

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 33

Requirements for Federal Funding Accountability and Transparency Act Implementation

AGENCY: Office of Federal Financial Management, Office of Management and Budget (OMB).

ACTION: Proposed guidance to agencies.

SUMMARY: OMB proposes to issue guidance to agencies to establish requirements for federal financial assistance applicants, recipients, and subrecipients that are necessary for the implementation of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, hereafter referred to as “the Transparency Act” or “the Act”). An agency under the proposed guidance would require applicants other than individuals, with some specific exceptions, to have Dun and Bradstreet Data Universal Numbering System (DUNS) numbers and maintain current registrations in the Central Contractor Registration (CCR) database. The guidance also provides standard wording for an award term that each agency would include in its financial assistance awards. The award term would require recipients and subrecipients that are subject to the policy to have DUNS numbers, maintain current CCR registrations, and report subaward data that the implementation of the Transparency Act requires. This proposed implementation of the requirement for reporting of subawards under federal financial assistance awards parallels the Federal Acquisition Regulation implementation of that Transparency Act reporting requirement for subcontracts under federal procurement contracts (72 FR 51306, September 6, 2007).

DATES: Comments are due on or before August 5, 2008.

ADDRESSES: Due to potential delays in OMB’s receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: Marguerite Pridgen at mpridgen@omb.eop.gov. Please include “Transparency Act Guidance” in the subject line and the full body of your comments in the text of the electronic message and not as an attachment. Please include your name, title, organization, postal address, telephone

number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952.

Comments may be mailed to Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

Comments may also be sent via <http://www.regulations.gov>—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type “Transparency Act Guidance” (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

All responses will be summarized and included in the request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–7844 (direct) or (202) 395–3993 (main office) and e-mail: Marguerite_E._Pridgen@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Transparency Act

The Act requires the Office of Management and Budget (OMB) to ensure the existence and operation of a single Web site at which the public may access and search data on federal financial assistance awards. It:

- Specifies that data on federal agencies’ awards to non-federal entities are to be available at the Web site by January 1, 2008.
- Specifies that data on subawards under those federal awards are to be available by January 1, 2009.
- Exempts awards to individuals and individual transactions of less than \$25,000.

The Act identifies sixteen specific data elements that the Web site must include for each federal award and authorizes OMB to specify additional elements for other relevant information. The sixteen elements the Act specifies are:

- The name of the entity receiving the award;
- The amount of the award;
- The transaction type;
- The funding agency;
- The Catalog of Federal Domestic Assistance number;
- The program source;

- The location of the entity receiving the award, including four data elements for the city, State, Congressional district, and country;

- The location of the primary place of performance under the award, including four data elements for the city, State, Congressional district, and country;

- A unique identifier of the entity receiving the award; and

- A unique identifier of the parent entity of the recipient, should the recipient be owned by another entity.

Although the Act does not identify specific data elements for subaward reporting, it does require that the data about subawards be disclosed in the same manner as the data for federal agencies’ awards. It also requires OMB to conduct a pilot to determine how best to implement a reporting system under which the entity issuing a subaward is responsible for fulfilling the subaward reporting requirement.

II. Purposes of the Guidance

The proposed guidance following this preamble has three purposes, all of which are related to the implementation of the Transparency Act. Those purposes, which are identified in section 33.100 of the guidance, are to establish:

- A requirement to use the Data Universal Numbering System (DUNS) number as the unique identifier for each entity receiving an award or subaward;
- Requirements for applicant, recipient and subrecipient registration in the Central Contractor Registration (CCR) as a way to maintain a reliable source of standard information about organizations for Transparency Act reporting and other purposes; and
- Requirements for recipient and subrecipient reporting of obligations of federal funds for subawards.

The following paragraphs provide further information about these three requirements.

DUNS number. The interagency task force that OMB established to help implement the Transparency Act selected the DUNS number as the unique identifier that the Act requires to be reported both for the recipient and, if applicable, its parent entity. The proposed guidance following this preamble therefore includes a Government-wide policy under which agencies will require federal financial assistance applicants and recipients, with a few exceptions, to have DUNS numbers. The proposed guidance thereby would expand a current OMB policy requiring use of DUNS numbers in conjunction with grants and cooperative agreements, by broadening the policy to loans and other types of

federal financial assistance awards. The current policy, the full text of which is in the **Federal Register** [68 FR 38402, June 27, 2003], was established by the July 15, 2003, OMB memorandum M-03-16, "OMB Issues Grants Management Policies" (available at <http://www.whitehouse.gov/omb/memoranda/m03-16.pdf>).

