State of New Jersey
NJ Department of Treasury

P.O. Date: 4/30/2024

Division of Administration

Release Purchase Order

G4018 Integrity Oversight Monitoring

Blanket Order Number

21-PROSV-01432:18

SHOW THIS NUMBER ON ALL PACKAGES, INVOICES AND SHIPPING PAPERS.

Agency Ref. #

VENDOR

Vendor Number: [redacted]
CohnReznick LLP

4 Becker Farm Road
ROSELAND , NJ 07068
[redacted]

Vendor Alternate ID: [redacted]

Remit Address:
Tim Bender
4 Becker Farm Road
Roseland, NJ 07068
US

Email: [redacted]
Phone Number: [redacted]

SHIP TO

[redacted]
FEDERAL LIASION
PO BOX 211- 50 W. STATE ST- 8TH FL
TRENTON, NJ 08625
US
Email: [redacted]
Phone: [redacted]

BILL TO

[redacted]
FEDERAL LIASION
PO BOX 211- 50 W. STATE ST- 8TH FL
TRENTON, NJ 08625
US
Email: [redacted]
Phone: [redacted]

INVOICES: Direct invoices in DUPLICATE to the address shown above. TERMS AND CONDITIONS set forth in our Bid or Quotation, on the reverse side hereof or incorporated herein by reference become a part of this

ATTN: [redacted]

Solicitation (Bid) No.:

Payment Terms:
Shipping Terms:
Freight Terms:
Delivery Calendar Day(s) A.R.O.: 0

Item # 1
Class-Item 918-00

Category 3 Integrity Monitoring/Anti-Fraud, Extension Term 04/12/2024 to 04/11/2025 - Hourly Program Manager Rate

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
158.00	$ 275.00	HOUR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 43,450.00

Item # 2
Class-Item 918-00

Category 3 Integrity Monitoring/Anti-Fraud, Extension Term 04/12/2024 to 04/11/2025 - Hourly Project Manager Rate

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
438.00	$ 252.00	HOUR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 110,376.00

Item # 3
Class-Item 918-00

Category 3 Integrity Monitoring/Anti-Fraud, Extension Term 04/12/2024 to 04/11/2025- Hourly Consultant Rate

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
398.00	$ 153.00	HOUR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 60,894.00

Item # 4
Class-Item 918-00

Category 3 Integrity Monitoring/Anti-Fraud, Extension Term 04/12/2024 to 04/11/2025 - Hourly Subject Matter Expert Rate

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
79.00	$ 252.00	HOUR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 19,908.00

Item # 5
Class-Item 918-00

Category 3 Integrity Monitoring/Anti-Fraud, Extension Term 04/12/2024 to 04/11/2025 - Pass Through Price Line for Travel Expenses and Reimbursements

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 10,000.00	PASS THRU	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 10,000.00

TAX:	$ 0.00
FREIGHT:	$ 0.00
TOTAL:	$ 244,628.00

APPROVED
By: [redacted]
Phone#: [redacted]
BUYER

Letter of Engagement

April 25, 2024

Successful Bidder:

On behalf of the Department of Labor, the State of New Jersey, Department of the Treasury hereby issues this Letter of Engagement to CohnReznick, LLP pursuant to the Engagement Query issued on February 26, 2024 and CohnReznick, LLP's proposal dated April 8, 2024.

All terms and conditions of the Engagement Query, including but not limited to the Scope of Work, milestones, timelines, standards, deliverables and liquidated damages are incorporated into this Letter of Engagement and made a part hereof by reference.

The total cost of this Engagement shall not exceed $244,628.00.

The Integrity Monitor is instructed not to proceed until a purchase order is issued.

Thank you for your participation in the Integrity Monitor program.

Sincerely,

Mona Cartwright
IM State Contract Manager

INTEGRITY MONITOR ENGAGEMENT QUERY

Contract G4018 – Integrity Oversight Monitoring Program and Performance Monitoring, Financial Monitoring and Grant Management and Anti-Fraud Monitoring for COVID-19 Recovery Funds and Programs

New Jersey Department of Labor
[Category 3 services per Section 3.1.1 of the IOM RFQ]

I. GENERAL INFORMATION

On March 9, 2020, Governor Murphy issued Executive Order 103 declaring both a Public Health Emergency and State of Emergency in light of the dangers of the Coronavirus disease 2019 ("COVID-19"). On March 13, 2020, the President of the United States declared a national emergency and determined that the COVID-19 pandemic was of sufficient severity and magnitude to warrant a nationwide emergency declaration under Section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 *U.S.C.* 5121-5207, ("Stafford Act") and that declaration was extended to the State of New Jersey on March 25, 2020 pursuant to Section 401 of the Stafford Act. Since then, Congress has enacted legislation to stimulate economic recovery and assist state, local and tribal governments navigate the impact of the COVID-19 outbreak and cover necessary expenditures related to the public health emergency.

On July 17, 2020, Governor Murphy signed Executive Order 166 ("E.O. 166"), which established the COVID-19 Compliance and Oversight Task Force ("Taskforce") and the Governor's Disaster Recovery Office ("GDRO").

Pursuant to E.O. 166, the Taskforce has issued guidelines, which have been updated as of June 2021 and are attached hereto, regarding the appointment and responsibilities of COVID-19 Oversight Integrity Monitors ("Integrity Monitors"). Integrity Monitors are intended to serve as an important part of the State's accountability infrastructure while working with Using Agencies in developing measures to prevent, detect, and remediate inefficiency and malfeasance in the expenditure of COVID-19 Recovery Funds and provide expertise in Program and Process Management Auditing, Financial Auditing and Grant Management, and Integrity Monitoring/Anti-Fraud services.

The New Jersey Department of the Treasury has established a pool of qualified Integrity Monitors for the oversight of COVID-19 Recovery Funds and COVID-19 Recovery Programs. Qualified Integrity Monitors are identified in G4018 Integrity Oversight Monitoring: Program and Performance Monitoring, Financial Monitoring and Grant Management, and Anti-Fraud Monitoring for COVID-19 Recovery Funds and Programs ("IOM RFQ"), posted in the New Jersey Department of the Treasury eProcurement website, NJSTART. Using Agencies shall engage with qualified Integrity Monitors to carry out their responsibilities under E.O. 166. The terms and conditions of the Integrity Monitor's executed State Contract shall apply to the Integrity Monitoring Engagement executed via this Engagement Query.

The capitalized terms in this Engagement Query shall have the same meanings as set forth in the IOM RFQ.

This Engagement Query has been issued by the Department of the Treasury on behalf of the New Jersey Department of Labor (**NJDOL)**.

The purpose of this Engagement Query is for the **NJDOL** to procure the services of an Integrity Monitor ("IM") for **Category 3 services per Section 3.1.1 of the IOM RFQ.**

A. Background

The New Jersey Department of Labor (NJDOL) embarked on a journey in May of 2023 to improve New Jersey residents' overall experience with unemployment insurance. New Jersey's Unemployment Insurance Information Technology Modernization Program (The Program) initiative began a series of efforts which include the improvement of NJDOL's UI online application and related claim status functions, our communication structures, and the underlying technical infrastructure through agile development two separate NJ DCA subawards from the American Rescue Plan Act (ARPA) for 15M and 35M each will be utilized to fund the UI IT Modernization program's activities as indicated in the Governor's budget. The program is expected to run through December 2026 when the respective funding expires. NJDOL does not anticipate having any applicants or subrecipients for these awards. Expenditure data will be available to IM electronically.

The existing mainframe system caused significant challenges for the unprecedented number of UI claimants filing during the COVID-19 pandemic. Significant restructuring and rebuilding will allow staff to process unemployment claims more easily, and workers to apply and track their status more easily. NJDOL will improve the back-end UI systems related to the delivery/payment of benefits and services and/or meeting compliance requirements. Through the UI Modernization initiative, NJDOL will be able to improve the processes and experiences enabling New Jerseyans to understand, navigate, and access programs, benefits, and information that supports them in their ability to obtain meaningful employment to advance their careers.

State and Local Fiscal Recovery Funds (SFRF) Funding will be used to purchase and/or procure software and software licenses, procure professional services and agile software development firm services, and to assist in project development, facilitation, and implementation activities for projects related to increasing public access to, and improving public delivery of, unemployment insurance benefits and its administration provided by the State of New Jersey to state residents and employers, per the US Digital Service Playbook and the US Government Accountability Office's Agile Guide. Admin costs and effort and may be transferred to participating agencies to accomplish the goals of this project. funds may be dedicated to supporting administrative costs of compliance.

In addition to the above fund allocations the Department administers several important state programs that affect the daily lives of our workforce. They include workers' compensation courts, the unemployment insurance program, temporary disability insurance program, family leave insurance program, wage and hour enforcement, and various workforce-training and placement One-Stop Career Centers. The administration of these programs could be adversely affected should power be lost to the 60-year-old,

high rise facility for any extended period. Currently, should power be lost to the facility, the NJDOL facility does not have a standby generator to allow for a continuity of the above business services for the residents of New Jersey. NJDOL plans to allot SFRF funds to assist with procuring the standby generator. Automatic standby generator systems are often required by building codes for critical safety systems such as elevators in high-rise buildings, fire protection systems, standby lighting, or medical and life support equipment. One lesson of the pandemic is that the State must be prepared for possible outages to ensure we can assist our state's workforce in their time of need.

Expenditure data is posted on an internet accessible website that requires login access to be granted. The system is called SYROMS BPM, it is a reporting system with general information regarding expenditure line items. Sampleable data is contained here, substantiating documentation should be available upon request with identification of specific expenditures. Expenditures are posted monthly. Expenditures are primarily consultant fees.

Applicable Federal Guidance are listed below and provided as attachments to this RFP:

- The American Rescue Plan Act of 2021
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Code of Federal Regulation Title 2)
- State of New Jersey Standard Terms and Conditions
- Unemployment Insurance Modernization and Worker Experience Contract – Development & Human-Centered Design services for UI Modernization.
- U.S. Government Accountability Office Agile Assessment Guide
- A Playbook for Improving Unemployment Insurance Delivery

II. SCOPE OF WORK REQUIREMENTS

A. Project Description

- Within 5 business days of the purchase order issued as a result of the Letter of Engagement, the IM and NJDOL shall participate in a *kick-off meeting* to review the deliverables and due dates in Section C below and establish key personnel for communications during the course of the Engagement.

- The IM shall conduct a *Risk Assessment* of the NJDOL's existing controls in place to prevent fraud, waste, or abuse in connection with the COVID-19 Recovery Program that includes, at minimum, a review or assessment of the following items, which will be provided to the IM by a date to be determined during the kickoff meeting:
    - Program policies and procedures
    - NJDOL's organizational structure and capacity
    - NJDOL's internal controls
    - Level of risk associated with the Program.
    - NJDOL's prior audits

- IM will develop procedures, based on federal government standards, for reviewing how to process and review agile software development invoicing and how to estimate and evaluate SPRINT costs. This will be due within 60 days of IM contract Engagement.

- Based on the risk assessment, the IM shall develop and submit a *Work Plan* for monitoring the COVID-19 Recovery Program for fraud, waste, or abuse that includes a review of relevant risk factors detailed in the risk assessment, which shall be specific to the Program being monitored.

  The Work Plan shall include a sampling methodology to achieve a monitoring objective related to both compliance and internal controls. Any sampling used shall follow a nationally recognized audit standard such as the AICPA or GAO Government Auditing Standards, 2018 Revision. Sampling methodologies may include: (1) simple random; (2) statistical; (3) risk-based judgmental; (4) or other methodology appropriate to the Program characteristics. The IM shall document the rationale for the sampling methodology selected. Upon agreement with NJDOL, Work Plan shall include the following types of review:

  - Interview NJDOL or other stakeholders, as necessary.
  - Procurement/expenditure reviews
    - Review expenditures to test for proper documentation, authorization, and approvals.
  - Review NJDOL and/or vendor/consultant payroll expenditures, time sheets, job descriptions, and fringe benefits to ensure proper documentation, eligibility for reimbursement, etc.
  - Review data retention policies and procedures.
  - Fraud monitoring
    - Review program data and/or contracts to identify potential fraud, using data analytics or other methods to identify anomalies, patterns, and discrepancies.
    - Cross-check or validate information against other data sources.
    - Assist in the development of an anti-fraud monitoring, prevention, and detection program.
  - Capital Improvement project monitoring.
    - Ongoing monitoring, including a review of procurements, expenditures, change orders, invoices, punch list items, etc.
    - Review of compliance with New Jersey Prevailing Wage Act, Davis-Bacon Act (as applicable), Small and Minority/Women-owned Business Enterprises, etc.
    - On-site reviews, if necessary and when reasonable
  - Depending on findings because of monitoring under the Work Plan, the IM should evaluate whether onsite monitoring is appropriate based upon any conclusions reached when conducting the risk assessment or as a result of ongoing monitoring. The IM shall document in writing its evaluation and conclusion, including an assessment of the following factors:
    - Significant findings reported in quarterly reports or interim reports.
    - Unresponsiveness to requests for information
    - Non-compliance with federal reporting requirements; and

- Allegations of misuse of funds.

The IM shall implement the Work Plan to provide oversight of the Program until the expiration of this Engagement.

B. Reporting Requirements

1. Quarterly Integrity Monitor Reports

a. Pursuant to E.O. 166, the Integrity Monitor shall submit a draft quarterly report (QR) to the NJDOL on the last day of every calendar quarter detailing the specific services rendered during the quarter and any findings of fraud, waste, or abuse using the Quarterly Report template attached hereto. If the Integrity Monitor report contains findings of noncompliance, fraud, waste, or abuse, the NJDOL has an opportunity to respond within 10 business days after receipt.

b. Fifteen business days after each quarter end, the Integrity Monitor shall deliver its final quarterly report, including any comments from the NJDOL, to the State Treasurer, who shall share the reports with the GDRO, the Senate President, the Speaker of the General Assembly, the Attorney General, and the State Comptroller. The Integrity Monitor quarterly reports will be posted on the COVID-19 transparency website pursuant to E.O. 166.

2. Additional Reports

a. E.O. 166 directs the Office of the State Comptroller (OSC) to oversee the work of Integrity Monitors. Therefore, in accordance with E.O. 166 and the IM Guidelines, OSC may request that the Integrity Monitor issue additional reports or prepare memoranda that will assist OSC in evaluating whether there is fraud, waste, or abuse in COVID-19 Recovery Programs administered by the Using Agencies. OSC may also request that the Integrity Monitor share any corrective action plan(s) prepared by the NJDOL to evaluate whether those corrective plan(s) have been successfully implemented.

b. Integrity Monitor shall submit an internal monthly report (MR) to the NJDOL on the last day of every calendar month detailing the specific services rendered during the month and any findings of fraud, waste, or abuse using the Quarterly Report template attached. The Integrity Monitor shall meet with NJDOL within 10 business days of the submission to discuss any findings of noncompliance, fraud, waste, or abuse. The monthly report shall also include:
    i. Evaluation of effectiveness of fraud prevention activities including assessment of results, recommendations for corrective action, and prioritization of implementation of risk mitigation measures; and

ii. Indications of fraud, waste, or abuse should be immediately addressed by the NJDOL with recommendations for risk mitigation.

c. With the submission of a payment invoice (on a monthly basis), the IM shall provide a written report including, at a minimum hour billed for each consultant corresponding to the components of the Work Plan.

d. At the completion of the Engagement, the IM shall submit a Project Completion Report, including at a minimum, scope of Engagement and methodology, documentation of work performed, summary of findings, and recommendations to mitigate the risk of fraud, waste, and abuse in the Program or future Programs.

3. Reports of Fraud, Waste, Abuse, or Potential Criminal Conduct

a. The Integrity Monitor shall report issues of fraud, waste, abuse, and misuse of COVID-19 Recovery Funds immediately to the GDRO, OSC, the State Treasurer, the State Contract Manager, and the Accountability Officer. The Integrity Monitor shall report issues of potential criminal conduct immediately to the Office of the Attorney General.

C. Specific Performance Milestones/Timelines/Standards/Deliverables
All deliverables must be completed by the dates indicated below.

Deliverables	Date due
Kick-off meeting with NJDOL staff and successful IM	Within 5 business days of the purchase order issued
Risk Assessment	Within 45 business days of the purchase order issued
Work Plan	Within 45 business days of the purchase order issued
Interim Reports/Periodic Meetings	10 business days after each draft report delivered
Draft Quarterly Report(s)	Last day of each quarter
Final Quarterly Report(s)	15 business days after the end of each quarter
Monthly Report	Last day of each month
Project Completion Report	At the termination of the Engagement

III. Proposal Content

A. At minimum, the Integrity Monitor's proposal shall include the following:

- A description of how the Integrity Monitor intends to accomplish each component of the scope of work in Section II above, including a timeline for submission of the deliverables required by this Engagement Query.
- Identification of monitoring and audit experience relevant to government digital benefit delivery, unemployment insurance modernization programs and systems, and ARPA fraud monitoring. Strong preference will be given to proposers with direct experience monitoring human-centered agile software development contracts.

- A detailed budget identifying staff classifications and hourly rates shall be submitted with the response to this Engagement Query using the price sheet attached. The hourly rates shall not exceed the rates identified in the in the Integrity Monitor's Blanket P.O./Contract as posted in NJSTART. If an Integrity Monitor submits pricing over the Blanket P.O./Contract hourly rates posted in NJSTART, the response shall be rejected as the Integrity Monitor shall not be eligible for an award of this Engagement Query only.

- Identification of any potential conflicts of interest regarding the delivery of services for the scope of work under this Engagement Query.

B. The Integrity Monitor's proposal should also include the following:

- A list of existing Engagements under G4018 with other State agencies, along with the commencement and expiration dates of the Engagement. Please provide the information on Attachment 4: G4018 Integrity Monitoring Engagements Form. If the Form is not included with the proposal, the NJDOL, in its sole discretion, may request the Form from the Integrity Monitor.

IV. Submission of Proposals

Detailed proposals in response to this Engagement Query shall be submitted electronically by 3:00 p.m. on **April 8th, 2024.** Proposals must be submitted via email as set forth below:

TO: State Contract Manager
Mona Cartwright, Fiscal Manager, Department of the Treasury
TreasuryIM@treas.nj.gov

With a copy to the Agency Contract Manager: [redacted]

V. Duration of the Engagement

The Engagement will commence upon the issuance of a Letter of Engagement and expire on December 31, 2024.

At the option of the NJDOL, this Letter of Engagement may be extended. Any extension to this Letter of Engagement, however, may not exceed the Contract Term, and any extensions thereto, as set forth in the IOM RFQ.

VI. Contract Termination

The IOM's failure to comply with the requirements of the Engagement, including but not limited to E.O. 166, the IOM RFQ, the IM Guidelines, and this Engagement Query may constitute a breach of contract and may result in termination of the contract by the NJDOL or imposition of such other remedy as the NJDOL deems appropriate in accordance with Section 9.0 of the IOM RFQ.

VII. Liquidated Damages

At the NJDOL's discretion, liquidated damages may be assessed each time any of the below events occur, due to an act or omission of the IM. The NJDOL and the IM agree that it would be extremely difficult to determine actual damages that the NJDOL will sustain as the result of the IM's failure to meet its contractual requirements. Any breach by the IM could prevent the NJDOL from complying with E.O. 166, the IOM Guidelines, and laws applicable to the use and expenditure of COVID-19 Recovery Funds and other public funds will adversely impact the NJDOL's ability to ensure identification and mitigation of risks and may lead to damages suffered by the NJDOL and the State as a whole. If the IM fails to meet its contractual obligations, the NJDOL may assess liquidated damages against the IM as follows:

Failure to deliver a Risk Assessments within fifteen (15) days of the due date in Section II, A	$500/day
Failure to deliver a quarterly report by established due dates (listed in B Reporting Requirements)	$500/day
Failure to deliver a monthly report or a draft quarterly report by established due dates (listed in B Reporting Requirements)	$100/day

VIII. Questions regarding this Engagement Query

Any questions related to the Engagement Query, such as questions related to the Program or accessibility and format of data, must be submitted electronically by 3:00 p.m. on **March 14th, 2024**. They must be submitted via email to [redacted] with a copy to the State Contract Manager, Mona Cartwright at TreasuryIM@treas.nj.gov.

IX. Selection Process

The NJDOL Contract Manager will review the proposal(s) received and select the Integrity Monitor whose proposal is most advantageous, price and other factors considered including:

- The qualifications and experience of the personnel assigned to this Engagement
- The experience of the IM in Engagements of a similar size and scope
- The ability of the IM to complete the scope of work based on the proposed personnel/staff classifications and hours allocated to tasks in its proposal.

The State Contract Manager will then issue a Letter of Engagement with a "not to exceed" clause to the selected proposer.

The NJDOL may request a Best and Final Offer from Integrity Monitors that responded to the Engagement Query.

Prior to issuing a Letter of Engagement, the Agency Contract Manager in consultation with the Accountability Officer, will independently determine whether the proposed Integrity Monitor has any potential conflicts with the Engagement.

ATTACHMENTS

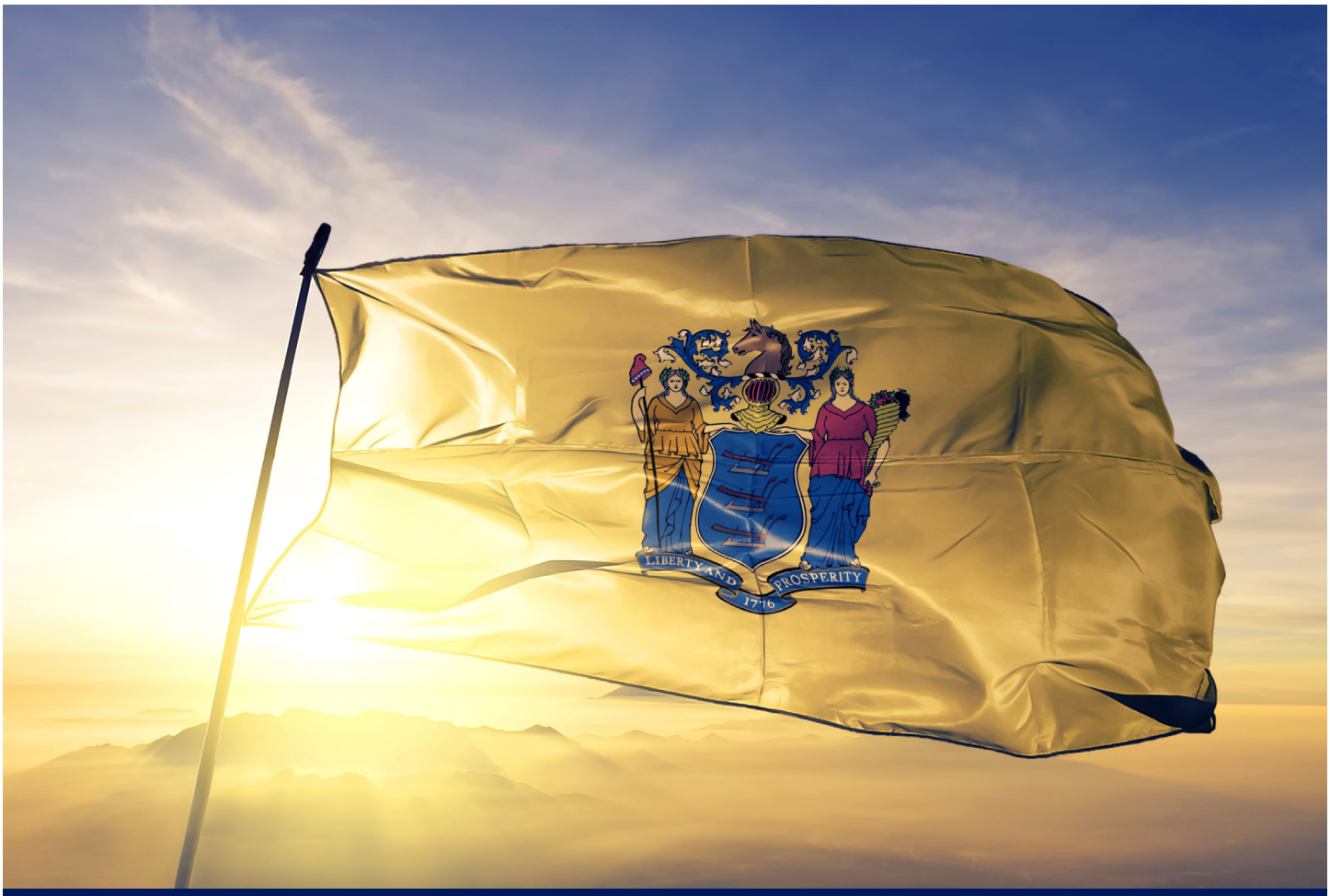
Attachment 1: Integrity Oversight Monitor Guidelines, updated as of June 2021
Attachment 2: Quarterly Report Template – Category 3
Attachment 3: EQ Price Sheet
Attachment 4: G4018 Integrity Monitoring Engagements Form
Attachment 5: A Playbook for Improving Unemployment Insurance Delivery
Attachment 6: Agile Assessment Guide – Best Practices for Agile Adoption
Attachment 7: American Rescue Plan Act of 2021
Attachment 8: Code of Federal Regulations Title 2
Attachment 9: State of New Jersey Terms & Conditions
Attachment 10: UI_WE RFQ – Agile Dev

Notice of Executive Order 166 Requirement for Posting of Winning Proposal
and Contract Documents

Pursuant to Executive Order No. 166, signed by Governor Murphy on July 17, 2020, the Office of the State Comptroller ("OSC") is required to make all approved state contracts for the allocation and expenditure of COVID-19 Recovery Funds available to the public by posting such contracts on an appropriate state website. Such contracts will be posted on the New Jersey transparency website developed by the Governor's Disaster Recovery Office ("GDRO Transparency Website").
The Letter of Engagement resulting from this Engagement Query is subject to the requirements of Executive Order No. 166. Accordingly, OSC will post a copy of the Letter of Engagement, including the Engagement Query, the winning proposer's proposal, and other related contract documents for the above contract on the GDRO Transparency website.

In submitting its proposal, a proposer may designate specific information as not subject to disclosure. However, such proposer must have a good faith legal or factual basis to assert that such designated portions of its proposal: (i) are proprietary and confidential financial or commercial information or trade secrets; or (ii) must not be disclosed to protect the personal privacy of an identified individual. The location in the proposal of any such designation should be clearly stated in a cover letter and a redacted copy of the proposal should be provided. A Proposer's failure to designate such information as confidential in submitting a proposal shall result in waiver of such claim.

