agrees to an extension; or

(ii) Before the 60th day we begin a limitation or termination proceeding against the excluded party under 34 CFR part 668, subpart G, or part 682, subpart D or G.

(c)(1) If a title IV, HEA participant is debarred or suspended by another Federal agency—

(i) We notify the participant whether the debarment or suspension prohibits participation in title IV, HEA transactions; and

(ii) If participation is prohibited, we state the effective date and duration of the prohibition.

(2) If a debarment or suspension by another agency prohibits participation in title IV, HEA transactions, that prohibition takes effect 20 days after we mail notice of our action.

(3) If the Department or another Federal agency suspends a title IV, HEA participant, we determine whether grounds exist for an emergency action against the participant under 34 CFR part 668, subpart G, or part 682, subpart D or G, as applicable.

(4) We use the procedures in § 3485.611 to exclude a title IV, HEA participant excluded by another Federal agency using procedures that did not meet the standards in paragraph (d) of this section.

(d) If a title IV, HEA participant is excluded by another agency, we debar, terminate, or suspend the participant—as provided under this part, 34 CFR part 668, or 34 CFR part 682, as applicable—if that agency followed procedures that gave the excluded party—

(1) Notice of the proposed action;

(2) An opportunity to submit and have considered evidence and argument to oppose the proposed action;

(3) An opportunity to present its objection at a hearing—

(i) At which the agency has the burden of persuasion by a preponderance

of the evidence that there is cause for the exclusion; and

(ii) Conducted by an impartial person who does not also exercise prosecutorial or investigative responsibilities with respect to the exclusion action;

(4) An opportunity to present witness testimony, unless the hearing official finds that there is no genuine dispute about a material fact;

(5) An opportunity to have agency witnesses with personal knowledge of material facts in genuine dispute testify about those facts, if the hearing official determines their testimony to be needed, in light of other available evidence and witnesses; and

(6) A written decision stating findings of fact and conclusions of law on which the decision is rendered.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

## Subpart G—Suspension

### § 3485.711 When does a suspension affect title IV, HEA transactions?

(a) A suspension under § 3485.611(a) takes effect immediately if the Secretary takes an emergency action under 34 CFR part 668, subpart G, or 34 CFR part 682, subpart D or G, at the same time the Secretary issues the suspension.

(b)(1) Except as provided under paragraph (a) of this section, a suspension under § 3485.611(a) takes effect 20 days after those procedures are complete.

(2) If the respondent appeals the suspension to the Secretary before the expiration of the 20 days under paragraph (b)(1) of this section, the suspension takes effect when the respondent receives the Secretary's decision.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

## Subpart H—Debarment

### § 3485.811 When does a debarment affect title IV, HEA transactions?

(a) A debarment under § 3485.611(b) takes effect 30 days after those procedures are complete.

(b) If the respondent appeals the debarment to the Secretary before the expiration of the 30 days under paragraph (a) of this section, the debarment takes effect when the respondent receives the Secretary's decision.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

## Subpart I—Definitions

### § 3485.937 ED Deciding Official.

The ED Deciding Official is an officer of the Department who has delegated authority under the procedures of the Department of Education to decide whether to affirm a suspension or enter a debarment.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

### § 3485.952 HEA.

*HEA* means the Higher Education Act of 1965, as amended.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

### § 3485.995 Principal.

*Principal* means—

(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or

(3) Occupies a technical or professional position capable of substantially

influencing the development or outcome of an activity required to perform the covered transaction.

(c) For the purposes of Department of Education title IV, HEA transactions—

(1) A third-party servicer, as defined in 34 CFR 668.2 or 682.200; or

(2) Any person who provides services described in 34 CFR 668.2 or 682.200 to a title IV, HEA participant, whether or not that person is retained or paid directly by the title IV, HEA participant.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p.189); E.O. 12689 (3 CFR 1989 Comp., p.235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

### § 3485.1016 Title IV, HEA participant.

A title IV, HEA participant is—

(a) An institution described in 34 CFR 600.4, 600.5, or 600.6 that provides postsecondary education; or

(b) A lender, third-party servicer, or guaranty agency, as those terms are defined in 34 CFR 668.2 or 682.200.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p.189); E.O. 12689 (3 CFR 1989 Comp., p.235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

### § 3485.1017 Title IV, HEA program.

A title IV, HEA program includes any program listed in 34 CFR 668.1(c).