Central Contractor Registration. The proposed guidance also would establish a requirement for applicant, recipient, and subrecipient registration in the CCR, as a way to help ensure consistent reporting of data about each entity and thereby make the data more useful to the public. Without the requirement, multiple agencies doing business with the same entity may use different variations of the entity's name, address, or parent organization when they each report on their awards to the entity. Using the DUNS number as the identifier for the entity, as described in the preceding paragraph, can partially alleviate that problem—each report of an award or subaward then can be linked to standard information about the award recipient in data bases of Dun and Bradstreet, Inc., which assigns and maintains DUNS numbers and associated organizational information. The proposed guidance requiring recipient and subrecipient registration in the CCR would further improve data quality by allowing a report of an award or subaward to also be linked to standard information that federal business partners provide about themselves to that Government repository.

Subaward reporting. The Transparency Act requires reporting of information about subawards under federal financial assistance awards. The proposed guidance therefore includes a basic policy requiring recipients and subrecipients to report on subawards they make. For two reasons, however, it does not specify the data elements that must be reported about each subaward. One reason is that data elements are best maintained separately from the Code of Federal Regulations. The other reason is that the data elements may be refined due to lessons learned during the subaward pilot that The Transparency Act requires, so they need not be formally established until after the pilot. At a later date, separately from today's policy proposal, we will publish the data elements for subaward reporting in the **Federal Register** with an opportunity for comment before formally establishing them as the required set.

III. The Proposed Guidance

The proposed guidance in 2 CFR part 33 is organized into three subparts:

- Subpart A states the purposes of the guidance, as described above in Section II of this preamble. It also specifies the types of federal financial assistance awards and types of recipient and subrecipient entities to which the proposed guidance would apply.
- Subpart B contains five sections that provide authorities and specify responsibilities for agencies. Section 33.200 states requirements for the content of agencies' program announcements, regulations, or other issuances providing instructions for applicants. Section 33.205 authorizes agencies to disqualify applicants that do not comply with requirements to provide a DUNS number and register in the CCR. Section 33.210 permits agencies to add DUNS number fields to application forms or formats that OMB cleared previously and section 33.215 establishes requirements for agencies' information systems. Finally, section 33.220 specifies standard wording of an award term for federal financial assistance subject to The Transparency Act. The award term requires recipients and subrecipients to register in the CCR and report on subaward obligations that are subject to the Transparency Act reporting requirements.
- Subpart C contains definitions of terms used in 2 CFR part 33.

IV. Invitation To Comment

We invite comments from the affected public on all aspects of the proposed guidance to agencies, including the proposal to require use of the DUNS number, registration in the CCR, and reporting on subawards. All comments will be considered in developing the final guidance.

List of Subjects in 2 CFR Part 33

Business and industry, Colleges and universities, Cooperative agreements, Farmers, Federal aid programs, Grant programs, Grants administration, Hospitals, Indians, Insurance, International organizations, Loan programs, Nonprofit organizations, Reporting and recordkeeping requirements, State and local governments, Subsidies.

Danny Werfel,
Deputy Controller.

Authority and Issuance

For the reasons set forth above, the Office of Management and Budget proposes to amend 2 CFR chapter I by adding part 33 to read as follows:

PART 33—UNIVERSAL IDENTIFIER, CENTRAL CONTRACTOR REGISTRATION, AND SUBAWARD REPORTING

Sec.

Subpart A—General

- 33.100 Purposes of this part.
33.105 Applicability.
33.110 Deviations.

Subpart B—Policy

- 33.200 Requirements for program announcements, regulations, and application instructions.
33.205 Effect of noncompliance with requirements in § 33.200.
33.210 Authority to modify agency application forms or formats.
33.215 Requirements for agency information systems.
33.220 Award term.

Subpart C—Definitions

- 33.300 Agency.
33.305 Award.
33.310 Central Contractor Registration (CCR).
33.315 Data Universal Numbering System (DUNS) Number.
33.320 Entity.
33.325 Federal financial assistance subject to the Transparency Act.
33.330 For-profit organization.
33.335 Foreign public entity.
33.340 Indian tribe (or "federally recognized Indian tribe").
33.345 Local government.
33.350 Nonprofit organization.
33.355 State.
33.360 Subaward.
33.365 Subrecipient.

Authority: Pub. L. 109-282; 31 U.S.C. 6102.

Subpart A—General

§ 33.100 Purposes of this part.

This part provides guidance to agencies to establish:

(a) The Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number as a universal identifier for federal financial assistance applicants, recipients, and subrecipients.

(b) The Central Contractor Registration (CCR) as the repository for standard information about federal financial assistance applicants, recipients, and subrecipients.

(c) Requirements for recipients' and subrecipients' reporting of information on subawards, as required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, hereafter referred to as "the Transparency Act").

§ 33.105 Applicability.