The State reserves the right to make the determination regarding what is proprietary or confidential and will advise the winning proposer accordingly. The State will not honor any attempt by a winning proposer to designate its entire proposal as proprietary or confidential and will not honor a claim of copyright protection for an entire proposal. In the event of any challenge to the winning proposer's assertion of confidentiality with which the State does not concur, the Proposer shall be solely responsible for defending its designation.



Integrity Oversight Monitor Guidelines

2021 Update

State of New Jersey COVID-19 Compliance and Oversight Taskforce

Table of Contents

Introduction

On July 17, 2020, Governor Murphy signed Executive Order 166 ("EO 166"), which, among other things, established the COVID-19 Compliance and Oversight Task Force (the "Taskforce"). The purpose of the Taskforce is to advise State departments, agencies, and independent authorities that receive or administer COVID-19 recovery funds ("Recovery Program Participants") regarding compliance with federal and State law and how to mitigate the risks of waste, fraud, and abuse. As defined in EO 166, "COVID-19 Recovery Funds" are funds awarded to state and local governments, and non-government sources to support New Jersey's residents, businesses, non-profit organizations, government agencies, and other entities responding to or recovering from the COVID-19 pandemic.

Pursuant to EO 166, the Taskforce is responsible for issuing guidelines regarding the appointment and responsibilities of COVID-19 Oversight Integrity Monitors ("Integrity Monitors"). Recovery Program Participants may retain and appoint Integrity Monitors to oversee the disbursement of COVID-19 Recovery Funds and the administration of a COVID-19 Recovery Program. They are intended to serve as an important part of the state's accountability infrastructure while working with Recovery Program Participants in developing measures to prevent, detect, and remediate inefficiency and malfeasance in the expenditure of COVID-19 Recovery Funds. Integrity Monitors may also be used, either proactively or in response to findings by an Integrity Monitor, as subject matter experts or consultants to assist Recovery Program Participants with program administration, grants management, reporting, and compliance, as approved by the Governor's Disaster Recovery Office (GDRO).

EO 166 requires Recovery Program Participants to identify a central point of contact (an "Accountability Officer") for tracking COVID-19 funds within each agency or authority. The Accountability Officer is responsible for working with and serving as a direct point of contact for the GDRO and the Taskforce. Accountability Officers should also ensure appropriate reviews are performed to assess risks and evaluate whether an Integrity Monitor can assist in reducing or eliminating risk to ensure the public that state and federal funds were used efficiently, fairly, and prudently.

Recovery Program Participants and Integrity Monitors should be focused on the common goal of maximizing the value of COVID-19 Recovery Funding by ensuring that every dollar is spent efficiently and properly. Integrity Monitors can add value to a program by assisting in implementing the fiscal controls necessary to maintain proper documentation, flagging potential issues in real time, maximizing reimbursements, sharing information with and responding to inquiries from the GDRO and Office of State Comptroller (OSC), and reporting to those offices, the Treasurer, the Attorney General, and legislative leadership.

Recovery Program Participants, Accountability Officers, and Integrity Monitors should work together to fulfill the goals of EO 166 and these guidelines. The retention of Integrity Monitors will support monitoring and oversight that will ensure that Recovery Program Participants administer COVID-19 recovery funds in compliance with program, financial, and administrative requirements set forth in the federal-state grant agreement, the State Recovery Program Participant sub-grant agreement, and applicable federal and state laws, regulations, and guidelines. Additionally, these guidelines will assist the State in fulfilling its monitoring responsibilities as set forth in 2 CFR 200 Subpart D. This may involve routine desk reviews and, when appropriate, on-site reviews by an Integrity Monitor. Recovery Program Participants that do not retain an Integrity Monitor will comply with these requirements, in coordination with the GDRO, as addressed in the Compliance Plan adopted by the Taskforce.

Establishing the Pool of Integrity Monitors

As of the issuance of this version of the Integrity Oversight Monitor Guidelines, a pool of monitors has already been established. The following provisions in this section should be used in the event it is necessary to establish additional pools of Integrity Monitors.[1]

In the event it is necessary to establish another pool of Integrity Monitors, the New Jersey Department of the Treasury, Division of Administration (Treasury) will be responsible for designating a department employee to act as the State Contract Manager for purposes of administering the overarching state contract for Integrity Monitoring Services. The State Contract Manager will establish one pool of qualified integrity monitors for engagement by eligible Recovery Program Participants. Treasury will issue a bid solicitation for technical and price quotations from interested qualified firms that can provide the following services:

- Category 1: Program and Process Management Auditing;
- Category 2: Financial Auditing and Grant Management; and
- Category 3: Integrity Monitoring/Anti-Fraud.

The specific services Integrity Monitors provide vary and will depend on the nature of the programs administered by the Recovery Program Participant and the amount of COVID-19 Recovery Funding received. The pool of Integrity Monitors should include professionals available to perform services in one or more of the following categories:

Category 1: Program and Process Management Auditing	Category 2: Financial Auditing and Grant Management	Category 3: Integrity Monitoring / Anti-Fraud
Development of processes, controls and technologies to support the execution of programs funded with COVID-19 Recovery Funds.	Plan, implement, administer, coordinate, monitor and evaluate the specific activities of all assigned financial and administrative functions. Develop and modify policies/procedures/systems in accordance with organizational needs and objectives, as well as applicable government regulations.	Forensic accounting and other specialty accounting services.

1. Agencies and authorities that are not permitted to follow all state procurement requirements due to U.S. Department of Transportation procurement policies may procure an Integrity Monitor separately in coordination with GDRO.

Review and improvement of procedures addressing financial management.	Provide technical knowledge and expertise to review and make recommendations to streamline grant management and fiscal management processes to ensure accountability of funds and compliance with program regulations.	Continuing risk assessments and loss prevention strategies.
Workload analysis; skills gap analysis, organizational effectiveness and workforce recruiting strategies.	Monitoring all grant management, accounting, budget management, and other business office functions regularly.	Performance and program monitoring and promotion of best practices.
Consulting services to support account reconciliations.	Provide and/or identify training for staff in the area of detection and prevention of waste, fraud, and abuse.	Prevention, detection and investigation of fraud and misconduct.
Quality assurance reviews and assessments associated with the payments process to ensure compliance with federal and state regulations.	Ensuring compliance with all applicable federal and state accounting and financial reporting requirements.	Implement and manage appropriate compliance systems and controls, as required by federal and state guidelines, regulations and law.
Risk analysis and identification of options for risk management for the federal and state grant payment process.	Provide tools to be used by the Recovery Program Participant for the assessment of the performance of the financial transaction process.	Provide data management systems/programs for the purpose of collecting, conducting and reporting required compliance and anti-fraud analytics.
Consulting services to reduce the reconciliation backlog for the Request for Reimbursments process.		Ability to provide integrity monitoring services for professional specialties such as engineering and structural integrity services, etc. either directly or through a subcontractor relationship.
Consulting services providing Subject Matter Expert (SME) knowledge of required standards for related monitoring and financial standards for federal funding.		

Conditions for Integrity Monitors

A Recovery Program Participant should evaluate whether it should retain an Integrity Monitor using the following standards.

Category 1 & 2 Integrity Monitors:

Category 1 and 2 Integrity Monitors are available to assist Recovery Program Participants, if, in consultation with GDRO, it has been determined that an agency or authority needs assistance in the establishment, administration, or monitoring of a program or when a Category 3 Integrity Monitor has issued findings that require the agency or authority to take corrective actions. In making the determination whether to obtain a Category 1 or 2 Integrity Monitor, a Recovery Program Participant's Accountability Officer, in consultation with GDRO, should evaluate whether an Integrity Monitor from Category 1 or 2 is necessary based on operational needs or to reduce or eliminate risk in view of the agency's or authority's existing resources, staffing, expertise or capacity. Agencies and authorities should evaluate whether the retention of a Category 1 or 2 Integrity Monitor would assist in addressing findings made by Category 3 Integrity Monitors. The availability of federal funds should be considered in evaluating whether to retain an Integrity Monitor from Category 1 or 2. In an appropriate circumstance, a Recovery Program Participant may request or may be directed by the GDRO to retain a Category 1 or 2 Integrity Monitor using non-federal funds.

Category 3 Integrity Monitors:

For Recovery Program Participants that have received or will administer a total of $20 million or more in COVID-19 Recovery Funds: A Recovery Program Participant that has received this amount of funding should retain at least one Integrity Monitor from Category 3: Integrity Monitoring/Anti-Fraud, subject to federal funding being available. The retention of Category 1 and 2 Integrity Monitors does not eliminate the obligation to retain a Category 3 Integrity Monitor. In some circumstances, multiple Category 3 Integrity Monitors may be necessary if one monitor is not adequate to oversee multiple programs being implemented by Recovery Program Participant as determined in consultation with the GDRO. In an appropriate circumstance, a Recovery Program Participant may request or may be directed by the GDRO to retain an Integrity Monitor using non-federal funds.

For Recovery Program Participants that have received or will administer a total of up to $20 million in COVID-19 Recovery Funds: A Recovery Program Participant that has received this amount of funding should evaluate in consultation with GDRO whether a Category 3 Integrity Monitor is needed based on the risks presented. The Recovery Program Participant's Accountability Officer should conduct a risk assessment taking into account both the likelihood and severity of risk in the participant's program(s) and consult with the GDRO regarding whether an Integrity Monitor from Category 3 is necessary to reduce or eliminate risk in view of the agency's or authority's existing resources, staffing, expertise or capacity. The availability of federal funds should be considered in evaluating whether to retain an Integrity Monitor. In an appropriate circumstance, a Recovery Program Participant may request or may be directed by the GDRO to retain an Integrity Monitor from Category 3 using non-federal funds.

Risk Assessment

As noted above, in certain circumstances, Recovery Program Participants seeking to retain an Integrity Monitor will be advised to conduct a risk assessment to determine the need for such services. A Recovery Program Participant's Accountability Officer, in consultation with the GDRO, should assess the risk to public funds, the availability of federal funds to pay for the Integrity Monitor, the entity's current operations, and whether internal controls alone are adequate to mitigate or eliminate risk.

An Accountability Officer, or an Integrity Monitor retained by a Recovery Program Participant, should conduct an initial review of the Recovery Program Participant's programs, procedures and processes, and assess the organizational risk and the entity's risk tolerance. The risk assessment should include a review of the agency's ability to comply with federal statutory and regulatory requirements as well as applicable state laws and regulations, including with regard to reporting, monitoring, and oversight, and a review of the agency's susceptibility to waste, fraud, and abuse.

An Accountability Officer conducting a risk assessment should complete and memorialize the assessment using the **matrix template you can download from OSC's website**. The risk assessment should be shared with the GDRO and OSC. Some of the specific factors an Accountability Officer should consider when assessing risk include:

- Organizational leadership, capacity, expertise, and experience managing and accounting for federal grant funds in general, and disaster recovery funds in particular;
- Input from the individuals/units that will be disbursing funds or administering the program;
- Review of existing internal controls and any identified weaknesses;
- Prior audits and audit findings from state or federal oversight entities;
- Lessons learned from prior disasters;
- Sub-recipient internal control weaknesses, if applicable;
- Adequacy of financial, acquisition, and grants management policies and procedures, including technological capacity and potentially outdated financial management systems;
- Ability to complete timely, accurate and complete reporting;
- Experience with state and federal procurement processes, value of anticipated procurements, and reliance on contractors to meet program goals and objectives;
- Potential conflicts of interests and ethics compliance;
- Amount of funds being disbursed to a particular category of sub-recipient and the complexity of its project(s); and
- Whether federal or state guidelines provide guidance regarding the uses of funds (*i.e.*, discretionary vs. restrictive).

The Accountability Officer should determine the organization's risk tolerance as to all recovery programs jointly and as to individual programs, recognizing that Integrity Monitors may be appropriate for some programs and not others within an agency or authority. If the risk exceeds an acceptable level of risk tolerance, the Accountability Officer should engage an Integrity Monitor.

An important element in the risk assessments is documentation of the process and results. This is critical to ensuring the extent of monitoring and oversight. The overall level of risk should dictate the frequency and depth of monitoring practices, including how to mitigate identified risks by, for example, providing training and technical assistance or increasing the frequency of on-site reviews. In some cases, monitoring efforts may lead an Accountability Officer or the GDRO to impose additional special conditions on the Recovery Program Participant. Depending on the kind of work the sub-recipient performs, it may be appropriate to reevaluate frequently, including quarterly, to account for changes in the organization or the nature of its activities. See 2 CFR Section 200.207 in the uniform guidance for examples; **GAO Report: A Framework for Managing Fraud Risk in Federal Programs (2015).**

Procedures for Requesting and Procuring an Integrity Monitor

To retain an Integrity Monitor, a Recovery Program Participant should proceed as follows:

- A Recovery Program Participant shall designate an agency employee to act as the contract manager for an Integrity Monitor engagement (Agency Contract Manager), which may be the Accountability Officer. The Agency Contract Manager should notify the State Contract Manager, on a form prescribed by Treasury, along with any required supporting documentation, of its request for an Integrity Monitor. The Agency Contract Manager should indicate which Integrity Monitoring services are required.

- The Agency Contract Manager will develop an Engagement Query.

- The Engagement Query will include a detailed scope of work; it should include specific performance milestones, timelines, and standards and deliverables.

- The Agency Contract Manager, in consultation with the Office of the Attorney General, Division of Law, will structure a liquidated damages provision for the failure to meet any required milestones, timelines, or standards or deliverables, as appropriate.

- The Agency Contract Manager will submit its Engagement Query to the State Contract Manager. Upon approval by the State Contract Manager, but prior to the solicitation of any services, the Engagement Query shall be sent to OSC for approval pursuant to EO 166. After receiving approval from OSC, the State Contract Manager will send the Engagement Query to all eligible Integrity Monitors within the pool in order to provide a level playing field.

- Interested, eligible Integrity Monitors will respond to the Engagement Query within the timeframe designated by the State Contract Manager, with a detailed proposal that includes a detailed budget, timelines, and plan to perform the scope of work and other requirements of the Engagement Query. Integrity Monitors shall also identify any potential conflicts of interest.

- The State Contract Manager will forward to the Agency Contract Manager all proposals received in response to the Engagement Query. The Agency Contract Manager will review the proposals and select the Integrity Monitor whose proposal represents the best value, price and other factors considered. The Agency Contract Manager will memorialize in writing the justification for selecting an Integrity Monitor(s).

- Prior to finalizing any engagement under this contract, the Agency Contract Manager, in consultation with the Accountability Officer, will independently determine whether the intended Integrity Monitor has any potential conflicts with the engagement.

- The State Contract Manager, on behalf of the Recovery Program Participant, will then issue a Letter of Engagement with a "Not to Exceed" clause to the engaged Integrity Monitor and work with the Agency Contract Manager to begin the issuance of Task Orders.

Integrity Monitor Requirements

A. Independence

The process by which Integrity Monitors are retained and the manner in which they perform their tasks in accordance with these guidelines are intended to provide independence as they monitor and report on the disbursement of COVID-19 Recovery Funds and the administration of a COVID-19 Recovery Program by a Recovery Program Participant. Although the Integrity Monitor and the Recovery Program Participant should share common goals, the Integrity Monitor should function as an independent party and should conduct its review as an outside auditor/reviewer would.

An Integrity Monitor for a particular Recovery Program Participant should have no individual or company affiliation with the agency or authority that would prevent it from performing its oversight as an independent third party. Integrity Monitors and Recovery Program Participants must be mindful of applicable conflicts of interest laws, including but not limited to, N.J.S.A. 52:13D-12 to -28, Executive Order 189 (Kean, 1988) and requirements set forth in the Uniform Grant Guidance, among others. To promote independence, an Integrity Monitor hired from Categories 1 or 2 may not also be engaged as a Category 3 Integrity Monitor to review the same programs for the same Recovery Program Participant. Likewise, a Category 3 Integrity may not be hired as a Category 1 or 2 Monitor to remediate any issues it identified as a Category 3 Integrity Monitor.

B. Communication

Integrity Monitors should maintain open and frequent communication with the Recovery Program Participant that has retained its services. The purpose of communicating in this manner is to make the Recovery Program Participant aware of issues that can be addressed during the administration of a program and prior to future disbursement of funds by the Participant. Therefore, Integrity Monitors should not wait until reports are issued to notify an Accountability Officer of deficiencies. This will enable the Recovery Program Participant to take action to correct any deficiencies before additional funds are expended. Substantial deficiencies should also be reported in real time to the GDRO, the State Comptroller, and the State Treasurer.

Prior to the posting of an Integrity Monitor report that contains findings of waste, fraud, or abuse, the Recovery Program Participant should be permitted to respond to the findings and have that response included in the publicly posted report. This will allow the Recovery Program Participant to highlight any course corrections as a result of the finding or to contest any finding that it feels is inappropriate. A Recovery Program Participant's response is due within 15 business days after receipt of an Integrity Monitor report.

Integrity Monitors must respond promptly to any inquiries posed by the GDRO, State Comptroller, State Treasurer, and Agency Contract Manager pursuant to EO 166.

C. General Tasks of Integrity Monitors

The tasks of an Integrity Monitor may vary based on the agency/program the Monitor is overseeing and the category of Integrity Monitor engaged. Generally, the role of a Category 1 Integrity Monitor is focused on program and process management auditing. These Integrity Monitors may assist a Recovery Program Participant in developing processes or controls to support the execution of programs, conduct risk analyses, or provide consulting or subject matter expertise to Recovery Program Participants. In general, a Category 2 Integrity Monitor's role is to provide financial auditing or grants management functions for a Recovery Program Participant. A Category 3 Integrity Monitor's primary roles are to monitor for fraud or misuse of funding, and ensure that Recovery Program Participants are performing according to the sub-award agreement and applicable federal and State regulations and guidelines. Tasks to be performed by Integrity

Monitors may include the following:

- Perform initial and ongoing risk assessments;
- Evaluate project performance;
- Evaluate internal controls associated with the Recovery Program Participant's financial management, cash management, acquisition management, property management, and records management capabilities;
- Validate compliance with sub-grant award and general term and special conditions;
- Review written documents, such as quarterly financial and performance reports, recent audit results, documented communications with the State, prior monitoring reports, pertinent performance data, and other documents or reports, as appropriate;
- Conduct interviews of Recovery Program Participant staff, as well as the constituents they serve, to determine whether program objectives are being met in an efficient, effective, and economical manner;
- Sample eligibility determinations and denials of applications for funding;
- Review specific files to become familiar with the progression of the disbursement of funds in a particular program, i.e., are actual expenditures consistent with planned expenditure and is the full scope of services listed in the project work plan being accomplished at the same rate of actual and planned expenditures;
- Ensure that the agency is retaining appropriate documentation, based on federal and state regulations and guidance, to support fund disbursement;
- Follow up with questions regarding specific funding decisions, and review decisions related to emergency situations;
- Facilitate the exchange of ideas and promote operational efficiency;
- Identify present and future needs; and
- Promote cooperation and communication among Integrity Monitors engaged by other Recovery Program Participants (e.g., to guard against duplication of benefits).

Integrity Monitors should generally perform desk reviews to evaluate the need for on-site visits or monitoring. Depending on the results of the desk review, coupled with the conclusions reached during any risk assessments that may have been conducted of the sub-recipient's capabilities, the Monitor should evaluate whether an on-site monitoring visit is appropriate. If the Monitor is satisfied that essential project goals, objectives, timelines, budgets, and other related program and financial criteria are being met, then the Monitor should document the steps taken to reach this conclusion and dispense with an on-site monitoring visit. However, the Integrity Monitor may choose to perform on-site monitoring visits as a result of any of the following:

- Non-compliance with reporting requirements;
- Problems identified in quarterly progress or financial reports;
- History of unsatisfactory performance;
- Unresponsiveness to requests for information;
- High-risk designation;
- Follow-up on prior audits or monitoring find-

ings; and

- Allegations of misuse of funds or receipt of complaints.

D. Reporting Requirements

1. Reports

Pursuant to EO 166, Integrity Monitors shall submit draft quarterly reports to the Recovery Program Participant on the last day of the quarter detailing the specific services rendered during that quarter and any findings of waste, fraud, or abuse **in accordance with the report templates found on OSC's website.**

Prior to the posting of a quarterly report that contains findings of waste, fraud, or abuse, the Recovery Program Participant should be permitted to respond to the findings and have that response included in the publicly posted report. This will allow the Recovery Program Participant to highlight any course corrections as a result of the finding or to contest any finding that it contends is inappropriate. A Recovery Program Participant's response is due within 15 business days after receipt of a quarterly report.

Fifteen business days after quarter-end, Integrity Monitors will deliver their final quarterly reports, inclusive of any comments from the Recovery Program Participant, to the State Treasurer, who shall share the reports with the GDRO, the Senate President, the Speaker of the General Assembly, the Attorney General, and the State Comptroller. The Integrity Monitor quarterly reports will be posted on the GDRO transparency website pursuant to the Executive Order.

The specific areas covered by a quarterly report will vary based on the type of Integrity Monitor engaged, the program being reviewed, the manner and use of the funds, procurement of goods and services, type of disbursements to be issued, and specific COVID-19 Recovery Fund requirements. The topics covered by the quarterly report should include the information included in **templates which you can download from OSC's website.**

2. Additional Reports

EO 166 directs OSC to oversee the work of Integrity Monitors and to submit inquiries to them to which Integrity Monitors must reply promptly. OSC may request Integrity Monitors to issue reports or prepare memoranda that will assist OSC in evaluating whether there is waste, fraud, or abuse in recovery programs administered by Recovery Plan Participants.

The State Comptroller may also request that Integrity Monitors or Recovery Program Participants share corrective action plans prepared by Recovery Plan Participants to address reported deficiencies and to evaluate whether those corrective plans have been successfully implemented.

GDRO and the State Treasurer may also request reports from Integrity Monitors to which Integrity Monitors must reply promptly.

3. Reports of Waste, Fraud, Abuse or Potential Criminal Conduct

Integrity Monitors must immediately report substantial issues of waste, fraud, abuse, and misuse of COVID-19 Recovery Funds simultaneously to the GDRO, OSC, State Treasurer, and the Agency Contract Manager and Accountability Officer of a Recovery Program Participant.

Integrity Monitors must immediately report potential criminal conduct to the Office of the Attorney General.

Integrity Monitor Management and Oversight

Agency Contract Managers have a duty to ensure that Integrity Monitors perform the necessary work, and do so while remaining on task, and on budget. Agency Contract Managers shall adhere to the requirements of Treasury Circular 14-08-DPP in their management and administration of the contract. The Agency Contract Manager will be responsible for monitoring contract deliverables and performing the contract management tasks identified in the circular, which include but are not limited to:

- Developing a budget and a plan to manage the contract. In developing a budget, the Agency Contract Manager should consider any caps on the amount of federal funding that can be used for oversight and administrative expenses and ensure that the total costs for Integrity Monitoring services are reasonable in relation to the total amount of program funds being administered by the Recovery Program Participant;
- Daily management of the contract, including monitoring and administering the contract for the Recovery Program Participant;
- Communicating with the Integrity Monitor and responding to requests for meetings, information or documents on a timely basis;
- Resolving issues with the Integrity Monitor in accordance with contract terms;
- Ensuring that all tasks, services, products, quality of deliverables and timeliness of services and deliverables are satisfied within contract requirements;
- Reviewing Integrity Monitor billing and ensuring that Integrity Monitors are paid only for services rendered;
- Attempting to recover any and all over-billings from the Integrity Monitor; and
- Coordinating with the State Contract Manager regarding any scope changes, compensation changes, the imposition of liquidated damages, or use of formal dispute processes.

In addition to these oversight and administration functions, the Agency Contract Manager must ensure open communication with the Accountability Officer, the Recovery Program Participant leadership, the GDRO, and OSC. The Agency Contract Manager should respond to inquiries and requests for documents from the GDRO and OSC as requested.