(Authority: E.O. 12549 (3 CFR 1986 Comp., p.189); E.O. 12689 (3 CFR 1989 Comp., p. 235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

### § 3485.1018 Title IV, HEA transaction.

A title IV, HEA transaction includes—

(a) A disbursement or delivery of funds provided under a title IV, HEA program to a student or borrower;

(b) A certification by an educational institution of eligibility for a loan under a title IV, HEA program;

(c) Guaranteeing a loan made under a title IV, HEA program; and

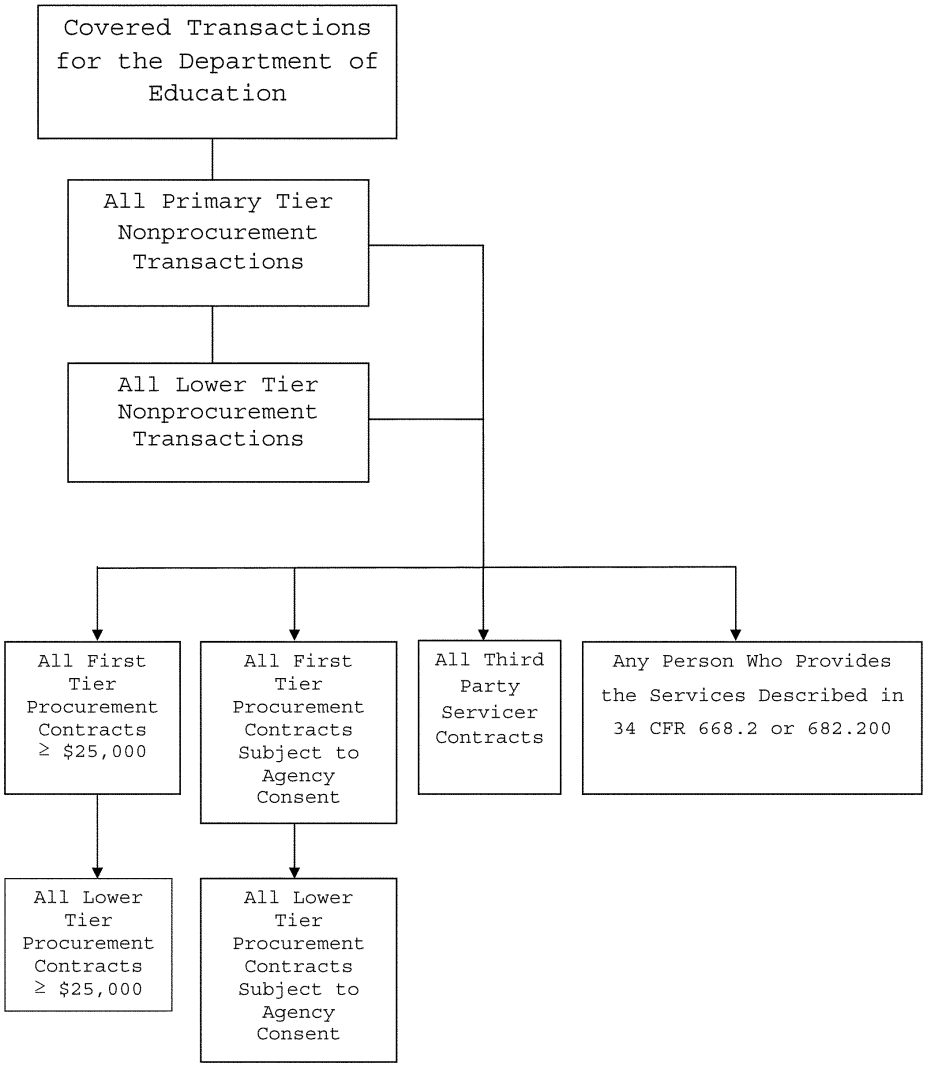
(d) The acquisition or exercise of any servicing responsibility for a grant, loan, or work study assistance under a title IV, HEA program.