(a) *Types of awards.* This part applies to an agency's grants, cooperative

agreements, loans, and other federal financial assistance subject to the Transparency Act, as defined in § 33.325.

(b) *Types of recipient and subrecipient entities.* (1) *General.* Through an agency's implementation of the guidance in this part, this part applies to all entities, other than those excepted in paragraph (b)(2) of this section, that—

(i) Apply for or receive agency awards; or

(ii) Receive subawards under those awards.

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

(ii) The requirement in this part to maintain a current registration in the CCR does not apply to:

(A) An agency of the Federal Government that receives an award from another agency.

(B) A foreign entity applying for or receiving an award or subaward for a project or program performed outside the United States, if an agency deems it to be impractical for the entity to register in the CCR.

(C) An entity to which an agency grants an exception based on a need to protect information about the entity from disclosure, to avoid compromising classified information or national security or jeopardizing the personal safety of the entity's clients.

§ 33.110 Deviations.

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

Subpart B—Policy

§ 33.200 Requirements for program announcements, regulations, and application instructions.

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

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

(2) That either:

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

(ii) Has application or plan due dates or anticipated award dates after October 1, 2008.

(b) The program announcement, regulation, or other issuance must require each entity that applies and does not have an exception under § 33.105(b)(2) to:

(1) Be registered in the CCR prior to submitting an application or plan;

(2) Maintain a current CCR registration at all times during which it has an active federal award or an application or plan under consideration by an agency; and

(3) Provide its DUNS number in each application or plan it submits to the agency.

(c) For purposes of this policy:

(1) The applicant is the entity that meets the agency's or program's eligibility criteria and has the legal authority to apply and to receive the award. For example, if a consortium applies for an award to be made to the consortium as the recipient, the consortium must have a DUNS number. If a consortium is eligible to receive funding under an agency program but the agency's policy is to make the award to a lead entity for the consortium, the DUNS number of the lead entity will be used.

(2) A "program announcement" 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 something else.

§ 33.205 Effect of noncompliance with requirements in § 33.200.

(a) An agency may not make an award to an entity until the entity has complied with all applicable requirements to provide a valid DUNS number and register in the CCR.

(b) If an entity does not comply with an applicable requirement to provide a DUNS number or register in the CCR, as specified in the program announcement or other instructions, the agency:

(1) May determine that the applicant is not qualified to receive an award; and

(2) May use that determination as a basis for making an award to an alternative applicant.

§ 33.210 Authority to modify agency application forms or formats.

To implement the policies in §§ 33.200 and 33.205, an agency may add a DUNS number field to application forms or formats previously approved by OMB, without having to obtain further approval to add the field.

§ 33.215 Requirements for agency information systems.

Each agency that awards or administers grants, cooperative agreements, loans, or other federal financial assistance subject to the Transparency Act must ensure that systems processing information related to the awards, and other systems as appropriate, are able to accept and use the DUNS number as the universal identifier for financial assistance applicants and recipients.

§ 33.220 Award term.

(a) To accomplish the purposes described in § 33.100, an agency must include the following award term in each award to a non-federal entity of federal financial assistance subject to the Transparency Act:

I. Central Contractor Registration and subaward reporting.

a. Central Contractor Registration.

1. Unless you are excepted from this requirement under 2 CFR 33.105(b)(2), you as the recipient must maintain the currency of your information in the Central Contractor Registration (CCR) until you submit the final financial report required under this award or receive the final payment, whichever is later.

2. If you are authorized to make subawards under this award and it is possible that you will make a subaward to an entity (see definition in paragraph d of this award term) with a total value of \$25,000 or more in federal funds over the life of the subaward, you:

i. Must notify potential subrecipients that no entity may receive funds for a subaward with a total value in that range unless the entity is registered in the CCR, which also requires that the subrecipient have a Data Universal Numbering System (DUNS) number.

ii. May not make a subaward to an entity with a total value in that range, or obligate additional funds for the subaward, unless the entity is registered in the CCR.

b. Reporting of first-tier subawards.

1. Applicability. Unless you have a current exception from this requirement under paragraph (e) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), you must report each action that obligates \$25,000 or more in federal funds under any subaward to an entity (see definitions in paragraph d of this award term).

2. Where and when to report. You must report each action described in paragraph b.1 of this award term:

i. To the <http://WWW.USASpending.gov> at usaspendingdata@gsa.gov.

ii. No later than 30 days after the date of the obligation.

3. What to report. You must report the information about each action that the <http://WWW.USASpending.gov> specifies.

c. Requirements for lower-tier subawards and obligating actions.