State of New Jersey, COVID-19 Compliance and Oversight Taskforce

Integrity Monitor Report
Category 3

Integrity Monitor Firm Name: [Type Here]
Quarter Ending: [MM/DD/YYYY]
Expected Engagement End Date: [MM/DD/YYYY]

A. General Info

1. Recovery Program Participant:

   [Type Here]

2. Federal Funding Source (e.g. CARES, HUD, FEMA, ARPA):

   [Type Here]

3. State Funding Source (if applicable):

   [Type Here]

4. Deadline for Use of State or Federal Funding by Recovery Program Participant:

   [Type Here]

5. Accountability Officer:

   [Type Here]

6. Program(s) under Review/Subject to Engagement:

   [Type Here]

7. Brief Description, Purpose, and Rationale of Integrity Monitor Project/Program:

   [Type Here]

8. Amount Allocated to Program(s) under Review:

   [Type Here]

9. Amount Expended by Recovery Program Participant to Date on Program(s) under Review:

[Type Here]

10. Amount Provided to Other State or Local Entities:

    [Type Here]

11. Completion Status of Program (e.g. planning phase, application review, post-payment):

    [Type Here]

12. Completion Status of Integrity Monitor Engagement:

    [Type Here]

B. Monitoring Activities

13. If FEMA funded, brief description of the status of the project worksheet and its support:

    a) IM Response

       [Type Here]

    b) Recovery Program Participant Comments

       [Type Here]

14. Description of the services provided to the Recovery Program Participant during the quarter (i.e. activities conducted, such as meetings, document review, staff training, etc.):

    a) IM Response

       [Type Here]

    b) Recovery Program Participant Comments

       [Type Here]

15. Description to confirm appropriate data/information has been provided by the Recovery Program Participant and description of activities taken to review the project/program:

    a) IM Response

        [Type Here]

    b) Recovery Program Participant Comments

        [Type Here]

16. Description of quarterly auditing activities conducted to ensure procurement compliance with terms and conditions of contracts and agreements:

    a) IM Response

        [Type Here]

    b) Recovery Program Participant Comments

        [Type Here]

17. If payment documentation in connection with the contract/program has been reviewed, provide description.

    a) IM Response

        [Type Here]

    b) Recovery Program Participant Comments

        [Type Here]

18. Description of quarterly activity to prevent and detect waste, fraud, and/or abuse:

    a) IM Response

        [Type Here]

    b) Recovery Program Participant Comments

[Type Here]

19. Details of any integrity issues/findings, including findings of waste, fraud, and/or abuse:

    a) IM Response

    [Type Here]

    b) Recovery Program Participant Comments

    [Type Here]

20. Details of any other items of note that have occurred in the past quarter:

    a) IM Response

    [Type Here]

    b) Recovery Program Participant Comments

    [Type Here]

21. Details of any actions taken to remediate waste, fraud, and/or abuse noted in past quarters:

    a) IM Response

    [Type Here]

    b) Recovery Program Participant Comments

    [Type Here]

C. Miscellaneous

22. List of hours (by employee) and expenses incurred to perform quarterly integrity monitoring review:

    a) IM Response

[Type Here]

b) Recovery Program Participant Comments

[Type Here]

23. Add any item, issue, or comment not covered in previous sections but deemed pertinent to monitoring program:

a) IM Response

[Type Here]

b) Recovery Program Participant Comments

[Type Here]

Name of Integrity Monitor:	[Type Here]
Name of Report Preparer:	[Type Here]
Signature:	[Sign Here]
Date:	[MM/DD/YYYY]

Integrity Monitoring - Price Sheet

Cell to be completed by Bidder

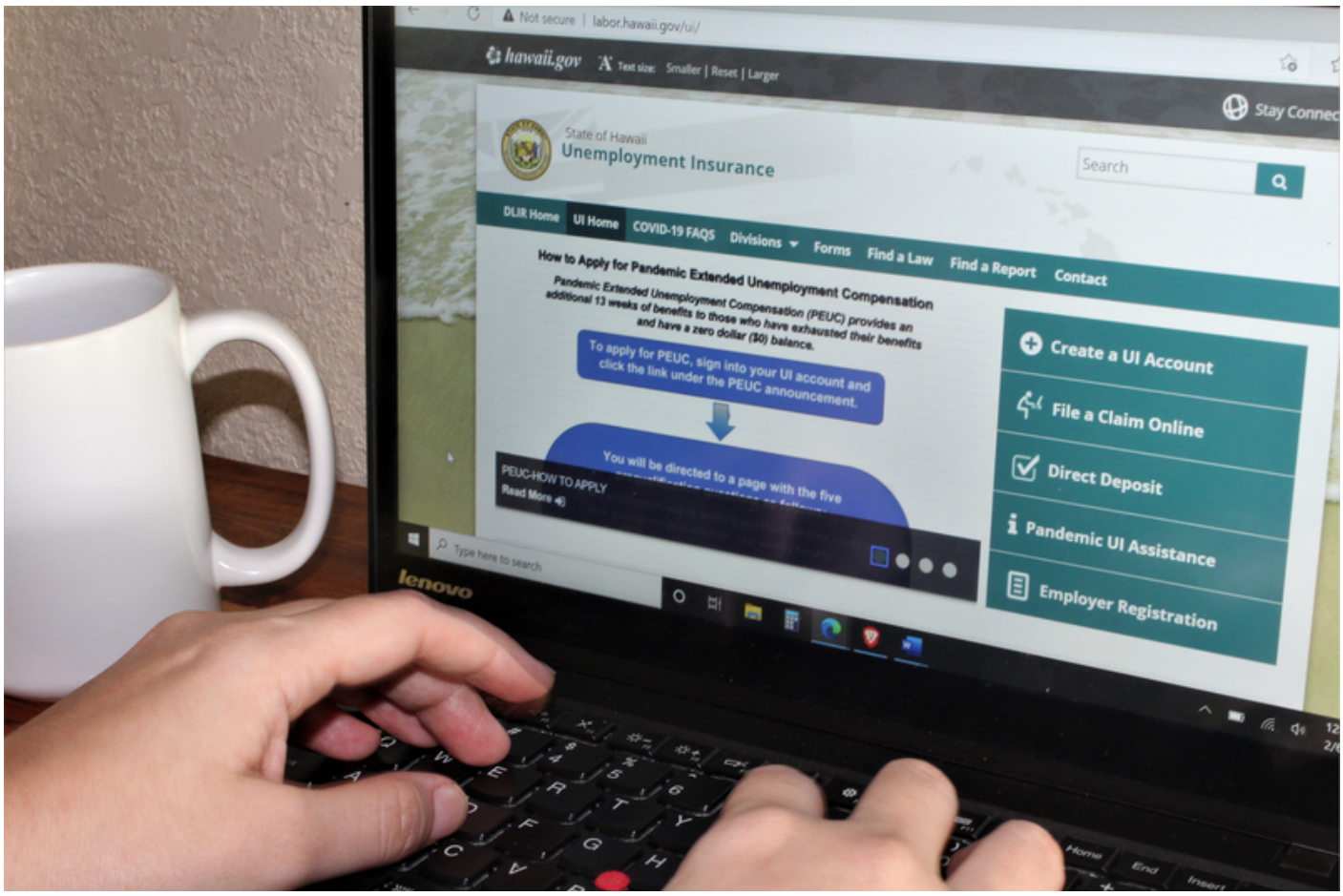
	Staffing Category	Hourly Billing Rate ($)	Hours	Amount ($)	Total Cost ($)	Hourly Discounted Billing Rate ($)	Amount ($)	Total Cost (discounted) ($)
Risk Assessment	Partner/Principal/Director			$0.00	$0.00		$0.00	$0.00
	Program Manager			$0.00			$0.00	
	Project Manager			$0.00			$0.00	
	Supervisory/Sr. Consultant			$0.00			$0.00	
	Consultant			$0.00			$0.00	
	Associate/Staff			$0.00			$0.00	
	Subject Matter Expert			$0.00			$0.00	
	Administrative Support			$0.00			$0.00	
			0					
Work Plan Development	Partner/Principal/Director			$0.00	$0.00		$0.00	$0.00
	Program Manager			$0.00			$0.00	
	Project Manager			$0.00			$0.00	
	Supervisory/Sr. Consultant			$0.00			$0.00	
	Consultant			$0.00			$0.00	
	Associate/Staff			$0.00			$0.00	
	Subject Matter Expert			$0.00			$0.00	
	Administrative Support			$0.00			$0.00	
			0					
On-going Monitoring	Partner/Principal/Director			$0.00	$0.00		$0.00	$0.00
	Program Manager			$0.00			$0.00	
	Project Manager			$0.00			$0.00	
	Supervisory/Sr. Consultant			$0.00			$0.00	
	Consultant			$0.00			$0.00	
	Associate/Staff			$0.00			$0.00	
	Subject Matter Expert			$0.00			$0.00	
	Administrative Support			$0.00			$0.00	
			0					
Reports	Partner/Principal/Director			$0.00	$0.00		$0.00	$0.00
	Program Manager			$0.00			$0.00	
	Project Manager			$0.00			$0.00	
	Supervisory/Sr. Consultant			$0.00			$0.00	
	Consultant			$0.00			$0.00	
	Associate/Staff			$0.00			$0.00	
	Subject Matter Expert			$0.00			$0.00	
	Administrative Support			$0.00			$0.00	
			0					
	Allowance for Travel Expenses and Reimbursement if on-site monitoring required			**$10,000.00**				
	Total Cost (non-discounted)				**$10,000.00**			
	Total Cost (if discounted)							**$10,000.00**

G4018 Integrity Monitoring Engagements				
Vendor Name:				
State Department or Agency	**Engagement Category: (1, 2, 3)**	**Program & Description**	**Program Federal Funding Source:**	**Amount of Funding**

‹ New Practice Lab

A Playbook for Improving Unemployment Insurance Delivery

PLAYBOOK



Blueee77 / Shutterstock.com

By **Ryan Burke**, **Mikey Dickerson**, **Lauren Lockwood**, **Tara Dawson McGuinness**, **Marina Nitze**, **Ayushi Roy**, and **Emily Wright-Moore**

June 22, 2021

CLICK HERE FOR THE FULL REPORT

every case, individual states have already tested.

To create the vision and map the steps, we collaborated with more than 50 advocacy groups, partners, dozens of state leaders and many unemployed workers. We highlight lessons learned from past recessions, recent pandemic-inspired innovations, and complementary benefit spaces like SNAP and WIC.

This is a playbook of what's working to deliver unemployment benefits to those who need them.

We hope that this living playbook will inspire and drive further improvements, building on the successes of individual states. New America, supported by the Families and Workers Fund, will continue to update these pages as states develop more solutions. We invite you to submit your suggestions and stories here.

Yes, a lot has gone wrong in benefits delivery.

And a lot has already been written about what's gone wrong. Coming out of the last recession, the American Recovery and Reinvestment Act of 2009 (ARRA) provided up to a total of $7 billion as incentive payments for states to "modernize" state UC benefit provisions. Payments were available through September 2011*. As recently as 2016, the Government Accountability Office (GAO) **asserted** that 40% of states had completed successful "modernizations" of their unemployment systems. But looking at the experiences of **states** delivering unemployment this year, it's hard to see $7 billion in improvements or modern benefits delivery. The Department of Labor Inspector General's 2021 **report** highlighted that it took far too long for states to disburse payments (an average

of 50 days for the PEUC program) and did not follow DOL guidance, leading to unnecessary hardship for workers while also increasing improper payments.

Unemployment benefits helped millions of Americans through this crisis.

While there were delays and delivery challenges, the CARES Act kept **12 million families** out of poverty and helped support the economy through the pandemic economic crisis. Every **$1.00 spent on UI created $1.61 in local spending**, which helped keep the economy afloat during this difficult time. Overall, **nearly one in four** workers relied on unemployment insurance to weather the pandemic, with insurance claims peaking around 30 million in late June of 2020. Less generous unemployment benefits would have made the recession **even worse**, demonstrating how necessary these benefits were to families.

So we learn from the past and build on what works.

We set a vision for what we want unemployment benefits to look like — a North Star that hasn't been articulated before.

We want claimants to **easily access and manage the benefits they're entitled to**, so we set claimant-centric metrics and launch demonstration projects to refine the best ways to achieve them. And we share what we learn, in ways that other states can readily replicate.

We want equitable outcomes for all populations, so we design processes for the hardest-to-reach 10%. We measure how those processes are working across demographics groups, and **we hold systems accountable to equitable access**.

Here is the future we can have.

"*What is a state's primary mandate when it comes to UI: To administer the prompt delivery of unemployment benefits to eligible applicants or to focus on identifying potential fraud and minimizing payouts?*" — New America

measures are effective at stopping benefit and identity theft, without also stopping real claimants from gaining access. We will know we have reached these goals because we have consistent, reliable metrics that track claimant-centric success outcomes as well as equitable access metrics across all populations.

These are the issues we need to examine.

"Digitizing a broken process gets you a digitized, broken process." — New America

We considered the unemployment process step by step, through the lens of claimants, partners, and the limitations of current systems. We uncovered success stories, case studies, and promising practices across the following areas:

- **Fraud prevention and identity verification** that don't discriminate against populations that need benefits the most. (Surprise: the federal government already has an effective solution, but state unemployment systems haven't been using it.)
- **Wage verification enhancements**, like automated wage verification for 1099 (freelance) workers and the creation of an online unemployment account that people could review to fix their employment and wage data as needed, before they ever need to apply for unemployment.
- **Claimant experience improvements** across multiple dimensions, including mobile access, claim status tracking, recertification, supporting multiple languages, accessibility, plain language content, cross-benefit promotion, and password resets. In particular, we emphasize making it clear when claimants need to take action, and making it simple and fast for them to take that action correctly.

- **Payment-related improvements**, including existing ways for states to leverage instant and/or digital payment methods, further increase today's payment timeliness in service of an eventual same-day payment goal, and avoid overpayments

- **Customer service practices** like measuring first contact resolution, offsetting high contact volume with improved self-service offerings for those claimants who prefer self-service, and providing service across multiple channels in a way that can resolve all inquiries back to the original individual for improved service.

We also spend time on specific technology best practices, like website instrumentation and back-end system monitoring, that can help systems collect and act on data to drive improvements. But we emphasize that technology *by itself* is not a solution. COBOL systems can process claims just fine, just as a new single-page JavaScript application can make it impossible for users to apply. The technology itself is nowhere near as relevant as the surrounding goals, metrics, policies, and processes.

Here are the steps towards the future we want.

In summary, our recommended approach for improving unemployment is:

- **Define success** in terms of claimant-centric *outcomes*, like percentages of claimants receiving unemployment benefits the same day they apply–not "how" measures like number of hours spent or lines of code written.
- Consider policy, practice, and technology together** holistically in developing hypotheses for solutions. Good implementation cannot fix poorly constructed policy.
- **Launch demonstration projects** with interested states designed to iteratively build, test, and further improve upon ways to achieve these goals.

- Promote successful demonstration projects to **develop shared services when they make sense**.

consistent nationally, like defining and measuring backlogs and fraud rates.

- **Build state integrated command centers** to respond to incidents, working down **fraud** and **backlogs**.
- Improve the relationship between U.S. DOL and states through collaborative projects like demonstration pilots and **shared services** like central **plain language** and **transadaptation** teams from which states gain value.
- Deploy philanthropic support towards specific demonstration projects in service of specific success metrics, as well as a **state working groups** to advance best practices and share fixes.

This report was made possible through the support and partnership of the Families and Workers Fund.

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* *Source:* **https://www.naswa.org/system/files/2021-03/usdolreleasesnaswareport.pdf**, pg. vi)

** "States often found that changes to one aspect of service delivery affected or influenced another. State leaders described the importance of strategically addressing the interplay of policy, business process, and technology barriers as they worked to implement their visions of service delivery. State policy staff usually participated in design sessions for new eligibility systems to ensure that new technologies were as compatible as possible with existing policies and planned policy changes. Policy staff often worked alongside operational staff to set policies for business improvement pilots or write new policies to fit

new business procedures. Illinois changed its policy on verifying citizenship, allowing the state to eliminate a citizenship form that had slowed processing of benefit applications. Likewise, redesign of business processes sometimes called for changes in technology, and

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Agile Assessment Guide:
Best Practices for Agile Adoption and Implementation

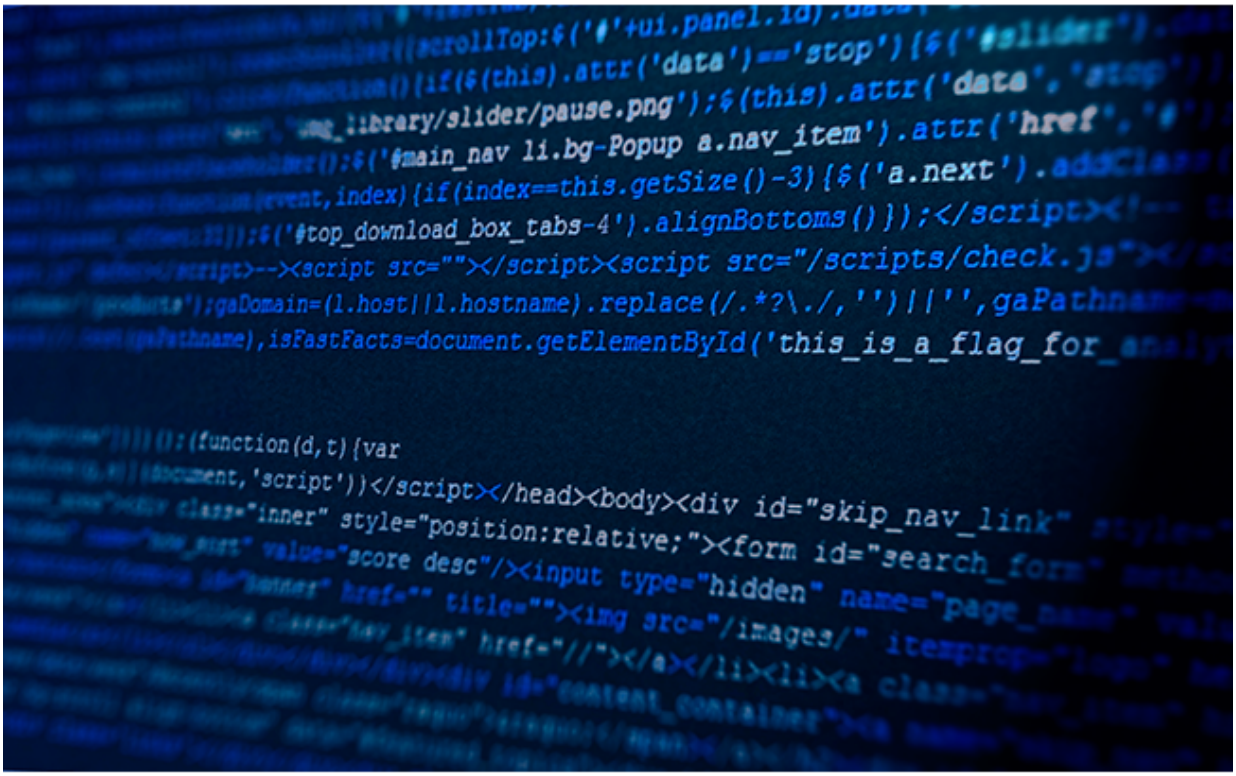
GAO-20-590G
Published: Sep 28, 2020. Publicly Released: Sep 28, 2020.

Fast Facts

Agile is an approach to software development in which software is developed incrementally and is continuously evaluated for functionality, quality, and customer satisfaction. Agile can reduce the risks of funding a program that fails or produces outdated technology.

This guide presents federal auditors and others with best practices to assess the adoption and use of Agile in federal agencies and elsewhere. The federal government is planning to spend at least $90 billion on major IT investments in FY 2021. It has struggled in this area. The government's management of IT acquisitions and operations remains on our High Risk List.

[March 2021 update: To see our 4 videos on Agile click here. Topics include DevOps, Continuous Integration, Software Bottlenecks, and Daily Standup Meetings.]



Source: GAO File Photo.

Highlights

Why GAO Did This Study

From September 28, 2020 through September 27, 2021, GAO is seeking input and feedback on this Exposure Draft from all interested parties. Please click on this link https://tell.gao.gov/agileguide to provide us with comment on the Guide.

The U.S. Government Accountability Office is responsible for, among other things, assisting Congress in its oversight of the executive branch, including assessing federal agencies' management of information technology (IT) systems. The federal government annually spends more than $90 billion on IT. However, federal agencies face challenges in developing, implementing, and maintaining their IT investments. All too frequently, agency IT programs have incurred cost overruns and schedule slippages while contributing little to mission-related outcomes. Accordingly, GAO has included management of IT acquisitions and operations on its High Risk List.

Recognizing the severity related to government-wide management of IT, in 2014, the Congress passed and the President signed federal IT acquisition reform legislation commonly referred to as the *Federal Information Technology Acquisition Reform Act*, or FITARA. This legislation was enacted to improve agencies' acquisition of IT and enable Congress to monitor agencies' progress and hold them accountable for reducing duplication and achieving cost savings. Among its specific provisions is a requirement for Chief Information Officers (CIOs) at covered agencies to certify that certain IT investments are adequately implementing incremental development as defined in the Office of Management and Budget's capital planning guidance. One such framework for incremental development is Agile software development, which has been adopted by many federal agencies.

The *Agile Assessment Guide* discusses best practices that can be used across the federal government for Agile adoption, execution, and program monitoring and control. Use of these best practices should enable government programs to better transition to and manage their Agile programs. GAO has developed this guide to serve multiple audiences:

- The primary audience for this guide is federal auditors. Specifically, the guide presents best practices that can be used to assess the extent to which an agency has adopted and implemented Agile methods.
- Organizations and programs that have already established policies and protocols for Agile adoption and execution can use this guide to evaluate their existing approach to Agile software development.
- Organizations and programs that are in the midst of adopting Agile software development practices and programs that are planning to adopt such practices can also use this guide to inform their transitions.

For more information, contact Carol Harris at (202) 512-4456 or harriscc@gao.gov.

Full Report

Full Report (268 pages)

Accessible PDF (290 pages)

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Topics

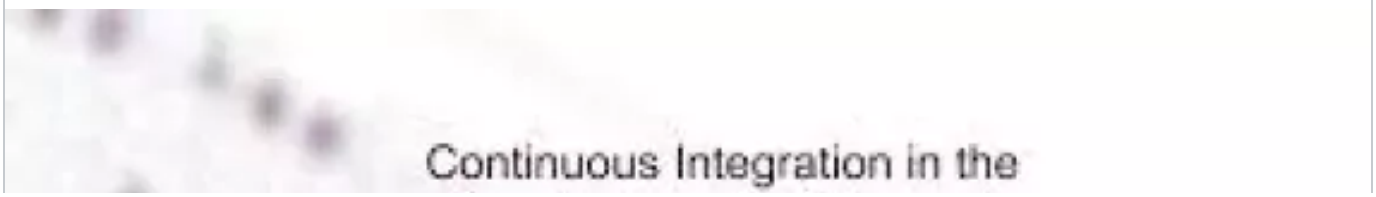
Information Technology | Best practices | Earned value management systems | Information technology | IT investment management | IT investments | Performance measurement | Software | Software development | Systems acquisition | Systems design

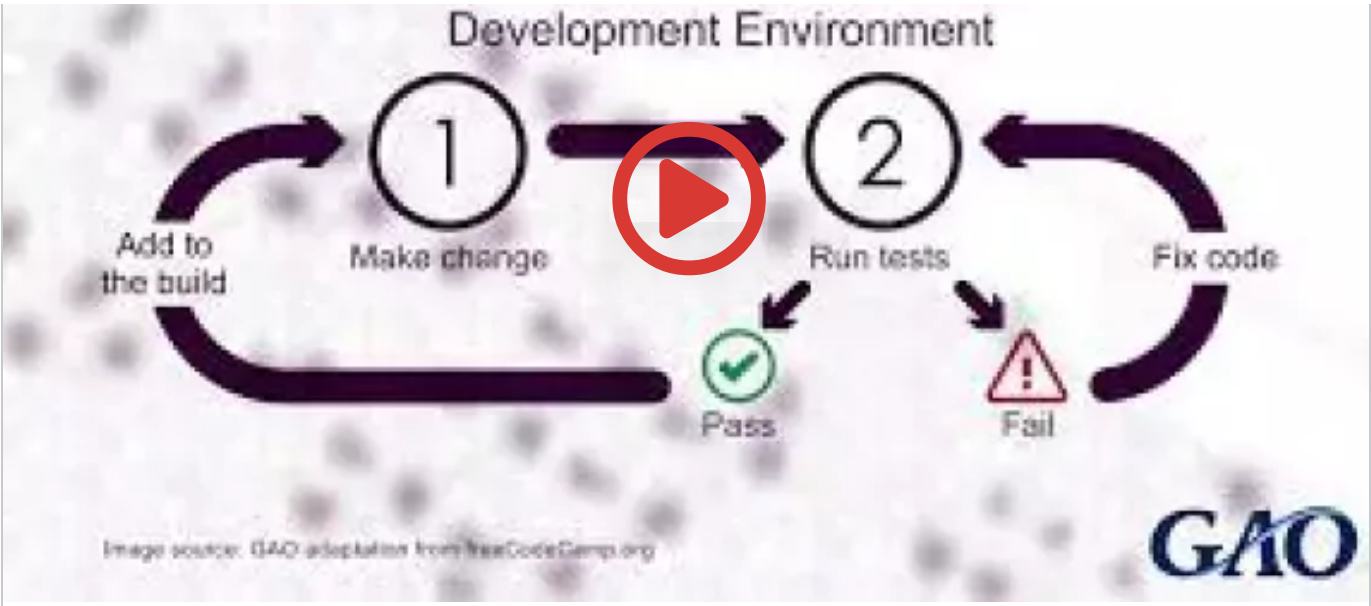
Multimedia

Agile, Explained: Daily Standup Meetings

TUESDAY, SEPTEMBER 29, 2020

Transcript

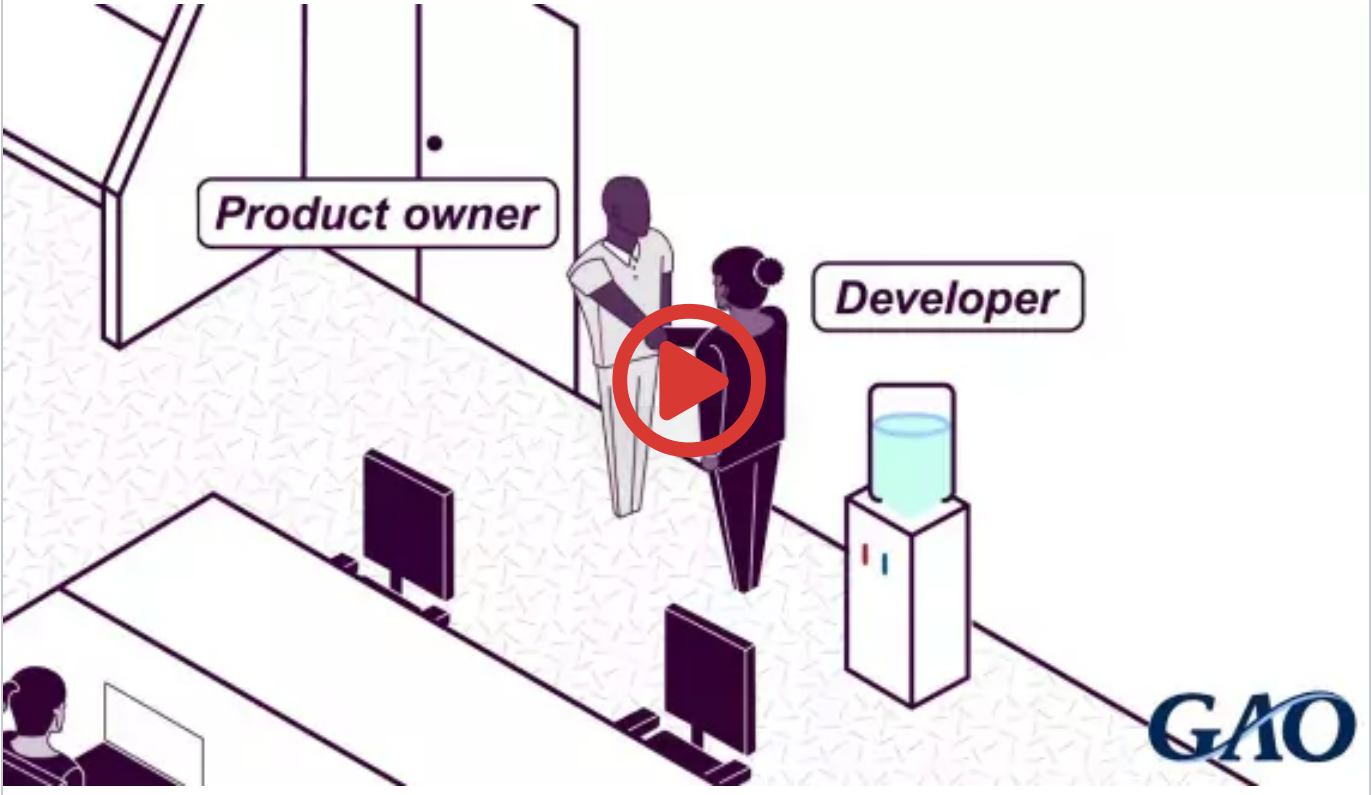




Agile, Explained: Continuous Integration

TUESDAY, SEPTEMBER 29, 2020

Transcript



Agile, Explained: Software Bottlenecks

TUESDAY, SEPTEMBER 29, 2020

Transcript

Press Release

What Does It Mean to Be "Agile" in the Federal Government?

