

## OMB Guidance, Grants and Agreements

## § 182.605

(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

**§ 182.610****2 CFR Ch. I (1-1-25 Edition)**

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

**OMB Guidance, Grants and Agreements****§ 183.10**

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 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 Federal agency regulations implementing the OMB guidance on non-procurement debarment and suspension (2 CFR part 180, which implements Ex-

ecutive 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

2 CFR Ch. I (1-1-25 Edition)

### § 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.