1. Subawards. In any subaward that you make to an entity under this award that you expect to have a total value of \$25,000 or more in federal funds over the life of the subaward, you must include an award term that:

i. Provides the subrecipient with the federal award number or other unique federal identifying number for this award.

ii. Requires the subrecipient to maintain a current registration in the CCR during the period of performance under the subaward; and

iii. Requires the subrecipient, if it makes any obligating action to which paragraph b.1 of this award term applies, to:

A. Report the action to either:

(1) The <http://WWW.USASpending.gov> within 30 days of the date of obligation, providing the information about the action that the system specifies; or

(2) You, if you prefer to have your subrecipient report each obligating action to you, in which case you must report the action to the <http://WWW.USASpending.gov> within 30 days of the subrecipient's obligation; and

B. Ensure that the lower-tier subaward includes a term requiring the lower-tier subrecipient to comply with the requirements in paragraph c of this award term.

2. Obligating actions. For each action that you take to obligate funding under a subaward described in paragraph c.1 of this award term, you must provide the subrecipient with the amount of federal funding that is included in the amount of funding obligated by the action.

d. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR) means the federal repository into which an entity must provide information required for the conduct of business as an award recipient or subrecipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone or the Internet

(currently at <http://www.dunandbradstreet.com>).

3. Entity means all of the following, as defined at 2 CFR part 33, subpart C:

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

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization; and

iv. A domestic or foreign for-profit organization.

4. Subaward:

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

A. You as the recipient awards to an eligible subrecipient; or

B. A subrecipient at one tier awards to a subrecipient at the next lower tier.

ii. The term does not include your 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").

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

5. Subrecipient means an entity that:

i. Receives a subaward from you or from another subrecipient under this award; and

ii. Is accountable to you or the other subrecipient for the use of the federal funds provided by the subaward.

(b) An agency may—

(1) Reserve paragraphs b and c of the award term in paragraph (a) of this section if there is no possibility of a subaward with a total value of \$25,000 or more in federal funds over the life of the subaward; and

(2) Use different letters and numbers to designate the paragraphs of the award term, if necessary, to conform the system of paragraph designations with the one used in other terms and conditions in the agency's awards.

Subpart C—Definitions

§ 33.300 Agency.

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

§ 33.305 Award.

Award means an award of Federal financial assistance subject to the Transparency Act, as defined in § 33.325.

§ 33.310 Central Contractor Registration (CCR).

Central Contractor Registration (CCR) has the meaning given in paragraph d.1 of the award term in § 33.220.

§ 33.315 Data Universal Numbering System (DUNS) Number.

Data Universal Numbering System (DUNS) Number has the meaning given in paragraph d.2 of the award term in § 33.220.

§ 33.320 Entity.

Entity has the meaning given in paragraph d.3 of the award term in § 33.220.

§ 33.325 Federal financial assistance subject to the Transparency Act.

Federal financial assistance subject to the Transparency Act means assistance that non-federal entities described in § 33.105(b) receive or administer in the form of—

- (a) Grants;
- (b) Cooperative agreements;
- (c) Loans;
- (d) Loan guarantees;
- (e) Subsidies;
- (f) Insurance;
- (g) Food commodities;
- (h) Direct appropriations; and
- (i) Other financial assistance

transactions that authorize the non-federal entities' expenditure of federal funds.

§ 33.330 For-profit organization.

For-profit organization means a non-Federal party organized for profit. It includes, but is not limited to:

- (a) An "S corporation" incorporated under Subchapter S of the Internal Revenue Code;
- (b) A corporation incorporated under another authority;
- (c) A partnership;
- (d) A limited liability corporation or partnership; and
- (e) A sole proprietorship.

§ 33.335 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; and
- (d) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

§ 33.340 Indian tribe (or “federally recognized Indian tribe”).

Indian tribe (or “federally recognized Indian tribe”) means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*)) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

§ 33.345 Local government.

Local government means 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 instrumentality of a local government.

§ 33.350 Nonprofit organization.

Nonprofit organization—

- (a) Means any corporation, trust, association, cooperative, or other 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; and
 - (3) Uses net proceeds to maintain, improve, or expand the operations of the organization.
- (b) Includes nonprofit—
 - (1) Institutions of higher education;
 - (2) Hospitals; and
 - (3) Tribal organizations other than those included in the definition of “Indian tribe.”

§ 33.355 State.

State means—

- (a) Any State of the United States;
- (b) The District of Columbia;
- (c) Any agency or instrumentality of a State other than a local government or State-controlled institution of higher education;
- (d) The Commonwealths of Puerto Rico and the Northern Mariana Islands; and
- (e) The United States Virgin Islands, Guam, American Samoa, and a territory or possession of the United States.

§ 33.360 Subaward.

Subaward has the meaning given in paragraph d.4 of the award term in § 33.220.

§ 33.365 Subrecipient.

Subrecipient has the meaning given in paragraph d.5 of the award term in § 33.220.

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