TUESDAY, SEPTEMBER

Draft GAO Guide Outlines Best Practices for Agile Software Development Washington, D.C. (September 29, 2020) – The U.S. Government Accountability Office (GAO) today issued a new " Spotlight " overview...

AMERICAN RESCUE PLAN ACT OF 2021

Public Law 117–2
117th Congress

An Act

Mar. 11, 2021
[H.R. 1319]

To provide for reconciliation pursuant to title II of S. Con. Res. 5.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

American Rescue Plan Act of 2021.
15 USC 9001 note.
Appropriation authorizations.

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Rescue Plan Act of 2021".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Subtitle A—Agriculture

7 USC 7501 note.

SEC. 1001. FOOD SUPPLY CHAIN AND AGRICULTURE PANDEMIC RESPONSE.

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Secretary of Agriculture for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $4,000,000,000, to remain available until expended, to carry out this section.

Grants.
Loans.

(b) USE OF FUNDS.—The Secretary of Agriculture shall use the amounts made available pursuant to subsection (a)—

(1) to purchase food and agricultural commodities;

Determination.

(2) to purchase and distribute agricultural commodities (including fresh produce, dairy, seafood, eggs, and meat) to individuals in need, including through delivery to nonprofit organizations and through restaurants and other food related entities, as determined by the Secretary, that may receive, store, process, and distribute food items;

(3) to make grants and loans for small or midsized food processors or distributors, seafood processing facilities and processing vessels, farmers markets, producers, or other organizations to respond to COVID–19, including for measures to protect workers against COVID–19; and

(4) to make loans and grants and provide other assistance to maintain and improve food and agricultural supply chain resiliency.

(c) ANIMAL HEALTH.—

(1) COVID–19 ANIMAL SURVEILLANCE.—The Secretary of Agriculture shall conduct monitoring and surveillance of susceptible animals for incidence of SARS–CoV–2.

(2) FUNDING.—Out of the amounts made available under subsection (a), the Secretary shall use $300,000,000 to carry out this subsection.

(d) OVERTIME FEES.—

(1) SMALL ESTABLISHMENT; VERY SMALL ESTABLISHMENT DEFINITIONS.—The terms "small establishment" and "very small establishment" have the meaning given those terms in the final rule entitled "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" published in the Federal Register on July 25, 1996 (61 Fed. Reg. 38806). Definition.

(2) OVERTIME INSPECTION COST REDUCTION.—Notwithstanding section 10703 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 2219a), the Act of June 5, 1948 (21 U.S.C. 695), section 25 of the Poultry Products Inspection Act (21 U.S.C. 468), and section 24 of the Egg Products Inspection Act (21 U.S.C. 1053), and any regulations promulgated by the Department of Agriculture implementing such provisions of law and subject to the availability of funds under paragraph (3), the Secretary of Agriculture shall reduce the amount of overtime inspection costs borne by federally-inspected small establishments and very small establishments engaged in meat, poultry, or egg products processing and subject to the requirements of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Egg Products Inspection Act (21 U.S.C. 1031 et seq.), for inspection activities carried out during the period of fiscal years 2021 through 2030. Time period.

(3) FUNDING.—Out of the amounts made available under subsection (a), the Secretary shall use $100,000,000 to carry out this subsection.

SEC. 1002. EMERGENCY RURAL DEVELOPMENT GRANTS FOR RURAL HEALTH CARE. 7 USC 2204b–2 note.

(a) GRANTS.—The Secretary of Agriculture (in this section referred to as the "Secretary") shall use the funds made available by this section to establish an emergency pilot program for rural development not later than 150 days after the date of enactment of this Act to provide grants to eligible applicants (as defined in section 3570.61(a) of title 7, Code of Federal Regulations) to be awarded by the Secretary based on rural development needs related to the COVID–19 pandemic. Deadline.

(b) USES.—An eligible applicant to whom a grant is awarded under this section may use the grant funds for costs, including those incurred prior to the issuance of the grant, as determined by the Secretary, of facilities which primarily serve rural areas (as defined in section 343(a)(13)(C) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)(13)(C)), which are located in a rural area, the median household income of the population to be served by which is less than the greater of the poverty line or the applicable percentage (determined under section 3570.63(b) of title 7, Code of Federal Regulations) of the State nonmetropolitan median household income, and for which the performance of any construction work completed with grant funds shall meet the condition set forth in section 9003(f) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8103(f)), to—

(1) increase capacity for vaccine distribution;

(2) provide medical supplies to increase medical surge capacity;

Reimbursement.

(3) reimburse for revenue lost during the COVID–19 pandemic, including revenue losses incurred prior to the awarding of the grant;

(4) increase telehealth capabilities, including underlying health care information systems;

(5) construct temporary or permanent structures to provide health care services, including vaccine administration or testing;

(6) support staffing needs for vaccine administration or testing; and

(7) engage in any other efforts to support rural development determined to be critical to address the COVID–19 pandemic, including nutritional assistance to vulnerable individuals, as approved by the Secretary.

(c) FUNDING.—In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $500,000,000, to remain available until September 30, 2023, to carry out this section, of which not more than 3 percent may be used by the Secretary for administrative purposes and not more than 2 percent may be used by the Secretary for technical assistance as defined in section 306(a)(26) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(26)).

SEC. 1003. PANDEMIC PROGRAM ADMINISTRATION FUNDS.

In addition to amounts otherwise available, there are appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $47,500,000, to remain available until expended, for necessary administrative expenses associated with carrying out this subtitle.

SEC. 1004. FUNDING FOR THE USDA OFFICE OF INSPECTOR GENERAL FOR OVERSIGHT OF COVID–19-RELATED PROGRAMS.

In addition to amounts otherwise made available, there is appropriated to the Office of the Inspector General of the Department of Agriculture for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $2,500,000, to remain available until September 30, 2022, for audits, investigations, and other oversight activities of projects and activities carried out with funds made available to the Department of Agriculture related to the COVID–19 pandemic.

7 USC 1921 note.

SEC. 1005. FARM LOAN ASSISTANCE FOR SOCIALLY DISADVANTAGED FARMERS AND RANCHERS.

(a) PAYMENTS.—

(1) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of amounts in the Treasury not otherwise appropriated, such sums as may be necessary, to remain available until expended, for the cost of loan modifications and payments under this section.

Effective date.

(2) PAYMENTS.—The Secretary shall provide a payment in an amount up to 120 percent of the outstanding indebtedness of each socially disadvantaged farmer or rancher as of January 1, 2021, to pay off the loan directly or to the socially disadvantaged farmer or rancher (or a combination of both), on each—

(A) direct farm loan made by the Secretary to the socially disadvantaged farmer or rancher; and

(B) farm loan guaranteed by the Secretary the borrower of which is the socially disadvantaged farmer or rancher.

(b) DEFINITIONS.—In this section:

(1) FARM LOAN.—The term "farm loan" means—

(A) a loan administered by the Farm Service Agency under subtitle A, B, or C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1922 et seq.); and

(B) a Commodity Credit Corporation Farm Storage Facility Loan.

(2) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(3) SOCIALLY DISADVANTAGED FARMER OR RANCHER.—The term "socially disadvantaged farmer or rancher" has the meaning given the term in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)).

SEC. 1006. USDA ASSISTANCE AND SUPPORT FOR SOCIALLY DISADVANTAGED FARMERS, RANCHERS, FOREST LAND OWNERS AND OPERATORS, AND GROUPS.

7 USC 2279 note.

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Secretary of Agriculture for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $1,010,000,000, to remain available until expended, to carry out this section.

(b) ASSISTANCE.—The Secretary of Agriculture shall use the amounts made available pursuant to subsection (a) for purposes described in this subsection by—

(1) using not less than 5 percent of the total amount of funding provided under subsection (a) to provide outreach, mediation, financial training, capacity building training, cooperative development training and support, and other technical assistance on issues concerning food, agriculture, agricultural credit, agricultural extension, rural development, or nutrition to socially disadvantaged farmers, ranchers, or forest landowners, or other members of socially disadvantaged groups;

(2) using not less than 5 percent of the total amount of funding provided under subsection (a) to provide grants and loans to improve land access for socially disadvantaged farmers, ranchers, or forest landowners, including issues related to heirs' property in a manner as determined by the Secretary;

(3) using not less than 0.5 percent of the total amount of funding provided under subsection (a) to fund the activities of one or more equity commissions that will address racial equity issues within the Department of Agriculture and its programs;

(4) using not less than 5 percent of the total amount of funding provided under subsection (a) to support and supplement agricultural research, education, and extension, as well as scholarships and programs that provide internships and pathways to Federal employment, by—

(A) using not less than 1 percent of the total amount of funding provided under subsection (a) at colleges or universities eligible to receive funds under the Act of August 30, 1890 (commonly known as the "Second Morrill Act") (7 U.S.C. 321 et seq.), including Tuskegee University;

(B) using not less than 1 percent of the total amount of funding provided under subsection (a) at 1994 Institutions (as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note; Public Law 103–382));

(C) using not less than 1 percent of the total amount of funding provided under subsection (a) at Alaska Native serving institutions and Native Hawaiian serving institutions eligible to receive grants under subsections (a) and (b), respectively, of section 1419B of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3156);

(D) using not less than 1 percent of the total amount of funding provided under subsection (a) at Hispanic-serving institutions eligible to receive grants under section 1455 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3241); and

(E) using not less than 1 percent of the total amount of funding provided under subsection (a) at the insular area institutions of higher education located in the territories of the United States, as referred to in section 1489 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3361); and

(5) using not less than 5 percent of the total amount of funding provided under subsection (a) to provide financial assistance to socially disadvantaged farmers, ranchers, or forest landowners that are former farm loan borrowers that suffered related adverse actions or past discrimination or bias in Department of Agriculture programs, as determined by the Secretary.

(c) DEFINITIONS.—In this section:

(1) NONINDUSTRIAL PRIVATE FOREST LAND.—The term "nonindustrial private forest land" has the meaning given the term in section 1201(a)(18) of the Food Security Act of 1985 (16 U.S.C. 3801(a)(18)).

(2) SOCIALLY DISADVANTAGED FARMER, RANCHER, OR FOREST LANDOWNER.—The term "socially disadvantaged farmer, rancher, or forest landowner" means a farmer, rancher, or owner or operator of nonindustrial private forest land who is a member of a socially disadvantaged group.

(3) SOCIALLY DISADVANTAGED GROUP.—The term "socially disadvantaged group" has the meaning given the term in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)).

SEC. 1007. USE OF THE COMMODITY CREDIT CORPORATION FOR COMMODITIES AND ASSOCIATED EXPENSES.

In addition to amounts otherwise made available, there are appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $800,000,000, to remain available until September 30, 2022, to use the Commodity Credit Corporation to acquire and make available commodities under section 406(b) of the Food for Peace Act (7 U.S.C. 1736(b)) and for expenses under such section.

Subtitle B—Nutrition

SEC. 1101. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM.

(a) VALUE OF BENEFITS.—Section 702(a) of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260) is amended by striking "June 30, 2021" and inserting "September 30, 2021". 7 USC 2011 note.

(b) SNAP ADMINISTRATIVE EXPENSES.—In addition to amounts otherwise available, there is hereby appropriated for fiscal year 2021, out of any amounts in the Treasury not otherwise appropriated, $1,150,000,000, to remain available until September 30, 2023, with amounts to be obligated for each of fiscal years 2021, 2022, and 2023, for the costs of State administrative expenses associated with carrying out this section and administering the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), of which—

(1) $15,000,000 shall be for necessary expenses of the Secretary of Agriculture (in this section referred to as the "Secretary") for management and oversight of the program; and

(2) $1,135,000,000 shall be for the Secretary to make grants to each State agency for each of fiscal years 2021 through 2023 as follows:

(A) 75 percent of the amounts available shall be allocated to States based on the share of each State of households that participate in the supplemental nutrition assistance program as reported to the Department of Agriculture for the most recent 12-month period for which data are available, adjusted by the Secretary (as of the date of the enactment of this Act) for participation in disaster programs under section 5(h) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(h)); and Time period.

(B) 25 percent of the amounts available shall be allocated to States based on the increase in the number of households that participate in the supplemental nutrition assistance program as reported to the Department of Agriculture over the most recent 12-month period for which data are available, adjusted by the Secretary (as of the date of the enactment of this Act) for participation in disaster programs under section 5(h) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(h)).

SEC. 1102. ADDITIONAL ASSISTANCE FOR SNAP ONLINE PURCHASING AND TECHNOLOGY IMPROVEMENTS. 7 USC 2016 note.

(a) FUNDING.—In addition to amounts otherwise made available, there is appropriated for fiscal year 2021, out of any amounts in the Treasury not otherwise appropriated, $25,000,000 to remain available through September 30, 2026, to carry out this section.

(b) USE OF FUNDS.—The Secretary of Agriculture may use the amounts made available pursuant to subsection (a)—

(1) to make technological improvements to improve online purchasing in the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(2) to modernize electronic benefit transfer technology;

(3) to support the mobile technologies demonstration projects and the use of mobile technologies authorized under

section 7(h)(14) of the Food and Nutrition Act of 2008 (7 U.S.C. 2016(h)(14)); and

(4) to provide technical assistance to educate retailers on the process and technical requirements for the online acceptance of the supplemental nutrition assistance program benefits, for mobile payments, and for electronic benefit transfer modernization initiatives.

SEC. 1103. ADDITIONAL FUNDING FOR NUTRITION ASSISTANCE PROGRAMS.

Section 704 of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260) is amended— 134 Stat. 2095.

(1) by striking "In addition" and inserting the following: "(a) COVID–19 RESPONSE FUNDING.—In addition"; and

(2) by adding at the end the following—

"(b) ADDITIONAL FUNDING.—In addition to any other funds made available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $1,000,000,000 to remain available until September 30, 2027, for the Secretary of Agriculture to provide grants to the Commonwealth of Northern Mariana Islands, Puerto Rico, and American Samoa for nutrition assistance, of which $30,000,000 shall be available to provide grants to the Commonwealth of Northern Mariana Islands for such assistance.".

SEC. 1104. COMMODITY SUPPLEMENTAL FOOD PROGRAM.

In addition to amounts otherwise made available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $37,000,000, to remain available until September 30, 2022, for activities authorized by section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).

42 USC 1786 note.

SEC. 1105. IMPROVEMENTS TO WIC BENEFITS.

(a) DEFINITIONS.—In this section:

(1) APPLICABLE PERIOD.—The term "applicable period" means a period—

(A) beginning after the date of enactment of this Act, as selected by a State agency; and

(B) ending not later than the earlier of—

(i) 4 months after the date described in subparagraph (A); or

(ii) September 30, 2021.

(2) CASH-VALUE VOUCHER.—The term "cash-value voucher" has the meaning given the term in section 246.2 of title 7, Code of Federal Regulations (as in effect on the date of the enactment of this Act).

(3) PROGRAM.—The term "program" means the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

(4) QUALIFIED FOOD PACKAGE.—The term "qualified food package" means each of the following food packages (as defined in section 246.10(e) of title 7, Code of Federal Regulations (as in effect on the date of the enactment of this Act)):

(A) Food package III–Participants with qualifying conditions.

(B) Food Package IV–Children 1 through 4 years.

(C) Food Package V–Pregnant and partially (mostly) breastfeeding women.

(D) Food Package VI–Postpartum women.

(E) Food Package VII–Fully breastfeeding.

(5) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(6) STATE AGENCY.—The term "State agency" has the meaning given the term in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

(b) AUTHORITY TO INCREASE AMOUNT OF CASH-VALUE VOUCHER.—During the public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d) on January 31, 2020, with respect to the Coronavirus Disease 2019 (COVID–19), and in response to challenges relating to that public health emergency, the Secretary may, in carrying out the program, increase the amount of a cash-value voucher under a qualified food package to an amount that is less than or equal to $35.

(c) APPLICATION OF INCREASED AMOUNT OF CASH-VALUE VOUCHER TO STATE AGENCIES.—

(1) NOTIFICATION.—An increase to the amount of a cash-value voucher under subsection (b) shall apply to any State agency that notifies the Secretary of—

(A) the intent to use that increased amount, without further application; and

(B) the applicable period selected by the State agency during which that increased amount shall apply.

(2) USE OF INCREASED AMOUNT.—A State agency that makes a notification to the Secretary under paragraph (1) shall use the increased amount described in that paragraph—

(A) during the applicable period described in that notification; and

(B) only during a single applicable period.

(d) SUNSET.—The authority of the Secretary under subsection (b), and the authority of a State agency to increase the amount of a cash-value voucher under subsection (c), shall terminate on September 30, 2021.

(e) FUNDING.—In addition to amounts otherwise made available, there is appropriated to the Secretary, out of funds in the Treasury not otherwise appropriated, $490,000,000 to carry out this section, to remain available until September 30, 2022.

SEC. 1106. WIC PROGRAM MODERNIZATION.

In addition to amounts otherwise available, there are appropriated to the Secretary of Agriculture, out of amounts in the Treasury not otherwise appropriated, $390,000,000 for fiscal year 2021, to remain available until September 30, 2024, to carry out outreach, innovation, and program modernization efforts, including appropriate waivers and flexibility, to increase participation in and redemption of benefits under programs established under section 17 of the Child Nutrition Act of 1966 (7 U.S.C. 1431), except that such waivers may not relate to the content of the WIC Food Packages (as defined in section 246.10(e) of title 7, Code of Federal Regulations (as in effect on the date of enactment of this Act)), or the nondiscrimination requirements under section 246.8 of title 7, Code of Federal Regulations (as in effect on the date of enactment of this Act).

42 USC 1766 note.

SEC. 1107. MEALS AND SUPPLEMENTS REIMBURSEMENTS FOR INDIVIDUALS WHO HAVE NOT ATTAINED THE AGE OF 25.

(a) PROGRAM FOR AT-RISK SCHOOL CHILDREN.—Beginning on the date of enactment of this section, notwithstanding paragraph (1)(A) of section 17(r) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(r)), during the COVID–19 public health emergency declared under section 319 of the Public Health Service Act (42 U.S.C. 247d), the Secretary shall reimburse institutions that are emergency shelters under such section 17(r) (42 U.S.C. 1766(r)) for meals and supplements served to individuals who, at the time of such service—

(1) have not attained the age of 25; and

(2) are receiving assistance, including non-residential assistance, from such emergency shelter.

(b) PARTICIPATION BY EMERGENCY SHELTERS.—Beginning on the date of enactment of this section, notwithstanding paragraph (5)(A) of section 17(t) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(t)), during the COVID–19 public health emergency declared under section 319 of the Public Health Service Act (42 U.S.C. 247d), the Secretary shall reimburse emergency shelters under such section 17(t) (42 U.S.C. 1766(t)) for meals and supplements served to individuals who, at the time of such service have not attained the age of 25.

(c) DEFINITIONS.—In this section:

(1) EMERGENCY SHELTER.—The term "emergency shelter" has the meaning given the term under section 17(t)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(t)(1)).

(2) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

SEC. 1108. PANDEMIC EBT PROGRAM.

Section 1101 of the Families First Coronavirus Response Act (7 U.S.C. 2011 note; Public Law 116–127) is amended—

(1) in subsection (a)—

(A) by striking "During fiscal years 2020 and 2021" and inserting "In any school year in which there is a public health emergency designation"; and

(B) by inserting "or in a covered summer period following a school session" after "in session";

(2) in subsection (g), by striking "During fiscal year 2020, the" and inserting "The";

(3) in subsection (h)(1)—

(A) by inserting "either" after "at least 1 child enrolled in such a covered child care facility and"; and

(B) by inserting "or a Department of Agriculture grant-funded nutrition assistance program in the Commonwealth of the Northern Mariana Islands, Puerto Rico, or American Samoa" before "shall be eligible to receive assistance";

(4) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively;

(5) by inserting after subsection (h) the following:

Plan. Time period.

"(i) EMERGENCIES DURING SUMMER.—The Secretary of Agriculture may permit a State agency to extend a State agency plan approved under subsection (b) for not more than 90 days for the purpose of operating the plan during a covered summer period, during which time schools participating in the school lunch program

under the Richard B. Russell National School Lunch Act or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and covered child care facilities shall be deemed closed for purposes of this section.";

(6) in subsection (j) (as so redesignated)—

(A) by redesignating paragraphs (2) through (6) as paragraphs (3) through (7), respectively;

(B) by inserting after paragraph (1) the following:

"(2) COVERED SUMMER PERIOD.—The term 'covered summer period' means a summer period that follows a school year during which there was a public health emergency designation."; and Definition.

(C) in paragraph (5) (as so redesignated), by striking "or another coronavirus with pandemic potential"; and

(7) in subsection (k) (as so redesignated), by inserting "Federal agencies," before "State agencies".

TITLE II—COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Subtitle A—Education Matters

PART 1—DEPARTMENT OF EDUCATION

SEC. 2001. ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND. 20 USC 3401 note.

(a) IN GENERAL.—In addition to amounts otherwise available through the Education Stabilization Fund, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $122,774,800,000, to remain available through September 30, 2023, to carry out this section.

(b) GRANTS.—From funds provided under subsection (a), the Secretary shall—

(1) use $800,000,000 for the purposes of identifying homeless children and youth and providing homeless children and youth with—

(A) wrap-around services in light of the challenges of COVID–19; and

(B) assistance needed to enable homeless children and youth to attend school and participate fully in school activities; and

(2) from the remaining amounts, make grants to each State educational agency in accordance with this section.

(c) ALLOCATIONS TO STATES.—The amount of each grant under subsection (b) shall be allocated by the Secretary to each State in the same proportion as each State received under part A of title I of the Elementary and Secondary Education Act of 1965 in the most recent fiscal year.

(d) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

(1) IN GENERAL.—Each State shall allocate not less than 90 percent of the grant funds awarded to the State under this section as subgrants to local educational agencies (including charter schools that are local educational agencies) in the State in proportion to the amount of funds such local

educational agencies and charter schools that are local educational agencies received under part A of title I of the Elementary and Secondary Education Act of 1965 in the most recent fiscal year.

Deadline.

(2) AVAILABILITY OF FUNDS.—Each State shall make allocations under paragraph (1) to local educational agencies in an expedited and timely manner and, to the extent practicable, not later than 60 days after the receipt of such funds.

(e) USES OF FUNDS.—A local educational agency that receives funds under this section—

(1) shall reserve not less than 20 percent of such funds to address learning loss through the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs, and ensure that such interventions respond to students' academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student subgroups described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care; and

(2) shall use the remaining funds for any of the following:

(A) Any activity authorized by the Elementary and Secondary Education Act of 1965.

(B) Any activity authorized by the Individuals with Disabilities Education Act.

(C) Any activity authorized by the Adult Education and Family Literacy Act.

(D) Any activity authorized by the Carl D. Perkins Career and Technical Education Act of 2006.

Coordination.

(E) Coordination of preparedness and response efforts of local educational agencies with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.

(F) Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.

Procedures.

(G) Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.

(H) Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.

(I) Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency.

(J) Planning for, coordinating, and implementing activities during long-term closures, including providing meals to eligible students, providing technology for online learning to all students, providing guidance for carrying out requirements under the Individuals with Disabilities Education Act and ensuring other educational services can

continue to be provided consistent with all Federal, State, and local requirements.

(K) Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and children with disabilities, which may include assistive technology or adaptive equipment.

(L) Providing mental health services and supports, including through the implementation of evidence-based full-service community schools.

(M) Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, children with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

(N) Addressing learning loss among students, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the local educational agency, including by—

(i) administering and using high-quality assessments that are valid and reliable, to accurately assess students' academic progress and assist educators in meeting students' academic needs, including through differentiating instruction;

(ii) implementing evidence-based activities to meet the comprehensive needs of students;

(iii) providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment; and

(iv) tracking student attendance and improving student engagement in distance education.

(O) School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.

(P) Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and nonmechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.

Strategies.

(Q) Developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.

(R) Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.

(f) STATE FUNDING.—With funds not otherwise allocated under subsection (d), a State—

(1) shall reserve not less than 5 percent of the total amount of grant funds awarded to the State under this section to carry out, directly or through grants or contracts, activities to address learning loss by supporting the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs, and ensure that such interventions respond to students' academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student subgroups described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care, including by providing additional support to local educational agencies to fully address such impacts;

(2) shall reserve not less than 1 percent of the total amount of grant funds awarded to the State under this section to carry out, directly or through grants or contracts, the implementation of evidence-based summer enrichment programs, and ensure such programs respond to students' academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student populations described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care;

(3) shall reserve not less than 1 percent of the total amount of grant funds awarded to the State under this section to carry out, directly or through grants or contracts, the implementation of evidence-based comprehensive afterschool programs, and ensure such programs respond to students' academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student populations described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care; and

(4) may reserve not more than one-half of 1 percent of the total amount of grant funds awarded to the State under this section for administrative costs and the remainder for emergency needs as determined by the State educational agency to address issues responding to coronavirus, which may be addressed through the use of grants or contracts.

Deadline.

(g) REALLOCATION.—A State shall return to the Secretary any funds received under this section that the State does not award within 1 year of receiving such funds and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (c).

(h) DEFINITIONS.—In this section—

(1) the terms "child", "children with disabilities", "distance education", "elementary school", "English learner", "evidence-

based", "secondary school", "local educational agency", "parent", "Secretary", "State educational agency", and "technology" have the meanings given those terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801);

(2) the term "full-service community school" has the meaning given that term in section 4622(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7272(2)); and

(3) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(i) SAFE RETURN TO IN-PERSON INSTRUCTION.—

(1) IN GENERAL.—A local educational agency receiving funds under this section shall develop and make publicly available on the local educational agency's website, not later than 30 days after receiving the allocation of funds described in paragraph (d)(1), a plan for the safe return to in-person instruction and continuity of services. Plan. Public information. Web posting. Deadline.