(Authority: E.O. 12549 (3 CFR 1986 Comp., p.189); E.O. 12689 (3 CFR 1989 Comp., p.235); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 20 U.S.C. 1082, 1094, 1221e–3, and 3474)

## Subpart J [Reserved]

APPENDIX A TO PART 3485—COVERED TRANSACTIONS

Appendix A to Part 3485--Covered Transactions




## PARTS 3486–3499 [RESERVED]

# CHAPTER XXXV—EXPORT-IMPORT BANK OF THE UNITED STATES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## PARTS 3500–3512 [RESERVED]

# PART 3513—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

3513.10 What does this part do?
3513.20 Does this part apply to me?
3513.30 What policies and procedures must I follow?

### Subpart A—General

3513.137 Who at Ex-Im Bank may grant an exception to let an excluded person participate in a covered transaction?

### Subpart B—Covered Transactions

3513.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

### Subpart C—Responsibilities of Participants Regarding Transactions

3513.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

### Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

3513.437 What method do I use to communicate to a participate the requirements described in the OMB guidance at 2 CFR 180.435?

### Subparts E–J [Reserved]

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

SOURCE: 72 FR 30244, May 31, 2007, unless otherwise noted.

### § 3513.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Export Import Bank of the United States (Ex-Im Bank) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for Ex-Im Bank to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

### § 3513.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970, as supplemented by subpart B of this part).

(b) Respondent in an Ex-Im Bank suspension or debarment action.

(c) Ex-Im Bank debarment or suspension official;

(d) Ex-Im Bank grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

### § 3513.30 What policies and procedures must I follow?

Ex-Im Bank policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this pat (i.e., §3513.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, Ex-Im Bank policies and procedures are those in the OMB guidance.

## Subpart A—General

### § 3513.137 Who in Ex-Im Bank may grant an exception to let an excluded person participate in a covered transaction?

(a) The Ex-Im Bank agency head or designee may grant an exception permitting an excluded person to participate in a particular covered transacting. If the Ex-Im Bank agency head or designee grants an exception,

the exception must be in writing and state the reason(s) for deviating from the government wide policy in Executive Order 12549.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

## Subpart B—Covered Transactions

### § 3513.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), Ex-Im Bank does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement under a covered nonprocurement transaction.

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 3513.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

To communicate the requirements, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tiered covered transactions.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 3513.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## Subparts E–J [Reserved]

## PARTS 3514–3599 [RESERVED]

# CHAPTER XXXVI—OFFICE OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT


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## PARTS 3600–3602 [RESERVED]

# PART 3603—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

AUTHORITY: 21 U.S.C. 1706; 21 U.S.C. 1703(d), 1703(f), 21 U.S.C. 1701, 21 U.S.C. 1521–1548, 21 U.S.C. 2001–2003, Office of National Drug Control Policy Reauthorization Act of 2006, P.L 109–469 (2006), 2 CFR part 200.

SOURCE: 79 FR 76105, Dec. 19, 2014, unless otherwise noted.

### § 3603.1 Adoption of 2 CFR Part 200.

Under the authority listed above, the Executive Office of the President, Office of National Drug Control Policy (ONDCP) adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for ONDCP.

## PARTS 3604–3699 [RESERVED]

# CHAPTER XXXVII—PEACE CORPS


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# PART 3700—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.
3700.10 What does this part do?
3700.20 Does this part apply to me?
3700.30 What policies and procedures must I follow?
3700.137 Who in the Peace Corps may grant an exception to let an excluded person participate in a covered transaction?
3700.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?
3700.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?
3700.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 22 U.S.C. 2503(b).

SOURCE: 71 FR 64731, Nov. 22, 2006, unless otherwise noted.

### § 3700.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the Peace Corps policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Peace Corps to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

### § 3700.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970);

(b) Respondent in a Peace Corps suspension or debarment action;

(c) Peace Corps debarment or suspension official; or

(d) Peace Corps grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

### § 3700.30 What policies and procedures must I follow?

The Peace Corps policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 3700.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, Peace Corps policies and procedures are those in the OMB guidance.

### § 3700.137 Who in the Peace Corps may grant an exception to let an excluded person participate in a covered transaction?

The Director of the Peace Corps has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

### § 3700.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the appendix to 2 CFR part 180), Peace Corps does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

**§ 3700.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?**

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180.

