

## **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.

## § 400.1

## 2 CFR Ch. IV (1-1-25 Edition)

*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

**Department of Agriculture****§ 415.1**

reported by subrecipients, no later than 5 calendar days following disclosure. 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.

## §415.1

## 2 CFR Ch. IV (1-1-25 Edition)

(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.

tion 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

**Department of Agriculture****§ 415.3**

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

## §415.4

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

## 2 CFR Ch. IV (1-1-25 Edition)

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.