(2) COMMENT PERIOD.—Before making the plan described in paragraph (1) publicly available, the local educational agency shall seek public comment on the plan and take such comments into account in the development of the plan.

(3) PREVIOUS PLANS.—If a local educational agency has developed a plan for the safe return to in-person instruction before the date of enactment of this Act that meets the requirements described in paragraphs (1) and (2), such plan shall be deemed to satisfy the requirements under this subsection.

SEC. 2002. EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS.

(a) IN GENERAL.—In addition to amounts otherwise available through the Emergency Assistance to Non-Public Schools Program, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $2,750,000,000, to remain available through September 30, 2023, for making allocations to Governors under the Emergency Assistance to Non-Public Schools Program to provide services or assistance to non-public schools that enroll a significant percentage of low-income students and are most impacted by the qualifying emergency.

(b) LIMITATIONS.—Funds provided under subsection (a) shall not be used to provide reimbursements to any non-public school.

SEC. 2003. HIGHER EDUCATION EMERGENCY RELIEF FUND.

In addition to amounts otherwise available, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $39,584,570,000, to remain available through September 30, 2023, for making allocations to institutions of higher education in accordance with the same terms and conditions of section 314 of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (division M of Public Law 116–260), except that—

(1) subsection (a)(1) of such section 314 shall be applied by substituting "91 percent" for "89 percent"; Applicability.

(2) subsection (a)(2) of such section 314 shall be applied— Applicability.

(A) in the matter preceding subparagraph (A), by substituting "under the heading 'Higher Education' in the Department of Education Appropriations Act, 2020" for "in the Further Consolidated Appropriations Act, 2020 (Public Law 116–94)"; and

(B) in subparagraph (B), by substituting "under the heading 'Higher Education' in the Department of Education Appropriations Act, 2020" for "in the Further Consolidated Appropriations Act, 2020 (Public Law 116–94)";

(3) an institution that receives an allocation apportioned in accordance with clause (iii) of subsection (a)(2)(A) of such section 314 that has a total endowment size of less than $1,000,000 (including an institution that does not have an endowment) shall be treated by the Secretary as having a total endowment size of $1,000,000 for the purposes of such clause (iii);

Applicability.

(4) subsection (a)(4) of such section 314 shall be applied by substituting "1 percent" for "3 percent";

(5) except as provided in paragraphs (7) and (9) of subsection (d) of such section 314, an institution shall use a portion of funds received under this section to—

(A) implement evidence-based practices to monitor and suppress coronavirus in accordance with public health guidelines; and

(B) conduct direct outreach to financial aid applicants about the opportunity to receive a financial aid adjustment due to the recent unemployment of a family member or independent student, or other circumstances, described in section 479A of the Higher Education Act of 1965 (20 U.S.C. 1087tt);

(6) the following shall not apply to funds provided or received in accordance with this section—

(A) subsection (b) of such section 314;

(B) paragraph (2) of subsection (c) of such section 314;

(C) paragraphs (1), (2), (4), (5), (6), and (8) of subsection (d) of such section 314;

(D) subsections (e) and (f) of such section 314; and

(E) section 316 of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (division M of Public Law 116–260); and

(7) an institution that receives an allocation under this section apportioned in accordance with subparagraphs (A) through (D) of subsection (a)(1) of such section 314 shall use not less than 50 percent of such allocation to provide emergency financial aid grants to students in accordance with subsection (c)(3) of such section 314.

SEC. 2004. MAINTENANCE OF EFFORT AND MAINTENANCE OF EQUITY.

(a) STATE MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—As a condition of receiving funds under section 2001, a State shall maintain support for elementary and secondary education, and for higher education (which shall include State funding to institutions of higher education and State need-based financial aid, and shall not include support for capital projects or for research and development or tuition and fees paid by students), in each of fiscal years 2022 and 2023 at least at the proportional levels of such State's support for elementary and secondary education and for higher education relative to such State's overall spending, averaged over fiscal years 2017, 2018, and 2019.

(2) WAIVER.—For the purpose of relieving fiscal burdens incurred by States in preventing, preparing for, and responding

to the coronavirus, the Secretary of Education may waive any maintenance of effort requirements associated with the Education Stabilization Fund.

(b) STATE MAINTENANCE OF EQUITY.—

(1) HIGH-NEED LOCAL EDUCATIONAL AGENCIES.—As a condition of receiving funds under section 2001, a State educational agency shall not, in fiscal year 2022 or 2023, reduce State funding (as calculated on a per-pupil basis) for any high-need local educational agency in the State by an amount that exceeds the overall per-pupil reduction in State funds, if any, across all local educational agencies in such State in such fiscal year.

(2) HIGHEST POVERTY LOCAL EDUCATIONAL AGENCIES.—Notwithstanding paragraph (1), as a condition of receiving funds under section 2001, a State educational agency shall not, in fiscal year 2022 or 2023, reduce State funding (as calculated on a per-pupil basis) for any highest poverty local educational agency below the level of funding (as calculated on a per-pupil basis) provided to each such local educational agency in fiscal year 2019.

(c) LOCAL EDUCATIONAL AGENCY MAINTENANCE OF EQUITY FOR HIGH-POVERTY SCHOOLS.—

(1) IN GENERAL.—As a condition of receiving funds under section 2001, a local educational agency shall not, in fiscal year 2022 or 2023—

(A) reduce per-pupil funding (from combined State and local funding) for any high-poverty school served by such local educational agency by an amount that exceeds—

(i) the total reduction in local educational agency funding (from combined State and local funding) for all schools served by the local educational agency in such fiscal year (if any); divided by

(ii) the number of children enrolled in all schools served by the local educational agency in such fiscal year; or

(B) reduce per-pupil, full-time equivalent staff in any high-poverty school by an amount that exceeds—

(i) the total reduction in full-time equivalent staff in all schools served by such local educational agency in such fiscal year (if any); divided by

(ii) the number of children enrolled in all schools served by the local educational agency in such fiscal year.

(2) EXCEPTION.—Paragraph (1) shall not apply to a local educational agency in fiscal year 2022 or 2023 that meets at least 1 of the following criteria in such fiscal year:

(A) Such local educational agency has a total enrollment of less than 1,000 students.

(B) Such local educational agency operates a single school.

(C) Such local educational agency serves all students within each grade span with a single school.

(D) Such local educational agency demonstrates an exceptional or uncontrollable circumstance, such as unpredictable changes in student enrollment or a precipitous decline in the financial resources of such agency, as determined by the Secretary of Education. Determination.

(d) DEFINITIONS.—In this section:

(1) ELEMENTARY EDUCATION; SECONDARY EDUCATION.—The terms "elementary education" and "secondary education" have the meaning given such terms under State law.

(2) HIGHEST POVERTY LOCAL EDUCATIONAL AGENCY.—The term "highest poverty local educational agency" means a local educational agency that is among the group of local educational agencies in the State that—

(A) in rank order, have the highest percentages of economically disadvantaged students in the State, on the basis of the most recent satisfactory data available from the Department of Commerce (or, for local educational agencies for which no such data are available, such other data as the Secretary of Education determines are satisfactory); and

(B) collectively serve not less than 20 percent of the State's total enrollment of students served by all local educational agencies in the State.

(3) HIGH-NEED LOCAL EDUCATIONAL AGENCY.—The term "high-need local educational agency" means a local educational agency that is among the group of local educational agencies in the State that—

(A) in rank order, have the highest percentages of economically disadvantaged students in the State, on the basis of the most recent satisfactory data available from the Department of Commerce (or, for local educational agencies for which no such data are available, such other data as the Secretary of Education determines are satisfactory); and

(B) collectively serve not less than 50 percent of the State's total enrollment of students served by all local educational agencies in the State.

(4) HIGH-POVERTY SCHOOL.—

(A) IN GENERAL.—The term "high-poverty school" means, with respect to a school served by a local educational agency, a school that is in the highest quartile of schools served by such local educational agency based on the percentage of economically disadvantaged students served, as determined by the State in accordance with subparagraph (B).

(B) DETERMINATION.—In making the determination under subparagraph (A), a State shall select a measure of poverty established for the purposes of this paragraph by the Secretary of Education and apply such measure consistently to all schools in the State.

(5) OVERALL PER-PUPIL REDUCTION IN STATE FUNDS.—The term "overall per-pupil reduction in State funds" means, with respect to a fiscal year—

(A) the amount of any reduction in the total amount of State funds provided to all local educational agencies in the State in such fiscal year compared to the total amount of such funds provided to all local educational agencies in the State in the previous fiscal year; divided by

(B) the aggregate number of children enrolled in all schools served by all local educational agencies in the State in the fiscal year for which the determination is being made.

(6) STATE.—The term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. 2005. OUTLYING AREAS.

Time period.

In addition to amounts otherwise available, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $850,000,000, to remain available through September 30, 2023, for the Secretary of Education to allocate awards to the outlying areas on the basis of their respective needs, as determined by the Secretary, to be allocated not more than 30 calendar days after the date of enactment of this Act.

SEC. 2006. GALLAUDET UNIVERSITY.

In addition to amounts otherwise available, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $19,250,000, to remain available through September 30, 2023, for the Kendall Demonstration Elementary School, the Model Secondary School for the Deaf, and Gallaudet University to prevent, prepare for, and respond to coronavirus, including to defray expenses associated with coronavirus (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, and payroll) and to provide financial aid grants to students, which may be used for any component of the student's cost of attendance.

SEC. 2007. STUDENT AID ADMINISTRATION.

In addition to amounts otherwise available, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $91,130,000, to remain available through September 30, 2023, for Student Aid Administration within the Department of Education to prevent, prepare for, and respond to coronavirus including direct outreach to students and borrowers about financial aid, economic impact payments, means-tested benefits, unemployment assistance, and tax benefits, for which the students and borrowers may be eligible.

SEC. 2008. HOWARD UNIVERSITY.

In addition to amounts otherwise available, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $35,000,000, to remain available through September 30, 2023, for Howard University to prevent, prepare for, and respond to coronavirus, including to defray expenses associated with coronavirus (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, and payroll) and to provide financial aid grants to students, which may be used for any component of the student's cost of attendance.

SEC. 2009. NATIONAL TECHNICAL INSTITUTE FOR THE DEAF.

In addition to amounts otherwise available, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated,

$19,250,000, to remain available through September 30, 2023, for the National Technical Institute for the Deaf to prevent, prepare for, and respond to coronavirus, including to defray expenses associated with coronavirus (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff training, and payroll) and to provide financial aid grants to students, which may be used for any component of the student's cost of attendance.

SEC. 2010. INSTITUTE OF EDUCATION SCIENCES.

In addition to amounts otherwise available, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $100,000,000, to remain available through September 30, 2023, for the Institute of Education Sciences to carry out research related to addressing learning loss caused by the coronavirus among the student subgroups described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)) and students experiencing homelessness and children and youth in foster care, and to disseminate such findings to State educational agencies and local educational agencies and other appropriate entities.

SEC. 2011. PROGRAM ADMINISTRATION.

In addition to amounts otherwise available, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $15,000,000, to remain available through September 30, 2024, for Program Administration within the Department of Education to prevent, prepare for, and respond to coronavirus, and for salaries and expenses necessary to implement this part.

SEC. 2012. OFFICE OF INSPECTOR GENERAL.

In addition to amounts otherwise available, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $5,000,000, to remain available until expended, for the Office of Inspector General of the Department of Education, for salaries and expenses necessary for oversight, investigations, and audits of programs, grants, and projects funded under this part carried out by the Office of Inspector General.

SEC. 2013. MODIFICATION OF REVENUE REQUIREMENTS FOR PROPRIETARY INSTITUTIONS OF HIGHER EDUCATION.

(a) IN GENERAL.—Section 487(a)(24) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)(24)) is amended by striking "funds provided under this title" and inserting "Federal funds that are disbursed or delivered to or on behalf of a student to be used to attend such institution (referred to in this paragraph and subsection (d) as 'Federal education assistance funds')".

(b) IMPLEMENTATION OF NON-FEDERAL REVENUE REQUIREMENT.—Section 487(d) of the Higher Education Act of 1965 (20 U.S.C. 1094(d)) is amended—

(1) in the subsection heading, by striking "Non-title IV" and inserting "Non-Federal"; and

(2) in paragraph (1)(C), by striking "funds for a program under this title" and inserting "Federal education assistance funds".

(c) EFFECTIVE DATE.—The amendments made under this section shall— 20 USC 1094 note.

(1) be subject to the master calendar requirements under section 482 of the Higher Education Act of 1965 (20 U.S.C. 1089) and the public involvement and negotiated rulemaking requirements under section 492 of the Higher Education Act of 1965 (20 U.S.C. 1098a), except that such negotiated rulemaking shall commence not earlier than October 1, 2021; and

(2) apply to institutional fiscal years beginning on or after January 1, 2023. Applicability.

SEC. 2014. FUNDING FOR THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

(a) AMOUNTS FOR IDEA.—There is appropriated to the Secretary of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated—

(1) $2,580,000,000 for grants to States under part B of the Individuals with Disabilities Education Act;

(2) $200,000,000 for preschool grants under section 619 of the Individuals with Disabilities Education Act; and

(3) $250,000,000 for programs for infants and toddlers with disabilities under part C of the Individuals with Disabilities Education Act.

(b) GENERAL PROVISIONS.—Any amount appropriated under subsection (a) is in addition to other amounts appropriated or made available for the applicable purpose.

PART 2—MISCELLANEOUS

SEC. 2021. NATIONAL ENDOWMENT FOR THE ARTS.

In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $135,000,000, to remain available until expended, under the National Foundation on the Arts and the Humanities Act of 1965, as follows:

(1) Forty percent shall be for grants, and relevant administrative expenses, to State arts agencies and regional arts organizations that support organizations' programming and general operating expenses to cover up to 100 percent of the costs of the programs which the grants support, to prevent, prepare for, respond to, and recover from the coronavirus.

(2) Sixty percent shall be for direct grants, and relevant administrative expenses, that support organizations' programming and general operating expenses to cover up to 100 percent of the costs of the programs which the grants support, to prevent, prepare for, respond to, and recover from the coronavirus.

SEC. 2022. NATIONAL ENDOWMENT FOR THE HUMANITIES.

In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $135,000,000, to remain available until expended, under the National Foundation on the Arts and the Humanities Act of 1965, as follows:

(1) Forty percent shall be for grants, and relevant administrative expenses, to State humanities councils that support humanities organizations' programming and general operating expenses to cover up to 100 percent of the costs of the programs

which the grants support, to prevent, prepare for, respond to, and recover from the coronavirus.

(2) Sixty percent shall be for direct grants, and relevant administrative expenses, that support humanities organizations' programming and general operating expenses to cover up to 100 percent of the costs of the programs which the grants support, to prevent, prepare for, respond to, and recover from the coronavirus.

SEC. 2023. INSTITUTE OF MUSEUM AND LIBRARY SERVICES.

In addition to amounts otherwise available, there is appropriated to the Institute of Museum and Library Services for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $200,000,000, to remain available until expended, for necessary expenses to carry out museum and library services. The Director of the Institute of Museum and Library Services shall award not less than 89 percent of such funds to State library administrative agencies by applying the formula in section 221(b) of the Museum and Library Services Act, except that—

Applicability.

(1) section 221(b)(3)(A) of such Act shall be applied by substituting "$2,000,000" for "$680,000" and by substituting "$200,000" for "$60,000"; and

(2) section 221(b)(3)(C) and subsections (b) and (c) of section 223 of such Act shall not apply to funds provided under this section.

Subtitle B—Labor Matters

SEC. 2101. FUNDING FOR DEPARTMENT OF LABOR WORKER PROTECTION ACTIVITIES.

(a) APPROPRIATION.—In addition to amounts otherwise made available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Labor for fiscal year 2021, $200,000,000, to remain available until September 30, 2023, for the Wage and Hour Division, the Office of Workers' Compensation Programs, the Office of the Solicitor, the Mine Safety and Health Administration, and the Occupational Safety and Health Administration to carry out COVID–19 related worker protection activities, and for the Office of Inspector General for oversight of the Secretary's activities to prevent, prepare for, and respond to COVID–19.

(b) ALLOCATION OF AMOUNTS.—Amounts appropriated under subsection (a) shall be allocated as follows:

(1) Not less than $100,000,000 shall be for the Occupational Safety and Health Administration, of which $10,000,000 shall be for Susan Harwood training grants and not less than $5,000,000 shall be for enforcement activities related to COVID–19 at high risk workplaces including health care, meat and poultry processing facilities, agricultural workplaces and correctional facilities.

(2) $12,500,000 shall be for the Office of Inspector General.

Subtitle C—Human Services and Community Supports

SEC. 2201. CHILD CARE AND DEVELOPMENT BLOCK GRANT PROGRAM.

(a) CHILD CARE AND DEVELOPMENT BLOCK GRANT FUNDING.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any amounts in the Treasury not otherwise appropriated, $14,990,000,000, to remain available through September 30, 2021, to carry out the program authorized under section 658C of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858a) without regard to requirements in sections 658E(c)(3)(E) or 658G of such Act (42 U.S.C. 9858c(c)(3)(E), 9858e). Payments made to States, territories, Indian Tribes, and Tribal organizations from funds made available under this subsection shall be obligated in fiscal year 2021 or the succeeding 2 fiscal years. States, territories, Indian Tribes, and Tribal organizations are authorized to use such funds to provide child care assistance to health care sector employees, emergency responders, sanitation workers, and other workers deemed essential during the response to coronavirus by public officials, without regard to the income eligibility requirements of section 658P(4) of the Child Care and Development Block Grant Act (42 U.S.C. 9858n(4)). Time period.

(b) ADMINISTRATIVE COSTS.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any amounts in the Treasury not otherwise appropriated, $35,000,000, to remain available through September 30, 2025, for the costs of providing technical assistance and conducting research and for the administrative costs to carry out this section and section 2202 of this subtitle.

(c) SUPPLEMENT NOT SUPPLANT.—Amounts made available to carry out this section shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide child care services for eligible individuals.

SEC. 2202. CHILD CARE STABILIZATION. 42 USC 9858 note.

(a) DEFINITIONS.—In this section:

(1) COVID–19 PUBLIC HEALTH EMERGENCY.—The term "COVID–19 public health emergency" means the public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d) on January 31, 2020, with respect to COVID–19, including any renewal of the declaration.

(2) ELIGIBLE CHILD CARE PROVIDER.—The term "eligible child care provider" means—

(A) an eligible child care provider as defined in section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n); or

(B) a child care provider that is licensed, regulated, or registered in the State, territory, or Indian Tribe on the date of enactment of this Act and meets applicable State and local health and safety requirements.

(b) CHILD CARE STABILIZATION FUNDING.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any amounts in the Treasury not otherwise appropriated, $23,975,000,000, to remain available through September

30, 2021, for grants under this section in accordance with the Child Care and Development Block Grant Act of 1990.

(c) GRANTS.—From the amounts appropriated to carry out this section and under the authority of section 658O of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m) and this section, the Secretary shall award to each lead agency a child care stabilization grant, without regard to the requirements in subparagraphs (C) and (E) of section 658E(c)(3), and in section 658G, of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(c)(3), 9858e). Such grant shall be allotted in accordance with section 658O of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858m).

(d) STATE RESERVATIONS AND SUBGRANTS.—

(1) RESERVATION.—A lead agency for a State that receives a child care stabilization grant pursuant to subsection (c) shall reserve not more than 10 percent of such grant funds to administer subgrants, provide technical assistance and support for applying for and accessing the subgrant opportunity, publicize the availability of the subgrants, carry out activities to increase the supply of child care, and provide technical assistance to help child care providers implement policies as described in paragraph (2)(D)(i).

(2) SUBGRANTS TO QUALIFIED CHILD CARE PROVIDERS.—

(A) IN GENERAL.—The lead agency shall use the remainder of the grant funds awarded pursuant to subsection (c) to make subgrants to qualified child care providers described in subparagraph (B), regardless of such a provider's previous receipt of other Federal assistance, to support the stability of the child care sector during and after the COVID–19 public health emergency.

(B) QUALIFIED CHILD CARE PROVIDER.—To be qualified to receive a subgrant under this paragraph, a provider shall be an eligible child care provider that on the date of submission of an application for the subgrant, was either—

(i) open and available to provide child care services; or

(ii) closed due to public health, financial hardship, or other reasons relating to the COVID–19 public health emergency.

(C) SUBGRANT AMOUNT.—The amount of such a subgrant to a qualified child care provider shall be based on the provider's stated current operating expenses, including costs associated with providing or preparing to provide child care services during the COVID–19 public health emergency, and to the extent practicable, cover sufficient operating expenses to ensure continuous operations for the intended period of the subgrant.

(D) APPLICATION.—The lead agency shall—

Web posting.

(i) make available on the lead agency's website an application for qualified child care providers that includes certifications that, for the duration of the subgrant—

(I) the provider applying will, when open and available to provide child care services, implement policies in line with guidance from the corresponding State, Tribal, and local authorities, and

in accordance with State, Tribal, and local orders, and, to the greatest extent possible, implement policies in line with guidance from the Centers for Disease Control and Prevention;

(II) for each employee, the provider will pay not less than the full compensation, including any benefits, that was provided to the employee as of the date of submission of the application for the subgrant (referred to in this subclause as "full compensation"), and will not take any action that reduces the weekly amount of the employee's compensation below the weekly amount of full compensation, or that reduces the employee's rate of compensation below the rate of full compensation, including the involuntary furloughing of any employee employed on the date of submission of the application for the subgrant; and

(III) the provider will provide relief from copayments and tuition payments for the families enrolled in the provider's program, to the extent possible, and prioritize such relief for families struggling to make either type of payment; and

(ii) accept and process applications submitted under this subparagraph on a rolling basis, and provide subgrant funds in advance of provider expenditures, except as provided in subsection (e)(2).

(E) OBLIGATION.—The lead agency shall notify the Secretary if it is unable to obligate at least 50 percent of the funds received pursuant to subsection (c) that are available for subgrants described in this paragraph within 9 months of the date of enactment of this Act. Notification. Deadline.

(e) USES OF FUNDS.—

(1) IN GENERAL.—A qualified child care provider that receives funds through such a subgrant shall use the funds for at least one of the following:

(A) Personnel costs, including payroll and salaries or similar compensation for an employee (including any sole proprietor or independent contractor), employee benefits, premium pay, or costs for employee recruitment and retention.

(B) Rent (including rent under a lease agreement) or payment on any mortgage obligation, utilities, facility maintenance or improvements, or insurance.

(C) Personal protective equipment, cleaning and sanitization supplies and services, or training and professional development related to health and safety practices.

(D) Purchases of or updates to equipment and supplies to respond to the COVID–19 public health emergency.

(E) Goods and services necessary to maintain or resume child care services.

(F) Mental health supports for children and employees.

(2) REIMBURSEMENT.—The qualified child care provider may use the subgrant funds to reimburse the provider for sums obligated or expended before the date of enactment of this Act for the cost of a good or service described in paragraph (1) to respond to the COVID–19 public health emergency.

(f) SUPPLEMENT NOT SUPPLANT.—Amounts made available to carry out this section shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide child care services for eligible individuals.

SEC. 2203. HEAD START.

In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any amounts in the Treasury not otherwise appropriated, $1,000,000,000, to remain available through September 30, 2022, to carry out the Head Start Act, including for Federal administrative expenses. After reserving funds for Federal administrative expenses, the Secretary shall allocate all remaining amounts to Head Start agencies for one-time grants, and shall allocate to each Head Start agency an amount that bears the same ratio to the portion available for allocations as the number of enrolled children served by the Head Start agency bears to the number of enrolled children served by all Head Start agencies.

SEC. 2204. PROGRAMS FOR SURVIVORS.

(a) IN GENERAL.—Section 303 of the Family Violence Prevention and Services Act (42 U.S.C. 10403) is amended by adding at the end the following:

"(d) ADDITIONAL FUNDING.—For the purposes of carrying out this title, in addition to amounts otherwise made available for such purposes, there are appropriated, out of any amounts in the Treasury not otherwise appropriated, for fiscal year 2021, to remain available until expended except as otherwise provided in this subsection, each of the following:

"(1) $180,000,000 to carry out sections 301 through 312, to be allocated in the manner described in subsection (a)(2), except that—

"(A) a reference in subsection (a)(2) to an amount appropriated under subsection (a)(1) shall be considered to be a reference to an amount appropriated under this paragraph;

"(B) the matching requirement in section 306(c)(4) and condition in section 308(d)(3) shall not apply; and

"(C) each reference in section 305(e) to 'the end of the following fiscal year' shall be considered to be a reference to 'the end of fiscal year 2025'; and

"(D) funds made available to a State in a grant under section 306(a) and obligated in a timely manner shall be available for expenditure, by the State or a recipient of funds from the grant, through the end of fiscal year 2025;

"(2) $18,000,000 to carry out section 309.

"(3) $2,000,000 to carry out section 313, of which $1,000,000 shall be allocated to support Indian communities.".

42 USC 10401 note.

(b) COVID–19 PUBLIC HEALTH EMERGENCY DEFINED.—In this section, the term "COVID–19 public health emergency" means the public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d) on January 31, 2020, with respect to COVID–19, including any renewal of the declaration.

(c) GRANTS TO SUPPORT CULTURALLY SPECIFIC POPULATIONS.—

(1) IN GENERAL.—In addition to amounts otherwise made available, there is appropriated, out of any amounts in the Treasury not otherwise appropriated, to the Secretary of Health

and Human Services (in this section referred to as the "Secretary"), $49,500,000 for fiscal year 2021, to be available until expended, to carry out this subsection (excluding Federal administrative costs, for which funds are appropriated under subsection (e)).

(2) USE OF FUNDS.—From amounts appropriated under paragraph (1), the Secretary acting through the Director of the Family Violence Prevention and Services Program, shall—

(A) support culturally specific community-based organizations to provide culturally specific activities for survivors of sexual assault and domestic violence, to address emergent needs resulting from the COVID–19 public health emergency and other public health concerns; and

(B) support culturally specific community-based organizations that provide culturally specific activities to promote strategic partnership development and collaboration in responding to the impact of COVID–19 and other public health concerns on survivors of sexual assault and domestic violence.

