

## § 180.935

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 non-procurement 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 government-wide Debarment and Suspension system under Executive Orders 12549 and 12689.

## § 180.955 Indictment.

*Indictment* means an indictment for a criminal offense. A presentment, infor-

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mation, 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.**

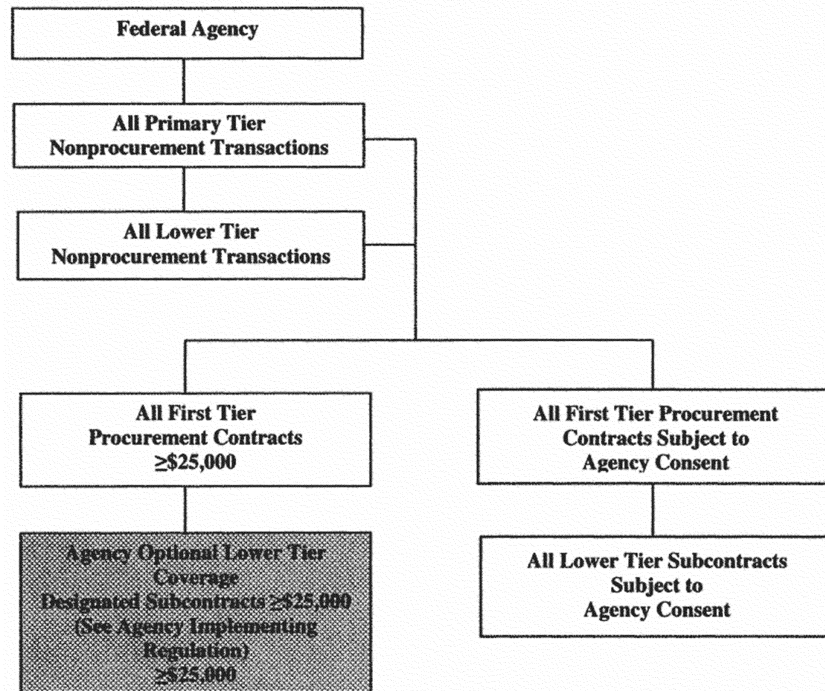
(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have a government-wide effect.

(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)

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## OMB Guidance, Grants and Agreements

## § 182.25

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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 ap-

plies 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:

## § 182.30

(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.

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### 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, dis-

persing, 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 require-

ments. 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