**§ 3700.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?**

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you as an agency official must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, and requires the participant to include a similar term or condition in lower-tier covered transactions.

## PARTS 3701–3799 [RESERVED]

# CHAPTER LVIII—ELECTION ASSISTANCE COMMISSION


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| 5802–5899 | [Reserved] | |

# PART 5800—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.
5800.10 What does this part do?
5800.20 Does this part apply to me?
5800.30 What policies and procedures must I follow?

**Subpart A—General**

5800.137 Who at the Commission may grant an exception to let an excluded person participate in a covered transaction?

**Subpart B—Covered Transactions**

5800.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

**Subpart C—Responsibilities of Participants Regarding Transactions**

5800.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

**Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions**

5800.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?
5800.765 May I ask the suspending official to reconsider a decision to suspend me?
5800.875 May I ask the debarring official to reconsider a decision to debar me?
5800.880 What factors may influence the debarring official during reconsideration?
5800.890 How may I appeal my debarment?

**Subparts E–H [Reserved]**

**Subpart I—Definitions**

5800.930 Debarring official.
5800.970 Nonprocurement transaction.
5800.1010 Suspending official.

**Subpart J [Reserved]**

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108; Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549; (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3); CFR, 1989 Comp., p. 235).

SOURCE: 75 FR 41692, July 19, 2010, unless otherwise noted.

## § 5800.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the U.S. Election Assistance Commission (''the Commission'' or ''EAC'') policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Commission to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' and 31 U.S.C. 6101 note.

## § 5800.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970);

(b) Respondent in a Commission suspension or debarment action;

(c) Commission debarment or suspension official; or

(d) Commission grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

## § 5800.30 What policies and procedures must I follow?

The Commission policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (i.e., §_____.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, Commission policies and procedures are those in the OMB guidance.

## Subpart A—General

### § 5800.137 Who at the Commission may grant an exception to let an excluded person participate in a covered transaction?

The Commission's Contracting Officer has the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

## Subpart B—Covered Transactions

### § 5800.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Pursuant to 2 CFR 180.220(c), the Commission extends coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts to include any subcontract to be funded by the Commission, the value of which is expected to equal to or exceed $25,000 or 30 percent of the value of first-tier transaction, whichever is lesser.

## Subpart C—Responsibilities of Participants Regarding Transactions

### § 5800.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

If a lower-tier transaction is covered pursuant to § 5800.220, you as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with Subpart C of the OMB guidance in 2 CFR part 180.

## Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

### § 5800.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you as an agency official must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, and requires the participant to include a similar term or condition in lower-tier covered transactions.

### § 5800.765 May I ask the suspending official to reconsider a decision to suspend me?

Yes. Within 30 days of receiving a final notice of suspension, you may make a written request for the suspending official to reconsider your suspension.

### § 5800.875 May I ask the debarring official to reconsider a decision to debar me?

Yes. Within 30 days of receiving a final notice of debarment, you may make a written request for the debarring official to reconsider your debarment pursuant to § 5800.880. The disposition of your request for reconsideration; or the result of your appeal; shall be considered a final agency action.

### § 5800.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on:

(a) Newly discovered material evidence;

(b) A reversal of the conviction or civil judgment upon which your debarment was based;

(c) A bona fide change in ownership or management;

(d) Elimination of other causes for which the debarment was imposed; or

(e) Other reasons the debarring official finds appropriate.

### § 5800.890 How may I appeal my debarment?

(a) If the Commission debarring official issues a decision under 2 CFR 180.870 to debar you after you present information in opposition to a proposed debarment under § 180.815, you may ask for review of the debarring official's decision in two ways:

(1) You may ask the debarring official under § 875 to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter; or

(2) You may request a review by the EAC's debarment appeals body (DAP), which is composed of the Executive Director, Chief Financial Officer, and Chief Operating Officer. The DAP will review your appeal and make a determination on whether to sustain or reverse the decision of the debarring official. The DAP will then make a recommendation to the EAC Commissioners who will vote by circulation on whether to accept or reject the recommendation of the DAP. A request to review the debarring official's decision to debar you must be made within 30 days of your receipt of the debarring official's decision under §180.870 or paragraph (a)(1) of this section. However, the DAP may recommend to the EAC Commissioners that the debarring official's decision be reversed, based on a majority vote of the DAP, only where the DAP finds that the decision is based on a clear error of material fact or law, or where DAP finds that the debarring official's decision was arbitrary, capricious, or an abuse of discretion. You may appeal the debarring official's decision without requesting reconsideration, or you may appeal the decision of the debarring official on reconsideration.