(d) GRANTS TO SUPPORT SURVIVORS OF SEXUAL ASSAULT.—

(1) IN GENERAL.—In addition to amounts otherwise made available, there is appropriated, out of any amounts in the Treasury not otherwise appropriated, to the Secretary, $198,000,000 for fiscal year 2021, to be available until expended, to carry out this subsection (excluding Federal administrative costs, for which funds are appropriated under subsection (e)).

(2) USE OF FUNDS.—From amounts appropriated under paragraph (1), the Secretary acting through the Director of the Family Violence Prevention and Services Program, shall assist rape crisis centers in transitioning to virtual services and meeting the emergency needs of survivors.

(e) ADMINISTRATIVE COSTS.—In addition to amounts otherwise made available, there is appropriated to the Secretary, out of any amounts in the Treasury not otherwise appropriated, $2,500,000 for fiscal year 2021, to remain available until expended, for the Federal administrative costs of carrying out subsections (c) and (d).

SEC. 2205. CHILD ABUSE PREVENTION AND TREATMENT.

In addition to amounts otherwise available, there is appropriated to the Secretary of Health and Human Services for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, the following amounts, to remain available through September 30, 2023:

(1) $250,000,000 for carrying out the program authorized under section 201 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116), which shall be allocated without regard to section 204(4) of such Act (42 U.S.C. 5116d(4)) and shall be allotted to States in accordance with section 203 of such Act (42 U.S.C. 5116b), except that—

(A) in subsection (b)(1)(A) of such section 203, "70 percent" shall be deemed to be "100 percent"; and

(B) subsections (b)(1)(B) and (c) of such section 203 shall not apply; and

(2) $100,000,000 for carrying out the State grant program authorized under section 106 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a), which shall be allocated without regard to section 112(a)(2) of such Act (42 U.S.C. 5106h(a)(2)).

SEC. 2206. CORPORATION FOR NATIONAL AND COMMUNITY SERVICE AND THE NATIONAL SERVICE TRUST.

(a) CORPORATION FOR NATIONAL AND COMMUNITY SERVICE.—In addition to amounts otherwise made available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, to the Corporation for National and Community Service, $852,000,000, to remain available through September 30, 2024, to carry out subsection (b), except that amounts to carry out subsection (b)(7) shall remain available until September 30, 2026.

(b) ALLOCATION OF AMOUNTS.—Amounts provided by subsection (a) shall be allocated as follows:

(1) AMERICORPS STATE AND NATIONAL.—$620,000,000 shall be used—

(A) to increase the living allowances of participants in national service programs; and

(B) to make funding adjustments to existing (as of the date of enactment of this Act) awards and award new and additional awards to entities to support programs described in paragraphs (1)(B), (2)(B), (3)(B), (4)(B), and (5)(B) of subsection (a), and subsection (b)(2), of section 122 of the National and Community Service Act of 1990 (42 U.S.C. 12572), whether or not the entities are already grant recipients under such provisions on the date of enactment of this Act, and notwithstanding section 122(a)(1)(B)(vi) of the National and Community Service Act of 1990 (42 U.S.C. 12572(a)(1)(B)(vi)), by—

(i) prioritizing entities serving communities disproportionately impacted by COVID–19 and utilizing culturally competent and multilingual strategies in the provision of services; and

(ii) taking into account the diversity of communities and participants served by such entities, including racial, ethnic, socioeconomic, linguistic, or geographic diversity.

(2) STATE COMMISSIONS.—$20,000,000 shall be used to make adjustments to existing (as of the date of enactment of this Act) awards and new and additional awards, including awards to State Commissions on National and Community Service, under section 126(a) of the National and Community Service Act of 1990 (42 U.S.C. 12576(a)).

(3) VOLUNTEER GENERATION FUND.—$20,000,000 shall be used for expenses authorized under section 501(a)(4)(F) of the National and Community Service Act of 1990 (42 U.S.C. 12681(a)(4)(F)), which, notwithstanding section 198P(d)(1)(B) of that Act (42 U.S.C. 12653p(d)(1)(B)), shall be for grants awarded by the Corporation for National and Community Service on a competitive basis.

(4) AMERICORPS VISTA.—$80,000,000 shall be used for the purposes described in section 101 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951), including to increase

the living allowances of volunteers, described in section 105(b) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955(b)).

(5) NATIONAL SENIOR SERVICE CORPS.—$30,000,000 shall be used for the purposes described in section 200 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5000).

(6) ADMINISTRATIVE COSTS.—$73,000,000 shall be used for the Corporation for National and Community Service for administrative expenses to carry out programs and activities funded by subsection (a).

(7) OFFICE OF INSPECTOR GENERAL.—$9,000,000 shall be used for the Office of Inspector General of the Corporation for National and Community Service for salaries and expenses necessary for oversight and audit of programs and activities funded by subsection (a).

(c) NATIONAL SERVICE TRUST.—In addition to amounts otherwise made available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $148,000,000, to remain available until expended, for administration of the National Service Trust, and for payment to the Trust for the provision of educational awards pursuant to section 145(a)(1)(A) of the National and Community Service Act of 1990 (42 U.S.C. 12601(a)(1)(A)).

Subtitle D—Public Health

SEC. 2301. FUNDING FOR COVID–19 VACCINE ACTIVITIES AT THE CENTERS FOR DISEASE CONTROL AND PREVENTION.

42 USC 247d note.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary of Health and Human Services (in this subtitle referred to as the "Secretary") for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $7,500,000,000, to remain available until expended, to carry out activities to plan, prepare for, promote, distribute, administer, monitor, and track COVID–19 vaccines.

Consultation.

(b) USE OF FUNDS.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, and in consultation with other agencies, as applicable, shall, in conducting activities referred to in subsection (a)—

(1) conduct activities to enhance, expand, and improve nationwide COVID–19 vaccine distribution and administration, including activities related to distribution of ancillary medical products and supplies related to vaccines; and

(2) provide technical assistance, guidance, and support to, and award grants or cooperative agreements to, State, local, Tribal, and territorial public health departments for enhancement of COVID–19 vaccine distribution and administration capabilities, including—

(A) the distribution and administration of vaccines licensed under section 351 of the Public Health Service Act (42 U.S.C. 262) or authorized under section 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–3) and ancillary medical products and supplies related to vaccines;

(B) the establishment and expansion, including staffing support, of community vaccination centers, particularly in underserved areas;

(C) the deployment of mobile vaccination units, particularly in underserved areas;

(D) information technology, standards-based data, and reporting enhancements, including improvements necessary to support standards-based sharing of data related to vaccine distribution and vaccinations and systems that enhance vaccine safety, effectiveness, and uptake, particularly among underserved populations;

(E) facilities enhancements;

(F) communication with the public regarding when, where, and how to receive COVID–19 vaccines; and

(G) transportation of individuals to facilitate vaccinations, including at community vaccination centers and mobile vaccination units, particularly for underserved populations.

(c) SUPPLEMENTAL FUNDING FOR STATE VACCINATION GRANTS.—

(1) DEFINITIONS.—In this subsection:

(A) BASE FORMULA.—The term "base formula" means the allocation formula that applied to the Public Health Emergency Preparedness cooperative agreement in fiscal year 2020.

(B) ALTERNATIVE ALLOCATION.—The term "alternative allocation" means an allocation to each State, territory, or locality calculated using the percentage derived from the allocation received by such State, territory, or locality of the aggregate amount of fiscal year 2020 Public Health Emergency Preparedness cooperative agreement awards under section 319C–1 of the Public Health Service Act (42 U.S.C. 247d–3a).

(2) SUPPLEMENTAL FUNDING.—

Deadline.

(A) IN GENERAL.—Not later than 21 days after the date of enactment of this Act, the Secretary shall, out of amounts described in subsection (a), provide supplemental funding to any State, locality, or territory that received less of the amounts that were appropriated under title III of division M of Public Law 116–260 for vaccination grants to be issued by the Centers for Disease Control and Prevention than such State, locality, or territory would have received had such amounts been allocated using the alternative allocation.

(B) AMOUNT.—The amount of supplemental funding provided under this subsection shall be equal to the difference between—

(i) the amount the State, locality, or territory received, or would receive, under the base formula; and

(ii) the amount the State, locality, or territory would receive under the alternative allocation.

SEC. 2302. FUNDING FOR VACCINE CONFIDENCE ACTIVITIES.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $1,000,000,000, to remain available until expended, to carry out activities, acting

through the Director of the Centers for Disease Control and Prevention—

(1) to strengthen vaccine confidence in the United States, including its territories and possessions;

(2) to provide further information and education with respect to vaccines licensed under section 351 of the Public Health Service Act (42 U.S.C. 262) or authorized under section 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–3); and

(3) to improve rates of vaccination throughout the United States, including its territories and possessions, including through activities described in section 313 of the Public Health Service Act, as amended by section 311 of division BB of the Consolidated Appropriations Act, 2021 (Public Law 116–260).

SEC. 2303. FUNDING FOR SUPPLY CHAIN FOR COVID–19 VACCINES, THERAPEUTICS, AND MEDICAL SUPPLIES.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $6,050,000,000, to remain available until expended, for necessary expenses with respect to research, development, manufacturing, production, and the purchase of vaccines, therapeutics, and ancillary medical products and supplies to prevent, prepare, or respond to—

(1) SARS–CoV–2 or any viral variant mutating therefrom with pandemic potential; and

(2) COVID–19 or any disease with potential for creating a pandemic.

SEC. 2304. FUNDING FOR COVID–19 VACCINE, THERAPEUTIC, AND DEVICE ACTIVITIES AT THE FOOD AND DRUG ADMINISTRATION.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $500,000,000, to remain available until expended, to be used for the evaluation of the continued performance, safety, and effectiveness, including with respect to emerging COVID–19 variants, of vaccines, therapeutics, and diagnostics approved, cleared, licensed, or authorized for use for the treatment, prevention, or diagnosis of COVID–19; facilitation of advanced continuous manufacturing activities related to production of vaccines and related materials; facilitation and conduct of inspections related to the manufacturing of vaccines, therapeutics, and devices delayed or cancelled for reasons related to COVID–19; review of devices authorized for use for the treatment, prevention, or diagnosis of COVID–19; and oversight of the supply chain and mitigation of shortages of vaccines, therapeutics, and devices approved, cleared, licensed, or authorized for use for the treatment, prevention, or diagnosis of COVID–19 by the Food and Drug Administration.

SEC. 2305. REDUCED COST-SHARING.

(a) IN GENERAL.—Section 1402 of the Patient Protection and Affordable Care Act is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) SPECIAL RULE FOR INDIVIDUALS WHO RECEIVE UNEMPLOYMENT COMPENSATION DURING 2021.—For purposes of this section,

in the case of an individual who has received, or has been approved to receive, unemployment compensation for any week beginning during 2021, for the plan year in which such week begins—

"(1) such individual shall be treated as meeting the requirements of subsection (b)(2), and

"(2) for purposes of subsections (c) and (d), there shall not be taken into account any household income of the individual in excess of 133 percent of the poverty line for a family of the size involved.".

42 USC 18071 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning after December 31, 2020.

Subtitle E—Testing

42 USC 247d note.

SEC. 2401. FUNDING FOR COVID–19 TESTING, CONTACT TRACING, AND MITIGATION ACTIVITIES.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary of Health and Human Services (in this subtitle referred to as the "Secretary") for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $47,800,000,000, to remain available until expended, to carry out activities to detect, diagnose, trace, and monitor SARS–CoV–2 and COVID–19 infections and related strategies to mitigate the spread of COVID–19.

(b) USE OF FUNDS.—From amounts appropriated by subsection (a), the Secretary shall—

(1) implement a national, evidence-based strategy for testing, contact tracing, surveillance, and mitigation with respect to SARS–CoV–2 and COVID–19, including through activities authorized under section 319(a) of the Public Health Service Act;

(2) provide technical assistance, guidance, and support, and award grants or cooperative agreements to State, local, and territorial public health departments for activities to detect, diagnose, trace, and monitor SARS–CoV–2 and COVID–19 infections and related strategies and activities to mitigate the spread of COVID–19;

(3) support the development, manufacturing, procurement, distribution, and administration of tests to detect or diagnose SARS–CoV–2 and COVID–19, including through—

(A) support for the development, manufacture, procurement, and distribution of supplies necessary for administering tests, such as personal protective equipment; and

(B) support for the acquisition, construction, alteration, or renovation of non-federally owned facilities for the production of diagnostics and ancillary medical products and supplies where the Secretary determines that such an investment is necessary to ensure the production of sufficient amounts of such supplies;

(4) establish and expand Federal, State, local, and territorial testing and contact tracing capabilities, including—

(A) through investments in laboratory capacity, such as—

(i) academic and research laboratories, or other laboratories that could be used for processing of COVID–19 testing;

(ii) community-based testing sites and community-based organizations; or

(iii) mobile health units, particularly in medically underserved areas; and

(B) with respect to quarantine and isolation of contacts;

(5) enhance information technology, data modernization, and reporting, including improvements necessary to support sharing of data related to public health capabilities;

(6) award grants to, or enter into cooperative agreements or contracts with, State, local, and territorial public health departments to establish, expand, and sustain a public health workforce; and

(7) to cover administrative and program support costs necessary to conduct activities related to subparagraph (a).

SEC. 2402. FUNDING FOR SARS–COV–2 GENOMIC SEQUENCING AND SURVEILLANCE.

42 USC 289g–5 note.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021 out of any money in the Treasury not otherwise appropriated, $1,750,000,000, to remain available until expended, to strengthen and expand activities and workforce related to genomic sequencing, analytics, and disease surveillance.

(b) USE OF FUNDS.—From amounts appropriated by subsection (a), the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall—

(1) conduct, expand, and improve activities to sequence genomes, identify mutations, and survey the circulation and transmission of viruses and other organisms, including strains of SARS–CoV–2;

(2) award grants or cooperative agreements to State, local, Tribal, or territorial public health departments or public health laboratories—

(A) to increase their capacity to sequence genomes of circulating strains of viruses and other organisms, including SARS–CoV–2;

(B) to identify mutations in viruses and other organisms, including SARS–CoV–2;

(C) to use genomic sequencing to identify outbreaks and clusters of diseases or infections, including COVID–19; and

(D) to develop effective disease response strategies based on genomic sequencing and surveillance data;

(3) enhance and expand the informatics capabilities of the public health workforce; and

(4) award grants for the construction, alteration, or renovation of facilities to improve genomic sequencing and surveillance capabilities at the State and local level.

Grants.

SEC. 2403. FUNDING FOR GLOBAL HEALTH.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any amounts in the Treasury not otherwise appropriated, $750,000,000, to remain available until expended, for activities to be conducted acting through the Director of the Centers for Disease Control and Prevention to combat SARS–CoV–2, COVID–19, and other emerging infectious disease threats globally, including efforts related to global health security, global disease detection and response, global health

protection, global immunization, and global coordination on public health.

SEC. 2404. FUNDING FOR DATA MODERNIZATION AND FORECASTING CENTER.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $500,000,000, to remain available until expended, for activities to be conducted acting through the Director of the Centers for Disease Control and Prevention to support public health data surveillance and analytics infrastructure modernization initiatives at the Centers for Disease Control and Prevention, and establish, expand, and maintain efforts to modernize the United States disease warning system to forecast and track hotspots for COVID–19, its variants, and emerging biological threats, including academic and workforce support for analytics and informatics infrastructure and data collection systems.

Subtitle F—Public Health Workforce

42 USC 295 note.

SEC. 2501. FUNDING FOR PUBLIC HEALTH WORKFORCE.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary of Health and Human Services (in this subtitle referred to as the "Secretary") for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $7,660,000,000, to remain available until expended, to carry out activities related to establishing, expanding, and sustaining a public health workforce, including by making awards to State, local, and territorial public health departments.

(b) USE OF FUNDS FOR PUBLIC HEALTH DEPARTMENTS.—Amounts made available to an awardee pursuant to subsection (a) shall be used for the following:

(1) Costs, including wages and benefits, related to the recruiting, hiring, and training of individuals—

(A) to serve as case investigators, contact tracers, social support specialists, community health workers, public health nurses, disease intervention specialists, epidemiologists, program managers, laboratory personnel, informaticians, communication and policy experts, and any other positions as may be required to prevent, prepare for, and respond to COVID–19; and

(B) who are employed by—

(i) the State, territorial, or local public health department involved; or

(ii) a nonprofit private or public organization with demonstrated expertise in implementing public health programs and established relationships with such State, territorial, or local public health departments, particularly in medically underserved areas.

(2) Personal protective equipment, data management and other technology, or other necessary supplies.

(3) Administrative costs and activities necessary for awardees to implement activities funded under this section.

(4) Subawards from recipients of awards under subsection (a) to local health departments for the purposes of the activities funded under this section.

SEC. 2502. FUNDING FOR MEDICAL RESERVE CORPS.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $100,000,000, to remain available until expended, for carrying out section 2813 of the Public Health Service Act (42 U.S.C. 300hh–15).

Subtitle G—Public Health Investments

SEC. 2601. FUNDING FOR COMMUNITY HEALTH CENTERS AND COMMUNITY CARE.

42 USC 254b note.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary of Health and Human Services (in this subtitle referred to as the "Secretary") for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $7,600,000,000, to remain available until expended, for necessary expenses for awarding grants and cooperative agreements under section 330 of the Public Health Service Act (42 U.S.C. 254b) to be awarded without regard to the time limitation in subsection (e)(3) and subsections (e)(6)(A)(iii), (e)(6)(B)(iii), and (r)(2)(B) of such section 330, and for necessary expenses for awarding grants to Federally qualified health centers, as described in section 1861(aa)(4)(B) of the Social Security Act (42 U.S.C. 1395x(aa)(4)(B)), and for awarding grants or contracts to Papa Ola Lokahi and to qualified entities under sections 4 and 6 of the Native Hawaiian Health Care Improvement Act (42 U.S.C. 11703, 11705). Of the total amount appropriated by the preceding sentence, not less than $20,000,000 shall be for grants or contracts to Papa Ola Lokahi and to qualified entities under sections 4 and 6 of the Native Hawaiian Health Care Improvement Act (42 U.S.C. 11703, 11705).

(b) USE OF FUNDS.—Amounts made available to an awardee pursuant to subsection (a) shall be used—

(1) to plan, prepare for, promote, distribute, administer, and track COVID–19 vaccines, and to carry out other vaccine-related activities;

(2) to detect, diagnose, trace, and monitor COVID–19 infections and related activities necessary to mitigate the spread of COVID–19, including activities related to, and equipment or supplies purchased for, testing, contact tracing, surveillance, mitigation, and treatment of COVID–19;

(3) to purchase equipment and supplies to conduct mobile testing or vaccinations for COVID–19, to purchase and maintain mobile vehicles and equipment to conduct such testing or vaccinations, and to hire and train laboratory personnel and other staff to conduct such mobile testing or vaccinations, particularly in medically underserved areas;

(4) to establish, expand, and sustain the health care workforce to prevent, prepare for, and respond to COVID–19, and to carry out other health workforce-related activities;

(5) to modify, enhance, and expand health care services and infrastructure; and

(6) to conduct community outreach and education activities related to COVID–19.

(c) PAST EXPENDITURES.—An awardee may use amounts awarded pursuant to subsection (a) to cover the costs of the awardee carrying out any of the activities described in subsection (b) during

Time period.

the period beginning on the date of the declaration of a public health emergency by the Secretary under section 319 of the Public Health Service Act (42 U.S.C. 247d) on January 31, 2020, with respect to COVID–19 and ending on the date of such award.

SEC. 2602. FUNDING FOR NATIONAL HEALTH SERVICE CORPS.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $800,000,000, to remain available until expended, for carrying out sections 338A, 338B, and 338I of the Public Health Service Act (42 U.S.C. 254l, 254l–1, 254q–1) with respect to the health workforce.

(b) STATE LOAN REPAYMENT PROGRAMS.—

(1) IN GENERAL.—Of the amount made available pursuant to subsection (a), $100,000,000 shall be made available for providing primary health services through grants to States under section 338I(a) of the Public Health Service Act (42 U.S.C. 254q–1(a)).

(2) CONDITIONS.—With respect to grants described in paragraph (1) using funds made available under such paragraph:

(A) Section 338I(b) of the Public Health Service Act (42 U.S.C. 254q–1(b)) shall not apply.

(B) Notwithstanding section 338I(d)(2) of the Public Health Service Act (42 U.S.C. 254q–1(d)(2)), not more than 10 percent of an award to a State from such amounts, may be used by the State for costs of administering the State loan repayment program.

SEC. 2603. FUNDING FOR NURSE CORPS.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $200,000,000, to remain available until expended, for carrying out section 846 of the Public Health Service Act (42 U.S.C. 297n).

42 USC 256h note.

SEC. 2604. FUNDING FOR TEACHING HEALTH CENTERS THAT OPERATE GRADUATE MEDICAL EDUCATION.

(a) IN GENERAL.—In addition to amounts otherwise available, and notwithstanding the capped amount referenced in sections 340H(b)(2) and 340H(d)(2) of the Public Health Service Act (42 U.S.C. 256h(b)(2) and (d)(2)), there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $330,000,000, to remain available until September 30, 2023, for the program of payments to teaching health centers that operate graduate medical education under section 340H of the Public Health Service Act (42 U.S.C. 256h) and for teaching health center development grants authorized under section 749A of the Public Health Service Act (42 U.S.C. 293l–1).

(b) USE OF FUNDS.—Amounts made available pursuant to subsection (a) shall be used for the following activities:

(1) For making payments to establish new approved graduate medical residency training programs pursuant to section 340H(a)(1)(C) of the Public Health Service Act (42 U.S.C. 256h(a)(1)(C)).

(2) To provide an increase to the per resident amount described in section 340H(a)(2) of the Public Health Service Act (42 U.S.C. 256h(a)(2)) of $10,000.

(3) For making payments under section 340H(a)(1)(A) of the Public Health Service Act (42 U.S.C. 256h(a)(1)(A))) to qualified teaching health centers for maintenance of filled positions at existing approved graduate medical residency training programs.

(4) For making payments under section 340H(a)(1)(B) of the Public Health Service Act (42 U.S.C. 256h(a)(1)(B)) for the expansion of existing approved graduate medical residency training programs.

(5) For making awards under section 749A of the Public Health Service Act (42 U.S.C. 293l–1) to teaching health centers for the purpose of establishing new accredited or expanded primary care residency programs.

(6) To cover administrative costs and activities necessary for qualified teaching health centers receiving payments under section 340H of the Public Health Service Act (42 U.S.C. 256h) to carry out activities under such section.

SEC. 2605. FUNDING FOR FAMILY PLANNING.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $50,000,000, to remain available until expended, for necessary expenses for making grants and contracts under section 1001 of the Public Health Service Act (42 U.S.C. 300).

Subtitle H—Mental Health and Substance Use Disorder

SEC. 2701. FUNDING FOR BLOCK GRANTS FOR COMMUNITY MENTAL HEALTH SERVICES.

In addition to amounts otherwise available, there is appropriated to the Secretary of Health and Human Services (in this subtitle referred to as the "Secretary") for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $1,500,000,000, to remain available until expended, for carrying out subpart I of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.), subpart III of part B of title XIX of such Act (42 U.S.C. 300x–51 et seq.), and section 505(c) of such Act (42 U.S.C. 290aa–4(c)) with respect to mental health. Notwithstanding section 1952 of the Public Health Service Act (42 U.S.C. 300x–62), any amount awarded to a State out of amounts appropriated by this section shall be expended by the State by September 30, 2025.

SEC. 2702. FUNDING FOR BLOCK GRANTS FOR PREVENTION AND TREATMENT OF SUBSTANCE ABUSE.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $1,500,000,000, to remain available until expended, for carrying out subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.), subpart III of part B of title XIX of such Act (42 U.S.C. 300x–51 et seq.), section 505(d) of such Act (42 U.S.C. 290aa–4(d)) with respect to substance abuse, and section 515(d) of such Act (42 U.S.C. 290bb–21(d)). Notwithstanding section 1952 Deadline.

of the Public Health Service Act (42 U.S.C. 300x–62), any amount awarded to a State out of amounts appropriated by this section shall be expended by the State by September 30, 2025.

42 USC 294n note prec.

SEC. 2703. FUNDING FOR MENTAL HEALTH AND SUBSTANCE USE DISORDER TRAINING FOR HEALTH CARE PROFESSIONALS, PARAPROFESSIONALS, AND PUBLIC SAFETY OFFICERS.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $80,000,000, to remain available until expended, for the purpose described in subsection (b).

Grants. Contracts.

(b) USE OF FUNDING.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall, taking into consideration the needs of rural and medically underserved communities, use amounts appropriated by subsection (a) to award grants or contracts to health professions schools, academic health centers, State or local governments, Indian Tribes and Tribal organizations, or other appropriate public or private nonprofit entities (or consortia of entities, including entities promoting multidisciplinary approaches), to plan, develop, operate, or participate in health professions and nursing training activities for health care students, residents, professionals, paraprofessionals, trainees, and public safety officers, and employers of such individuals, in evidence-informed strategies for reducing and addressing suicide, burnout, mental health conditions, and substance use disorders among health care professionals.

42 USC 294n note prec.

SEC. 2704. FUNDING FOR EDUCATION AND AWARENESS CAMPAIGN ENCOURAGING HEALTHY WORK CONDITIONS AND USE OF MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES BY HEALTH CARE PROFESSIONALS.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $20,000,000, to remain available until expended, for the purpose described in subsection (b).

Consultation.

(b) USE OF FUNDS.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the medical professional community, shall use amounts appropriated by subsection (a) to carry out a national evidence-based education and awareness campaign directed at health care professionals and first responders (such as emergency medical service providers), and employers of such professionals and first responders. Such awareness campaign shall—

(1) encourage primary prevention of mental health conditions and substance use disorders and secondary and tertiary prevention by encouraging health care professionals to seek support and treatment for their own mental health and substance use concerns; and

(2) help such professionals to identify risk factors in themselves and others and respond to such risks.

42 USC 294n note prec.

SEC. 2705. FUNDING FOR GRANTS FOR HEALTH CARE PROVIDERS TO PROMOTE MENTAL HEALTH AMONG THEIR HEALTH PROFESSIONAL WORKFORCE.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out

of any money in the Treasury not otherwise appropriated, $40,000,000, to remain available until expended, for the purpose described in subsection (b).

(b) USE OF FUNDS.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall, taking into consideration the needs of rural and medically underserved communities, use amounts appropriated by subsection (a) to award grants or contracts to entities providing health care, including health care providers associations and Federally qualified health centers, to establish, enhance, or expand evidence-informed programs or protocols to promote mental health among their providers, other personnel, and members. Contracts.

SEC. 2706. FUNDING FOR COMMUNITY-BASED FUNDING FOR LOCAL SUBSTANCE USE DISORDER SERVICES. 42 USC 290dd–3 note.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $30,000,000, to remain available until expended, to carry out the purpose described in subsection (b).

(b) USE OF FUNDS.—

(1) IN GENERAL.—The Secretary, acting through the Assistant Secretary for Mental Health and Substance Use and in consultation with the Director of the Centers for Disease Control and Prevention, shall award grants to support States; local, Tribal, and territorial governments; Tribal organizations; nonprofit community-based organizations; and primary and behavioral health organizations to support community-based overdose prevention programs, syringe services programs, and other harm reduction services. Grants.

(2) USE OF GRANT FUNDS.—Grant funds awarded under this section to eligible entities shall be used for preventing and controlling the spread of infectious diseases and the consequences of such diseases for individuals with substance use disorder, distributing opioid overdose reversal medication to individuals at risk of overdose, connecting individuals at risk for, or with, a substance use disorder to overdose education, counseling, and health education, and encouraging such individuals to take steps to reduce the negative personal and public health impacts of substance use or misuse.

SEC. 2707. FUNDING FOR COMMUNITY-BASED FUNDING FOR LOCAL BEHAVIORAL HEALTH NEEDS. 42 USC 290aa note.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $50,000,000, to remain available until expended, to carry out the purpose described in subsection (b).

(b) USE OF FUNDS.—

(1) IN GENERAL.—The Secretary, acting through the Assistant Secretary for Mental Health and Substance Use, shall award grants to State, local, Tribal, and territorial governments, Tribal organizations, nonprofit community-based entities, and primary care and behavioral health organizations to address increased community behavioral health needs worsened by the COVID–19 public health emergency. Grants.

(2) USE OF GRANT FUNDS.—Grant funds awarded under this section to eligible entities shall be used for promoting

care coordination among local entities; training the mental and behavioral health workforce, relevant stakeholders, and community members; expanding evidence-based integrated models of care; addressing surge capacity for mental and behavioral health needs; providing mental and behavioral health services to individuals with mental health needs (including co-occurring substance use disorders) as delivered by behavioral and mental health professionals utilizing telehealth services; and supporting, enhancing, or expanding mental and behavioral health preventive and crisis intervention services.

SEC. 2708. FUNDING FOR THE NATIONAL CHILD TRAUMATIC STRESS NETWORK.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $10,000,000, to remain available until expended, for carrying out section 582 of the Public Health Service Act (42 U.S.C. 290hh–1) with respect to addressing the problem of high-risk or medically underserved persons who experience violence-related stress.

SEC. 2709. FUNDING FOR PROJECT AWARE.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $30,000,000, to remain available until expended, for carrying out section 520A of the Public Health Service Act (42 U.S.C. 290bb–32) with respect to advancing wellness and resiliency in education.

SEC. 2710. FUNDING FOR YOUTH SUICIDE PREVENTION.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $20,000,000, to remain available until expended, for carrying out sections 520E and 520E–2 of the Public Health Service Act (42 U.S.C. 290bb–36, 290bb–36b).

SEC. 2711. FUNDING FOR BEHAVIORAL HEALTH WORKFORCE EDUCATION AND TRAINING.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $100,000,000, to remain available until expended, for carrying out section 756 of the Public Health Service Act (42 U.S.C. 294e–1).

SEC. 2712. FUNDING FOR PEDIATRIC MENTAL HEALTH CARE ACCESS.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $80,000,000, to remain available until expended, for carrying out section 330M of the Public Health Service Act (42 U.S.C. 254c–19).

SEC. 2713. FUNDING FOR EXPANSION GRANTS FOR CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS.

In addition to amounts otherwise available, there is appropriated to the Secretary, acting through the Assistant Secretary for Mental Health and Substance Use, for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $420,000,000, to remain available until expended, for grants to

communities and community organizations that meet the criteria for Certified Community Behavioral Health Clinics pursuant to section 223(a) of the Protecting Access to Medicare Act of 2014 (42 U.S.C. 1396a note).

Subtitle I—Exchange Grant Program

SEC. 2801. ESTABLISHING A GRANT PROGRAM FOR EXCHANGE MODERNIZATION.

42 USC 18031 note.

(a) IN GENERAL.—Out of funds appropriated under subsection (b), the Secretary of Health and Human Services (in this subtitle referred to as the "Secretary") shall award grants to each American Health Benefits Exchange established under section 1311(b) of the Patient Protection and Affordable Care Act (42 U.S.C. 18031(b)) (other than an Exchange established by the Secretary under section 1321(c) of such Act (42 U.S.C. 18041(c))) that submits to the Secretary an application at such time and in such manner, and containing such information, as specified by the Secretary, for purposes of enabling such Exchange to modernize or update any system, program, or technology utilized by such Exchange to ensure such Exchange is compliant with all applicable requirements.

(b) FUNDING.—In addition to amounts otherwise available, there is appropriated, for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $20,000,000, to remain available until September 30, 2022, for carrying out this section.

Subtitle J—Continued Assistance to Rail Workers

SEC. 2901. ADDITIONAL ENHANCED BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT.

(a) IN GENERAL.—Section 2(a)(5)(A) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(a)(5)(A)) is amended—

(1) in the first sentence—

(A) by striking "March 14, 2021" and inserting "September 6, 2021";

(B) by striking "or July 1, 2020" and inserting "July 1, 2020, or July 1, 2021"; and

(2) in the fourth sentence, by striking "March 14, 2021" and inserting "September 6, 2021".

(b) CLARIFICATION ON AUTHORITY TO USE FUNDS.—Funds appropriated under subparagraph (B) of section 2(a)(5) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(a)(5)) shall be available to cover the cost of recovery benefits provided under such section 2(a)(5) by reason of the amendments made by subsection (a) as well as to cover the cost of such benefits provided under such section 2(a)(5) as in effect on the day before the date of enactment of this Act.

45 USC 352 note.

SEC. 2902. EXTENDED UNEMPLOYMENT BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT.

(a) IN GENERAL.—Section 2(c)(2)(D) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(c)(2)(D)) is amended—

(1) in clause (i)—

(A) in subclause (I), by striking "185 days" and inserting "330 days";

(B) in subclause (II),

(i) by striking "19 consecutive 14-day periods" and inserting "33 consecutive 14-day periods"; and

(ii) by striking "6 consecutive 14-day periods" and inserting "20 consecutive 14-day periods";

(2) in clause (ii)—

(A) by striking "120 days of unemployment" and inserting "265 days of unemployment";

(B) by striking "12 consecutive 14-day periods" and inserting "27 consecutive 14-day periods"; and

(C) by striking "6 consecutive 14-day periods" and inserting "20 consecutive 14-day periods";

(3) in clause (iii)—

(A) by striking "June 30, 2021" and inserting "June 30, 2022"; and

(B) by striking "the provisions of clauses (i) and (ii) shall not apply to any employee whose extended benefit period under subparagraph (B) begins after March 14, 2021, and shall not apply to any employee with respect to any registration period beginning after April 5, 2021." and inserting "the provisions of clauses (i) and (ii) shall not apply to any employee with respect to any registration period beginning after September 6, 2021."; and

(4) in clause (v), by adding at the end the following: "In addition to the amount appropriated by the preceding two sentences, out of any funds in the Treasury not otherwise appropriated, there are appropriated $2,000,000 to cover the cost of additional extended unemployment benefits provided under this subparagraph, to remain available until expended.".

45 USC 352 note.

(b) CLARIFICATION ON AUTHORITY TO USE FUNDS.—Funds appropriated under the first, second, or third sentence of clause (v) of section 2(c)(2)(D) of the Railroad Unemployment Insurance Act shall be available to cover the cost of additional extended unemployment benefits provided under such section 2(c)(2)(D) by reason of the amendments made by subsection (a) as well as to cover the cost of such benefits provided under such section 2(c)(2)(D) as in effect on the day before the date of enactment of this Act.

SEC. 2903. EXTENSION OF WAIVER OF THE 7-DAY WAITING PERIOD FOR BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT.

(a) IN GENERAL.—Section 2112(a) of the CARES Act (15 U.S.C. 9030(a)) is amended by striking "March 14, 2021" and inserting "September 6, 2021".

15 USC 9030 note.

(b) CLARIFICATION ON AUTHORITY TO USE FUNDS.—Funds appropriated under section 2112(c) of the CARES Act (15 U.S.C. 9030(c)) shall be available to cover the cost of additional benefits payable due to section 2112(a) of such Act by reason of the amendments made by subsection (a) as well as to cover the cost of such benefits payable due to such section 2112(a) as in effect on the day before the date of enactment of this Act.

SEC. 2904. RAILROAD RETIREMENT BOARD AND OFFICE OF THE INSPECTOR GENERAL FUNDING.

In addition to amounts otherwise made available, there are appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated—

(1) $27,975,000, to remain available until expended, for the Railroad Retirement Board, to prevent, prepare for, and respond to coronavirus, of which—

(A) $6,800,000 shall be for additional hiring and overtime bonuses as needed to administer the Railroad Unemployment Insurance Act; and

(B) $21,175,000 shall be to supplement, not supplant, existing resources devoted to operations and improvements for the Information Technology Investment Initiatives of the Railroad Retirement Board; and

(2) $500,000, to remain available until expended, for the Railroad Retirement Board Office of Inspector General for audit, investigatory and review activities.

Subtitle K—Ratepayer Protection

SEC. 2911. FUNDING FOR LIHEAP.

In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any amounts in the Treasury not otherwise appropriated, $4,500,000,000, to remain available through September 30, 2022, for additional funding to provide payments under section 2602(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(b)), except that—

(1) $2,250,000,000 of such amounts shall be allocated as though the total appropriation for such payments for fiscal year 2021 was less than $1,975,000,000; and

(2) section 2607(b)(2)(B) of such Act (42 U.S.C. 8626(b)(2)(B)) shall not apply to funds appropriated under this section for fiscal year 2021.

SEC. 2912. FUNDING FOR WATER ASSISTANCE PROGRAM. 15 USC 9058b.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary of Health and Human Services (in this section referred to as the "Secretary") for fiscal year 2021, out of any amounts in the Treasury not otherwise appropriated, $500,000,000, to remain available until expended, for grants to States and Indian Tribes to assist low-income households, particularly those with the lowest incomes, that pay a high proportion of household income for drinking water and wastewater services, by providing funds to owners or operators of public water systems or treatment works to reduce arrearages of and rates charged to such households for such services.

(b) ALLOTMENT.—The Secretary shall—

(1) allot amounts appropriated in this section to a State or Indian Tribe based on—

(A) the percentage of households in the State, or under the jurisdiction of the Indian Tribe, with income equal or less than 150 percent of the Federal poverty line; and

(B) the percentage of households in the State, or under the jurisdiction of the Indian Tribe, that spend more than 30 percent of monthly income on housing; and

(2) reserve up to 3 percent of the amount appropriated in this section for Indian Tribes and tribal organizations.

(c) DEFINITION.—In this section, the term "State" means each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Subtitle L—Assistance for Older Americans, Grandfamilies, and Kinship Families

SEC. 2921. SUPPORTING OLDER AMERICANS AND THEIR FAMILIES.

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $1,434,000,000, to remain available until expended, to carry out the Older Americans Act of 1965.

(b) ALLOCATION OF AMOUNTS.—Amounts made available by subsection (a) shall be available as follows:

(1) $750,000,000 shall be available to carry out part C of title III of such Act.

(2) $25,000,000 shall be available to carry out title VI of such Act, including part C of such title.

(3) $460,000,000 shall be available to carry out part B of title III of such Act, including for—

(A) supportive services of the types made available for fiscal year 2020;

(B) efforts related to COVID–19 vaccination outreach, including education, communication, transportation, and other activities to facilitate vaccination of older individuals; and

(C) prevention and mitigation activities related to COVID–19 focused on addressing extended social isolation among older individuals, including activities for investments in technological equipment and solutions or other strategies aimed at alleviating negative health effects of social isolation due to long-term stay-at-home recommendations for older individuals for the duration of the COVID–19 public health emergency.

(4) $44,000,000 shall be available to carry out part D of title III of such Act.

(5) $145,000,000 shall be available to carry out part E of title III of such Act.

(6) $10,000,000 shall be available to carry out the long-term care ombudsman program under title VII of such Act.

42 USC 3020g.

SEC. 2922. NATIONAL TECHNICAL ASSISTANCE CENTER ON GRANDFAMILIES AND KINSHIP FAMILIES.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary of Health and Human Services for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $10,000,000, to remain available through September 30, 2025, for the Secretary, acting through the Administrator of the Administration for Community Living, to establish,

directly or through grants or contracts, a National Technical Assistance Center on Grandfamilies and Kinship Families (in this section referred to as the "Center") to provide training, technical assistance, and resources for government programs, nonprofit and other community-based organizations, and Indian Tribes, Tribal organizations, and urban Indian organizations, that serve grandfamilies and kinship families to support the health and well-being of members of grandfamilies and kinship families, including caregivers, children, and their parents. The Center shall focus primarily on serving grandfamilies and kinship families in which the primary caregiver is an adult age 55 or older, or the child has one or more disabilities.

(b) ACTIVITIES OF THE CENTER.—The Center shall—

(1) engage experts to stimulate the development of new and identify existing evidence-based, evidence-informed, and exemplary practices or programs related to health promotion (including mental health and substance use disorder treatment), education, nutrition, housing, financial needs, legal issues, disability self-determination, caregiver support, and other issues to help serve caregivers, children, and their parents in grandfamilies and kinship families;

(2) encourage and support the implementation of the evidence-based, evidence-informed, and exemplary practices or programs identified under paragraph (1) to support grandfamilies and kinship families and to promote coordination of services for grandfamilies and kinship families across systems that support them;

(3) facilitate learning across States, territories, Indian Tribes, Tribal organizations, and urban Indian organizations for providing technical assistance, resources, and training related to issues described in paragraph (1) to individuals and entities across systems that directly work with grandfamilies and kinship families;

(4) help government programs, nonprofit and other community-based organizations, and Indian Tribes, Tribal organizations, and urban Indian organizations, serving grandfamilies and kinship families, to plan and coordinate responses to assist grandfamilies and kinship families during national, State, Tribal, territorial, and local emergencies and disasters; and

(5) assist government programs, and nonprofit and other community-based organizations, in promoting equity and implementing culturally and linguistically appropriate approaches as the programs and organizations serve grandfamilies and kinship families.

TITLE III—COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Subtitle A—Defense Production Act of 1950

SEC. 3101. COVID–19 EMERGENCY MEDICAL SUPPLIES ENHANCEMENT. 50 USC 4511 note.

(a) SUPPORTING ENHANCED USE OF THE DEFENSE PRODUCTION ACT OF 1950.—In addition to funds otherwise available, there is appropriated, for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $10,000,000,000, to remain available

until September 30, 2025, to carry out titles I, III, and VII of such Act in accordance with subsection (b).

(b) MEDICAL SUPPLIES AND EQUIPMENT.—

(1) TESTING, PPE, VACCINES, AND OTHER MATERIALS.—Except as provided in paragraph (2), amounts appropriated in subsection (a) shall be used for the purchase, production (including the construction, repair, and retrofitting of government-owned or private facilities as necessary), or distribution of medical supplies and equipment (including durable medical equipment) related to combating the COVID–19 pandemic, including—

(A) in vitro diagnostic products for the detection of SARS–CoV–2 or the diagnosis of the virus that causes COVID–19, and the reagents and other materials necessary for producing, conducting, or administering such products, and the machinery, equipment, laboratory capacity, or other technology necessary to produce such products;

(B) face masks and personal protective equipment, including face shields, nitrile gloves, N–95 filtering facepiece respirators, and any other masks or equipment (including durable medical equipment) needed to respond to the COVID–19 pandemic, and the materials, machinery, additional manufacturing lines or facilities, or other technology necessary to produce such equipment; and

(C) drugs, devices, and biological products that are approved, cleared, licensed, or authorized for use in treating or preventing COVID–19 and symptoms related to COVID–19, and any materials, manufacturing machinery, additional manufacturing or fill-finish lines or facilities, technology, or equipment (including durable medical equipment) necessary to produce or use such drugs, biological products, or devices (including syringes, vials, or other supplies or equipment related to delivery, distribution, or administration).

Effective date. President.

(2) RESPONDING TO PUBLIC HEALTH EMERGENCIES.—After September 30, 2022, amounts appropriated in subsection (a) may be used for any activity authorized by paragraph (1), or any other activity necessary to meet critical public health needs of the United States, with respect to any pathogen that the President has determined has the potential for creating a public health emergency.

Subtitle B—Housing Provisions

15 USC 9058c.

SEC. 3201. EMERGENCY RENTAL ASSISTANCE.

(a) FUNDING.—

(1) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Secretary of the Treasury for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $21,550,000,000, to remain available until September 30, 2027, for making payments to eligible grantees under this section—

(2) RESERVATION OF FUNDS.—Of the amount appropriated under paragraph (1), the Secretary shall reserve—

(A) $305,000,000 for making payments under this section to the Commonwealth of Puerto Rico, the United States

Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa;

(B) $30,000,000 for costs of the Secretary for the administration of emergency rental assistance programs and technical assistance to recipients of any grants made by the Secretary to provide financial and other assistance to renters;

(C) $3,000,000 for administrative expenses of the Inspector General relating to oversight of funds provided in this section; and

(D) $2,500,000,000 for payments to high-need grantees as provided in this section.

(b) ALLOCATION OF FUNDS TO ELIGIBLE GRANTEES.—

(1) ALLOCATION FOR STATES AND UNITS OF LOCAL GOVERNMENT.—

Applicability.

(A) IN GENERAL.—The amount appropriated under paragraph (1) of subsection (a) that remains after the application of paragraph (2) of such subsection shall be allocated to eligible grantees described in subparagraphs (A) and (B) of subsection (f)(1) in the same manner as the amount appropriated under section 501 of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260) is allocated to States and units of local government under subsection (b)(1) of such section, except that section 501(b) of such subtitle A shall be applied—

(i) without regard to clause (i) of paragraph (1)(A);

(ii) by deeming the amount appropriated under paragraph (1) of subsection (a) of this Act that remains after the application of paragraph (2) of such subsection to be the amount deemed to apply for purposes of applying clause (ii) of section 501(b)(1)(A) of such subtitle A;

(iii) by substituting "$152,000,000" for "$200,000,000" each place such term appears;

(iv) in subclause (I) of such section 501(b)(1)(A)(v), by substituting "under section 3201 of the American Rescue Plan Act of 2021" for "under section 501 of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021"; and

(v) in subclause (II) of such section 501(b)(1)(A)(v), by substituting "local government elects to receive funds from the Secretary under section 3201 of the American Rescue Plan Act of 2021 and will use the funds in a manner consistent with such section" for "local government elects to receive funds from the Secretary under section 501 of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021 and will use the funds in a manner consistent with such section".

(B) PRO RATA ADJUSTMENT.—The Secretary shall make pro rata adjustments in the amounts of the allocations determined under subparagraph (A) of this paragraph for entities described in such subparagraph as necessary to ensure that the total amount of allocations made pursuant to such subparagraph does not exceed the remainder appropriated amount described in such subparagraph.

Applicability.

(2) ALLOCATIONS FOR TERRITORIES.—The amount reserved under subsection (a)(2)(A) shall be allocated to eligible grantees described in subsection (f)(1)(C) in the same manner as the amount appropriated under section 501(a)(2)(A) of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260) is allocated under section 501(b)(3) of such subtitle A to eligible grantees described under subparagraph (C) of such section 501(b)(3), except that section 501(b)(3) of such subtitle A shall be applied—

(A) in subparagraph (A), by inserting "of section 3201 of the American Rescue Plan Act of 2021" after "the amount reserved under subsection (a)(2)(A)"; and

(B) in clause (i) of subparagraph (B), by substituting "the amount equal to 0.3 percent of the amount appropriated under subsection (a)(1)" with "the amount equal to 0.3 percent of the amount appropriated under subsection (a)(1) of section 3201 of the American Rescue Plan Act of 2021".

(3) HIGH-NEED GRANTEES.—The Secretary shall allocate funds reserved under subsection (a)(2)(D) to eligible grantees with a high need for assistance under this section, with the number of very low-income renter households paying more than 50 percent of income on rent or living in substandard or overcrowded conditions, rental market costs, and change in employment since February 2020 used as the factors for allocating funds.

(c) PAYMENT SCHEDULE.—

Deadline.

(1) IN GENERAL.—The Secretary shall pay all eligible grantees not less than 40 percent of each such eligible grantee's total allocation provided under subsection (b) within 60 days of enactment of this Act.

Procedure.
Requirement.

(2) SUBSEQUENT PAYMENTS.—The Secretary shall pay to eligible grantees additional amounts in tranches up to the full amount of each such eligible grantee's total allocation in accordance with a procedure established by the Secretary, provided that any such procedure established by the Secretary shall require that an eligible grantee must have obligated not less than 75 percent of the funds already disbursed by the Secretary pursuant to this section prior to disbursement of additional amounts.

(d) USE OF FUNDS.—

(1) IN GENERAL.—An eligible grantee shall only use the funds provided from payments made under this section as follows:

(A) FINANCIAL ASSISTANCE.—

Time period.

(i) IN GENERAL.—Subject to clause (ii) of this subparagraph, funds received by an eligible grantee from payments made under this section shall be used to provide financial assistance to eligible households, not to exceed 18 months, including the payment of—

(I) rent;

(II) rental arrears;

(III) utilities and home energy costs;

(IV) utilities and home energy costs arrears; and

(V) other expenses related to housing, as defined by the Secretary.

(ii) LIMITATION.—The aggregate amount of financial assistance an eligible household may receive under this section, when combined with financial assistance provided under section 501 of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260), shall not exceed 18 months.

(B) HOUSING STABILITY SERVICES.—Not more than 10 percent of funds received by an eligible grantee from payments made under this section may be used to provide case management and other services intended to help keep households stably housed.

(C) ADMINISTRATIVE COSTS.—Not more than 15 percent of the total amount paid to an eligible grantee under this section may be used for administrative costs attributable to providing financial assistance, housing stability services, and other affordable rental housing and eviction prevention activities, including for data collection and reporting requirements related to such funds.

(D) OTHER AFFORDABLE RENTAL HOUSING AND EVICTION PREVENTION ACTIVITIES.—An eligible grantee may use any funds from payments made under this section that are unobligated on October 1, 2022, for purposes in addition to those specified in this paragraph, provided that—

(i) such other purposes are affordable rental housing and eviction prevention purposes, as defined by the Secretary, serving very low-income families (as such term is defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b))); and

(ii) prior to obligating any funds for such purposes, the eligible grantee has obligated not less than 75 percent of the total funds allocated to such eligible grantee in accordance with this section.

(2) DISTRIBUTION OF ASSISTANCE.—Amounts appropriated under subsection (a)(1) of this section shall be subject to the same terms and conditions that apply under paragraph (4) of section 501(c) of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260) to amounts appropriated under subsection (a)(1) of such section 501.

(e) REALLOCATION OF FUNDS.—

(1) IN GENERAL.—Beginning March 31, 2022, the Secretary shall reallocate funds allocated to eligible grantees in accordance with subsection (b) but not yet paid in accordance with subsection (c)(2) according to a procedure established by the Secretary. Effective date. Procedure.

(2) ELIGIBILITY FOR REALLOCATED FUNDS.—The Secretary shall require an eligible grantee to have obligated 50 percent of the total amount of funds allocated to such eligible grantee under subsection (b) to be eligible to receive funds reallocated under paragraph (1) of this subsection. Requirement.

(3) PAYMENT OF REALLOCATED FUNDS BY THE SECRETARY.—The Secretary shall pay to each eligible grantee eligible for a payment of reallocated funds described in paragraph (2) of this subsection the amount allocated to such eligible grantee in accordance with the procedure established by the Secretary in accordance with paragraph (1) of this subsection.

(4) USE OF REALLOCATED FUNDS.—Eligible grantees may use any funds received in accordance with this subsection only for purposes specified in paragraph (1) of subsection (d).

(f) DEFINITIONS.—In this section:

(1) ELIGIBLE GRANTEE.—The term "eligible grantee" means any of the following:

(A) The 50 States of the United States and the District of Columbia.

(B) A unit of local government (as defined in paragraph (5)).

(C) The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

(2) ELIGIBLE HOUSEHOLD.—The term "eligible household" means a household of 1 or more individuals who are obligated to pay rent on a residential dwelling and with respect to which the eligible grantee involved determines that—

(A) 1 or more individuals within the household has—

(i) qualified for unemployment benefits; or

(ii) experienced a reduction in household income, incurred significant costs, or experienced other financial hardship during or due, directly or indirectly, to the coronavirus pandemic;

(B) 1 or more individuals within the household can demonstrate a risk of experiencing homelessness or housing instability; and

(C) the household is a low-income family (as such term is defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

(3) INSPECTOR GENERAL.—The term "Inspector General" means the Inspector General of the Department of the Treasury.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(5) UNIT OF LOCAL GOVERNMENT.—The term "unit of local government" has the meaning given such term in section 501 of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260).

(g) AVAILABILITY.—Funds provided to an eligible grantee under a payment made under this section shall remain available through September 30, 2025.

(h) EXTENSION OF AVAILABILITY UNDER PROGRAM FOR EXISTING FUNDING.—Paragraph (1) of section 501(e) of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260) is amended by striking "December 31, 2021" and inserting "September 30, 2022".

134 Stat. 2074.

42 USC 1437f note.

SEC. 3202. EMERGENCY HOUSING VOUCHERS.

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Secretary of Housing and Urban Development (in this section referred to as the "Secretary") for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $5,000,000,000, to remain available until September 30, 2030, for—

(1) incremental emergency vouchers under subsection (b);

(2) renewals of the vouchers under subsection (b);

(3) fees for the costs of administering vouchers under subsection (b) and other eligible expenses defined by notice to prevent, prepare, and respond to coronavirus to facilitate the leasing of the emergency vouchers, such as security deposit assistance and other costs related to retention and support of participating owners; and

(4) adjustments in the calendar year 2021 section 8 renewal funding allocation, including mainstream vouchers, for public housing agencies that experience a significant increase in voucher per-unit costs due to extraordinary circumstances or that, despite taking reasonable cost savings measures, would otherwise be required to terminate rental assistance for families as a result of insufficient funding.