(b) A request for review under this section must be in writing; prominently state on the envelope or other cover and at the top of the first page ''Debarment Appeal;'' state the specific findings you believe to be in error; and include the reasons or legal bases for your position. The appeal request should be delivered or addressed to the U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005.

(c) After the circulation vote of the EAC Commissioners has been certified, either the Commission debarring official or the DAP must notify you of their decision under this section, in writing, using the notice procedures set forth at §§180.615 and 180.975.

(d) [Reserved]

(e) Nothing in this part prohibits the EAC from delegating the appeal review process to another Federal agency through a memorandum of understanding or interagency agreement.

## Subparts E–H [Reserved]

## Subpart I—Definitions

### § 5800.930 Debarring official.

For the Commission, the debarring official for all nonprocurement transactions is the Commission's Contracting Officer. In the case of a vacancy in the position of the Contracting Officer, the alternate debarring official is the Chief Financial Officer.

### § 5800.970 Nonprocurement transaction.

While the Commission treats all payments made to states under 42 U.S.C. 15301, 15302 and 15401 as grants, this part does not apply to grants made to states and political subdivisions therein.

### § 5800.1010 Suspending official.

For the Commission, the debarring official for all nonprocurement transactions is the Commission's Contracting Officer. In the case of a vacancy in the position of the Contracting Officer, the alternate debarring official is the Chief Financial Officer.

## Subpart J [Reserved]

# PART 5801—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

5801.10 Adoption of 2 CFR part 200.
5801.20–5801.99 [Reserved]

AUTHORITY: 2 CFR part 200.

SOURCE: 89 FR 101837, Dec. 17, 2024, unless otherwise noted.

### § 5801.10 Adoption of 2 CFR Part 200.

The U.S. Election Assistance Commission adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance.

### §§ 5801.20–5801.99 [Reserved]

## PARTS 5802–5899 [RESERVED]

# CHAPTER LIX—GULF COAST ECOSYSTEM RESTORATION COUNCIL


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| 5900 | Uniform administrative requirements, cost principles, and audit requirements for Federal awards | 695 |
| 5901–5999 | [Reserved] | |

# PART 5900—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

AUTHORITY: 5 U.S.C. 301; 33 U.S.C. 1321(t)(2); 2 CFR part 200.

SOURCE: 79 FR 76106, Dec. 19, 2014, unless otherwise noted.

### § 5900.101 Adoption of 2 CFR part 200.

The Gulf Coast Ecosystem Restoration Council adopts the Office of Management and Budget guidance in 2 CFR part 200, as revised effective October 1, 2024, except for 2 CFR 200.322(c) (collectively, OMB guidance). This part gives regulatory effect to the OMB guidance.

[89 FR 75445, Sept. 16, 2024]

# PARTS 5901–5999 [RESERVED]

# CHAPTER LX—FEDERAL COMMUNICATIONS COMMISSION


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# PART 6000—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

AUTHORITY: 47 U.S.C. 154(i), 1752(b)(10)(C); 2 CFR Part 200.

SOURCE: 87 FR 54327, Sept. 6, 2022, unless otherwise noted.

## § 6000.1 Adoption of 2 CFR Part 200.

Except as otherwise may be provided by this part, the Federal Communications Commission adopts the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth at 2 CFR part 200.

## § 6000.2 [Reserved]

# PARTS 6001–6099 [Reserved]

# FINDING AIDS

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For changes to this volume of the CFR prior to this listing, consult the annual edition of the monthly List of CFR Sections Affected (LSA). The LSA is available at *www.govinfo.gov*. For changes to this volume of the CFR prior to 2001, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, and 1986–2000'' published in 11 separate volumes. The ''List of CFR Sections Affected 1986–2000'' is available at *www.govinfo.gov*.

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