(b) EMERGENCY VOUCHERS.—

(1) IN GENERAL.—The Secretary shall provide emergency rental assistance vouchers under subsection (a), which shall be tenant-based rental assistance under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)).

(2) QUALIFYING INDIVIDUALS OR FAMILIES DEFINED.—For the purposes of this section, qualifying individuals or families are those who are—

(A) homeless (as such term is defined in section 103(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a));

(B) at risk of homelessness (as such term is defined in section 401(1) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(1)));

(C) fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking, as defined by the Secretary; or

(D) recently homeless, as determined by the Secretary, and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability.

(3) ALLOCATION.—The Secretary shall notify public housing agencies of the number of emergency vouchers provided under this section to be allocated to the agency not later than 60 days after the date of the enactment of this Act, in accordance with a formula that includes public housing agency capacity and ensures geographic diversity, including with respect to rural areas, among public housing agencies administering the Housing Choice Voucher program. Notification. Deadline.

(4) TERMS AND CONDITIONS.—

(A) ELECTION TO ADMINISTER.—The Secretary shall establish a procedure for public housing agencies to accept or decline the emergency vouchers allocated to the agency in accordance with the formula under subparagraph (3). Procedure.

(B) FAILURE TO USE VOUCHERS PROMPTLY.—If a public housing agency fails to lease its authorized vouchers under subsection (b) on behalf of eligible families within a reasonable period of time, the Secretary may revoke and redistribute any unleased vouchers and associated funds, including administrative fees and costs referred to in subsection (a)(3), to other public housing agencies according to the formula under paragraph (3).

(5) WAIVERS AND ALTERNATIVE REQUIREMENTS.—The Secretary may waive or specify alternative requirements for any

provision of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or regulation applicable to such statute other than requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that the waiver or alternative requirement is necessary to expedite or facilitate the use of amounts made available in this section.

(6) TERMINATION OF VOUCHERS UPON TURNOVER.—After September 30, 2023, a public housing agency may not reissue any vouchers made available under this section when assistance for the family assisted ends.

(c) TECHNICAL ASSISTANCE AND OTHER COSTS.—The Secretary may use not more $20,000,000 of the amounts made available under this section for the costs to the Secretary of administering and overseeing the implementation of this section and the Housing Choice Voucher program generally, including information technology, financial reporting, and other costs. Of the amounts set aside under this subsection, the Secretary may use not more than $10,000,000, without competition, to make new awards or increase prior awards to existing technical assistance providers to provide an immediate increase in capacity building and technical assistance to public housing agencies.

Notice.

(d) IMPLEMENTATION.—The Secretary may implement the provisions of this section by notice.

SEC. 3203. EMERGENCY ASSISTANCE FOR RURAL HOUSING.

In addition to amounts otherwise available, there is appropriated to the Secretary of Agriculture for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $100,000,000, to remain available until September 30, 2022, to provide grants under section 521(a)(2) of the Housing Act of 1949 or agreements entered into in lieu of debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D) of the Housing Act of 1949, for temporary adjustment of income losses for residents of housing financed or assisted under section 514, 515, or 516 of the Housing Act of 1949 who have experienced income loss but are not currently receiving Federal rental assistance.

42 USC 8101 note.

SEC. 3204. HOUSING COUNSELING.

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Neighborhood Reinvestment Corporation (in this section referred to as the "Corporation") for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $100,000,000, to remain available until September 30, 2025, for grants to housing counseling intermediaries approved by the Department of Housing and Urban Development, State housing finance agencies, and NeighborWorks organizations for providing housing counseling services, as authorized under the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8101–8107) and consistent with the discretion set forth in section 606(a)(5) of such Act (42 U.S.C. 8105(a)(5)) to design and administer grant programs. Of the grant funds made available under this subsection, not less than 40 percent shall be provided to counseling organizations that—

(1) target housing counseling services to minority and low-income populations facing housing instability; or

(2) provide housing counseling services in neighborhoods having high concentrations of minority and low-income populations.

(b) LIMITATION.—The aggregate amount provided to NeighborWorks organizations under this section shall not exceed 15 percent of the total of grant funds made available by subsection (a).

(c) ADMINISTRATION AND OVERSIGHT.—The Corporation may retain a portion of the amounts provided under this section, in a proportion consistent with its standard rate for program administration in order to cover its expenses related to program administration and oversight.

(d) HOUSING COUNSELING SERVICES DEFINED.— For the purposes of this section, the term "housing counseling services" means—

(1) housing counseling provided directly to households facing housing instability, such as eviction, default, foreclosure, loss of income, or homelessness;

(2) education, outreach, training, technology upgrades, and other program related support; and

(3) operational oversight funding for grantees and subgrantees that receive funds under this section.

SEC. 3205. HOMELESSNESS ASSISTANCE AND SUPPORTIVE SERVICES PROGRAM.

42 USC 12721 note.

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Secretary of Housing and Urban Development (in this section referred to as the "Secretary") for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $5,000,000,000, to remain available until September 30, 2025, except that amounts authorized under subsection (d)(3) shall remain available until September 30, 2029, for assistance under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 et seq.) for the following activities to primarily benefit qualifying individuals or families:

(1) Tenant-based rental assistance.

(2) The development and support of affordable housing pursuant to section 212(a) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12742(a)) ("the Act" herein).

(3) Supportive services to qualifying individuals or families not already receiving such supportive services, including—

(A) activities listed in section 401(29) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(29));

(B) housing counseling; and

(C) homeless prevention services.

(4) The acquisition and development of non-congregate shelter units, all or a portion of which may—

(A) be converted to permanent affordable housing;

(B) be used as emergency shelter under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371–11378);

(C) be converted to permanent housing under subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381–11389); or

(D) remain as non-congregate shelter units.

(b) QUALIFYING INDIVIDUALS OR FAMILIES DEFINED.—For the purposes of this section, qualifying individuals or families are those who are—

(1) homeless, as defined in section 103(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a));

(2) at-risk of homelessness, as defined in section 401(1) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(1));

(3) fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking, as defined by the Secretary;

(4) in other populations where providing supportive services or assistance under section 212(a) of the Act (42 U.S.C. 12742(a)) would prevent the family's homelessness or would serve those with the greatest risk of housing instability; or

(5) veterans and families that include a veteran family member that meet one of the preceding criteria.

(c) TERMS AND CONDITIONS.—

(1) FUNDING RESTRICTIONS.—The cost limits in section 212(e) (42 U.S.C. 12742(e)), the commitment requirements in section 218(g) (42 U.S.C. 12748(g)), the matching requirements in section 220 (42 U.S.C. 12750), and the set-aside for housing developed, sponsored, or owned by community housing development organizations required in section 231 of the Act (42 U.S.C. 12771) shall not apply for amounts made available in this section.

(2) ADMINISTRATIVE COSTS.— Notwithstanding sections 212(c) and (d)(1) of the Act (42 U.S.C. 12742(c) and (d)(1)), of the funds made available in this section for carrying out activities authorized in this section, a grantee may use up to fifteen percent of its allocation for administrative and planning costs.

(3) OPERATING EXPENSES.—Notwithstanding sections 212(a) and (g) of the Act (42 U.S.C. 12742(a) and (g)), a grantee may use up to an additional five percent of its allocation for the payment of operating expenses of community housing development organizations and nonprofit organizations carrying out activities authorized under this section, but only if—

(A) such funds are used to develop the capacity of the community housing development organization or nonprofit organization in the jurisdiction or insular area to carry out activities authorized under this section; and

(B) the community housing development organization or nonprofit organization complies with the limitation on assistance in section 234(b) of the Act (42 U.S.C. 12774(b)).

(4) CONTRACTING.—A grantee, when contracting with service providers engaged directly in the provision of services under paragraph (a)(3), shall, to the extent practicable, enter into contracts in amounts that cover the actual total program costs and administrative overhead to provide the services contracted.

(d) ALLOCATION.—

Deadline.

(1) FORMULA ASSISTANCE.—Except as provided in paragraphs (2) and (3), the Secretary shall allocate amounts made available under this section pursuant to section 217 of the Act (42 U.S.C. 12747) to grantees that received allocations pursuant to that same formula in fiscal year 2021, and shall make such allocations within 30 days of enactment of this Act.

(2) TECHNICAL ASSISTANCE.—Up to $25,000,000 of the amounts made available under this section shall be used, without competition, to make new awards or increase prior awards

to existing technical assistance providers to provide an immediate increase in capacity building and technical assistance available to any grantees implementing activities or projects consistent with this section.

(3) OTHER COSTS.—Up to $50,000,000 of the amounts made available under this section shall be used for the administrative costs to oversee and administer implementation of this section and the HOME program generally, including information technology, financial reporting, and other costs.

(4) WAIVERS OR ALTERNATIVE REQUIREMENTS.—The Secretary may waive or specify alternative requirements for any provision of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 et seq.) and titles I and IV of the McKinney-Vento Homelessness Act (42 U.S.C. 11301 et seq., 11360 et seq.) or regulation for the administration of the amounts made available under this section other than requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that the waiver or alternative requirement is necessary to expedite or facilitate the use of amounts made available under this section.

SEC. 3206. HOMEOWNER ASSISTANCE FUND. 15 USC 9058d.

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Secretary of the Treasury for the Homeowner Assistance Fund established under subsection (c) for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $9,961,000,000, to remain available until September 30, 2025, for qualified expenses that meet the purposes specified under subsection (c) and expenses described in subsection (d)(1).

(b) DEFINITIONS.—In this section:

(1) CONFORMING LOAN LIMIT.—The term "conforming loan limit" means the applicable limitation governing the maximum original principal obligation of a mortgage secured by a single-family residence, a mortgage secured by a 2-family residence, a mortgage secured by a 3-family residence, or a mortgage secured by a 4-family residence, as determined and adjusted annually under section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)).

(2) DWELLING.—The term "dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more individuals.

(3) ELIGIBLE ENTITY.—The term "eligible entity" means—

(A) a State; or

(B) any entity eligible for payment under subsection (f).

(4) MORTGAGE.—The term "mortgage" means any credit transaction—

(A) that is secured by a mortgage, deed of trust, or other consensual security interest on a principal residence of a borrower that is (i) a 1- to 4-unit dwelling, or (ii) residential real property that includes a 1- to 4-unit dwelling; and

(B) the unpaid principal balance of which was, at the time of origination, not more than the conforming loan limit.

(5) FUND.—The term "Fund" means the Homeowner Assistance Fund established under subsection (c).

(6) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(7) STATE.—The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(c) ESTABLISHMENT OF FUND.—

Effective date.

(1) ESTABLISHMENT; QUALIFIED EXPENSES.—There is established in the Department of the Treasury a Homeowner Assistance Fund to mitigate financial hardships associated with the coronavirus pandemic by providing such funds as are appropriated by subsection (a) to eligible entities for the purpose of preventing homeowner mortgage delinquencies, defaults, foreclosures, loss of utilities or home energy services, and displacements of homeowners experiencing financial hardship after January 21, 2020, through qualified expenses related to mortgages and housing, which include—

(A) mortgage payment assistance;

(B) financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing related costs related to a period of forbearance, delinquency, or default;

(C) principal reduction;

(D) facilitating interest rate reductions;

(E) payment assistance for—

(i) utilities, including electric, gas, home energy, and water;

(ii) internet service, including broadband internet access service, as defined in section 8.1(b) of title 47, Code of Federal Regulations (or any successor regulation);

(iii) homeowner's insurance, flood insurance, and mortgage insurance; and

(iv) homeowner's association, condominium association fees, or common charges;

Time period.

(F) reimbursement of funds expended by a State, local government, or designated entity under subsection (f) during the period beginning on January 21, 2020, and ending on the date that the first funds are disbursed by the eligible entity under the Homeowner Assistance Fund, for the purpose of providing housing or utility payment assistance to homeowners or otherwise providing funds to prevent foreclosure or post-foreclosure eviction of a homeowner or prevent mortgage delinquency or loss of housing or utilities as a response to the coronavirus disease (COVID) pandemic; and

Determination.

(G) any other assistance to promote housing stability for homeowners, including preventing mortgage delinquency, default, foreclosure, post-foreclosure eviction of a homeowner, or the loss of utility or home energy services, as determined by the Secretary.

(2) TARGETING.—Not less than 60 percent of amounts made to each eligible entity allocated amounts under subsection (d) or (f) shall be used for qualified expenses that assist homeowners having incomes equal to or less than 100 percent of the area median income for their household size or equal to or less than 100 percent of the median income for the United States, as determined by the Secretary of Housing and Urban Development, whichever is greater. The eligible entity shall prioritize remaining funds to socially disadvantaged individuals. Determination.

(d) ALLOCATION OF FUNDS.—

(1) ADMINISTRATION.—Of any amounts made available under this section, the Secretary shall reserve—

(A) to the Department of the Treasury, an amount not to exceed $40,000,000 to administer and oversee the Fund, and to provide technical assistance to eligible entities for the creation and implementation of State and tribal programs to administer assistance from the Fund; and

(B) to the Inspector General of the Department of the Treasury, an amount to not exceed $2,600,000 for oversight of the program under this section.

(2) FOR STATES.—After the application of paragraphs (1), (4), and (5) of this subsection and subject to paragraph (3) of this subsection, the Secretary shall allocate the remaining funds available within the Homeowner Assistance Fund to each State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico based on homeowner need, for such State relative to all States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, as of the date of the enactment of this Act, which is determined by reference to— Determination. Time period.

(A) the average number of unemployed individuals measured over a period of time not fewer than 3 months and not more than 12 months; and

(B) the total number of mortgagors with—

(i) mortgage payments that are more than 30 days past due; or

(ii) mortgages in foreclosure.

(3) SMALL STATE MINIMUM.—

(A) IN GENERAL.—Each State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico shall receive no less than $50,000,000 for the purposes established in (c).

(B) PRO RATA ADJUSTMENTS.—The Secretary shall adjust on a pro rata basis the amount of the payments for each State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico determined under this subsection without regard to this subparagraph to the extent necessary to comply with the requirements of subparagraph (A).

(4) TERRITORY SET-ASIDE.—Notwithstanding any other provision of this section, of the amounts appropriated under subsection (a), the Secretary shall reserve $30,000,000 to be disbursed to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands based on each such territory's share of the combined total population of all such territories, as determined by the Determinations.

Secretary. For the purposes of this paragraph, population shall be determined based on the most recent year for which data are available from the United States Census Bureau.

(5) TRIBAL SET-ASIDE.—The Secretary shall allocate funds to any eligible entity designated under subsection (f) pursuant to the requirements of that subsection.

(e) DISTRIBUTION OF FUNDS TO STATES.—

Deadlines.

(1) IN GENERAL.—The Secretary shall make payments, beginning not later than 45 days after enactment of this Act, from amounts allocated under subsection (d) to eligible entities that have notified the Secretary that they request to receive payment from the Fund and that the eligible entity will use such payments in compliance with this section.

(2) REALLOCATION.—If a State does not request allocated funds by the 45th day after the date of enactment of this Act, such State shall not be eligible for a payment from the Secretary pursuant to this section, and the Secretary shall, by the 180th day after the date of enactment of this Act, reallocate any funds that were not requested by such State among the States that have requested funds by the 45th day after the date of enactment of this Act. For any such reallocation of funds, the Secretary shall adhere to the requirements of subsection (d), except for paragraph (1), to the greatest extent possible, provided that the Secretary shall also take into consideration in determining such reallocation a State's remaining need and a State's record of using payments from the Fund to serve homeowners at disproportionate risk of mortgage default, foreclosure, or displacement, including homeowners having incomes equal to or less than 100 percent of the area median income for their household size or 100 percent of the median income for the United States, as determined by the Secretary of Housing and Urban Development, whichever is greater, and minority homeowners.

(f) TRIBAL SET-ASIDE.—

(1) SET-ASIDE.—Notwithstanding any other provision of this section, of the amounts appropriated under subsection (a), the Secretary shall use 5 percent to make payments to entities that are eligible for payments under clauses (i) and (ii) of section 501(b)(2)(A) of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260) for the purposes described in subsection (c).

Deadline.
Notification.

(2) ALLOCATION AND PAYMENT.—The Secretary shall allocate the funds set aside under paragraph (1) using the allocation formulas described in clauses (i) and (ii) of section 501(b)(2)(A) of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260), and shall make payments of such amounts beginning no later than 45 days after enactment of this Act to entities eligible for payment under clauses (i) and (ii) of section 501(b)(2)(A) of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260) that notify the Secretary that they request to receive payments allocated from the Fund by the Secretary for purposes described under subsection (c) and will use such payments in compliance with this section.

(3) ADJUSTMENT.—Allocations provided under this subsection may be further adjusted as provided by section

501(b)(2)(B) of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260).

SEC. 3207. RELIEF MEASURES FOR SECTION 502 AND 504 DIRECT LOAN BORROWERS.

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Secretary of Agriculture (in this section referred to as the "Secretary") for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $39,000,000, to remain available until September 30, 2023, for direct loans made under sections 502 and 504 of the Housing Act of 1949 (42 U.S.C. 1472, 1474).

(b) ADMINISTRATIVE EXPENSES.—The Secretary may use not more than 3 percent of the amounts appropriated under this section for administrative purposes.

SEC. 3208. FAIR HOUSING ACTIVITIES.

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Secretary of Housing and Urban Development (in this section referred to as the "Secretary") for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $20,000,000, to remain available until September 30, 2023, for the Fair Housing Initiatives Program under section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616a) to ensure fair housing organizations have additional resources to address fair housing inquiries, complaints, investigations, education and outreach activities, and costs of delivering or adapting services, during or relating to the coronavirus pandemic.

(b) ADMINISTRATIVE EXPENSES.—The Secretary may use not more than 3 percent of the amounts appropriated under this section for administrative purposes.

Subtitle C—Small Business (SSBCI)

SEC. 3301. STATE SMALL BUSINESS CREDIT INITIATIVE.

(a) STATE SMALL BUSINESS CREDIT INITIATIVE.—

(1) IN GENERAL.—The State Small Business Credit Initiative Act of 2010 (12 U.S.C. 5701 et seq.) is amended—

(A) in section 3003— 12 USC 5702.

(i) in subsection (b)—

(I) by amending paragraph (1) to read as follows:

"(1) IN GENERAL.—Not later than 30 days after the date of enactment of subsection (d), the Secretary shall allocate Federal funds to participating States so that each State is eligible to receive an amount equal to what the State would receive under the 2021 allocation, as determined under paragraph (2).";

Deadline. Allocation.

(II) in paragraph (2)—

(aa) by striking "2009" each place such term appears and inserting "2021";

(bb) by striking "2008" each place such term appears and inserting "2020";

(cc) in subparagraph (A), by striking "The Secretary" and inserting "With respect to States other than Tribal governments, the Secretary";

(dd) in subparagraph (C)(i), by striking "2007" and inserting "2019"; and

(ee) by adding at the end the following:

"(C) SEPARATE ALLOCATION FOR TRIBAL GOVERNMENTS.—

Determination.

"(i) IN GENERAL.—With respect to States that are Tribal governments, the Secretary shall determine the 2021 allocation by allocating $500,000,000 among the Tribal governments in the proportion the Secretary determines appropriate, including with consideration to available employment and economic data regarding each such Tribal government.

Deadlines.

"(ii) NOTICE OF INTENT; TIMING OF ALLOCATION.—With respect to allocations to States that are Tribal governments, the Secretary may—

"(I) require Tribal governments that individually or jointly wish to participate in the Program to file a notice of intent with the Secretary not later than 30 days after the date of enactment of subsection (d); and

"(II) notwithstanding paragraph (1), allocate Federal funds to participating Tribal governments not later than 60 days after the date of enactment of subsection (d).

Determination.

"(D) EMPLOYMENT DATA.—If the Secretary determines that employment data with respect to a State is unavailable from the Bureau of Labor Statistics of the Department of Labor, the Secretary shall consider such other economic and employment data that is otherwise available for purposes of determining the employment data of such State."; and

(III) by striking paragraph (3); and

(ii) in subsection (c)—

(I) in paragraph (1)(A)(iii), by inserting before the period the following: "that have delivered loans or investments to eligible businesses"; and

(II) by amending paragraph (4) to read as follows:

"(4) TERMINATION OF AVAILABILITY OF AMOUNTS NOT TRANSFERRED.—

Time periods.

"(A) IN GENERAL.—Any portion of a participating State's allocated amount that has not been transferred to the State under this section may be deemed by the Secretary to be no longer allocated to the State and no longer available to the State and shall be returned to the general fund of the Treasury or reallocated as described under subparagraph (B), if—

"(i) the second ⅓ of a State's allocated amount has not been transferred to the State before the end of the end of the 3-year period beginning on the date that the Secretary approves the State for participation; or

"(ii) the last ⅓ of a State's allocated amount has not been transferred to the State before the end of the end of the 6-year period beginning on the date that the Secretary approves the State for participation.

"(B) REALLOCATION.—Any amount deemed by the Secretary to be no longer allocated to a State and no longer available to such State under subparagraph (A) may be reallocated by the Secretary to other participating States. In making such a reallocation, the Secretary shall not take into account the minimum allocation requirements under subsection (b)(2)(B) or the specific allocation for Tribal governments described under subsection (b)(2)(C).";

(B) in section 3004(d), by striking "date of enactment of this Act" each place it appears and inserting "date of the enactment of section 3003(d)"; 12 USC 5703.

(C) in section 3005(b), by striking "date of enactment of this Act" each place it appears and inserting "date of the enactment of section 3003(d)"; 12 USC 5704.

(D) in section 3006(b)(4), by striking "date of enactment of this Act" and inserting "date of the enactment of section 3003(d)"; 12 USC 5705.

(E) in section 3007(b), by striking "March 31, 2011" and inserting "March 31, 2022"; 12 USC 5706.

(F) in section 3009, by striking "date of enactment of this Act" each place it appears and inserting "date of the enactment of section 3003(d)"; and 12 USC 5708.

(G) in section 3011(b), by striking "date of the enactment of this Act" each place it appears and inserting "date of the enactment of section 3003(d)". 12 USC 5710.

(2) APPROPRIATION.— 12 USC 5701 note.

(A) IN GENERAL.—In addition to amounts otherwise available, there is hereby appropriated to the Secretary of the Treasury for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $10,000,000,000, to remain available until expended, to provide support to small businesses responding to and recovering from the economic effects of the COVID–19 pandemic, ensure business enterprises owned and controlled by socially and economically disadvantaged individuals have access to credit and investments, provide technical assistance to help small businesses applying for various support programs, and to pay reasonable costs of administering such Initiative.

(B) RESCISSION.—With respect to amounts appropriated under subparagraph (A)—

(i) the Secretary of the Treasury shall complete all disbursements and remaining obligations before September 30, 2030; and Deadline.

(ii) any amounts that remain unexpended (whether obligated or unobligated) on September 30, 2030, shall be rescinded and deposited into the general fund of the Treasury.

(b) ADDITIONAL ALLOCATIONS TO SUPPORT BUSINESS ENTERPRISES OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—Section 3003 of the State Small Business Credit Initiative Act of 2010 (12 U.S.C. 5702) is amended by adding at the end the following:

"(d) ADDITIONAL ALLOCATIONS TO SUPPORT BUSINESS ENTERPRISES OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—Of the amounts appropriated for fiscal year 2021 to carry out the Program, the Secretary shall—

Regulations.
Requirements.

"(1) allocate $1,500,000,000 to States from funds allocated under this section and, by regulation or other guidance, prescribe Program requirements that the funds be expended for business enterprises owned and controlled by socially and economically disadvantaged individuals; and

Determination.

"(2) allocate such amounts to States based on the needs of business enterprises owned and controlled by socially and economically disadvantaged individuals, as determined by the Secretary, in each State, and not subject to the allocation formula described under subsection (b).

"(e) INCENTIVE ALLOCATIONS TO SUPPORT BUSINESS ENTERPRISES OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—Of the amounts appropriated for fiscal year 2021 to carry out the Program, the Secretary shall set aside $1,000,000,000 for an incentive program under which the Secretary shall increase the second ⅓ and last ⅓ allocations for States that demonstrate robust support, as determined by the Secretary, for business concerns owned and controlled by socially and economically disadvantaged individuals in the deployment of prior allocation amounts.".

Determination.

(c) ADDITIONAL ALLOCATIONS TO SUPPORT VERY SMALL BUSINESSES.—Section 3003 of the State Small Business Credit Initiative Act of 2010 (12 U.S.C. 5702), as amended by subsection (b), is further amended by adding at the end the following:

"(f) ADDITIONAL ALLOCATIONS TO SUPPORT VERY SMALL BUSINESSES.—

"(1) IN GENERAL.—Of the amounts appropriated to carry out the Program, the Secretary shall allocate not less than $500,000,000 to States from funds allocated under this section to be expended for very small businesses.

"(2) VERY SMALL BUSINESS DEFINED.—In this subsection, the term 'very small business'—

"(A) means a business with fewer than 10 employees; and

"(B) may include independent contractors and sole proprietors.".

(d) TECHNICAL ASSISTANCE.—Section 3009 of the State Small Business Credit Initiative Act of 2010 (12 U.S.C. 5708) is amended by adding at the end the following:

"(e) TECHNICAL ASSISTANCE.—Of the amounts appropriated for fiscal year 2021 to carry out the Program, $500,000,000 may be used by the Secretary to—

"(1) provide funds to States to carry out a technical assistance plan under which a State will provide legal, accounting, and financial advisory services, either directly or contracted with legal, accounting, and financial advisory firms, with priority given to business enterprises owned and controlled by socially and economically disadvantaged individuals, to very small businesses and business enterprises owned and controlled by socially and economically disadvantaged individuals applying for—

"(A) State programs under the Program; and

"(B) other State or Federal programs that support small businesses;

"(2) transfer amounts to the Minority Business Development Agency, so that the Agency may use such amounts in a manner the Agency determines appropriate, including

through contracting with third parties, to provide technical assistance to business enterprises owned and controlled by socially and economically disadvantaged individuals applying to—

"(A) State programs under the Program; and

"(B) other State or Federal programs that support small businesses; and

"(3) contract with legal, accounting, and financial advisory firms (with priority given to business enterprises owned and controlled by socially and economically disadvantaged individuals), to provide technical assistance to business enterprises owned and controlled by socially and economically disadvantaged individuals applying to—

"(A) State programs under the Program; and

"(B) other State or Federal programs that support small businesses.".

(e) INCLUSION OF TRIBAL GOVERNMENTS.—Section 3002(10) of the State Small Business Credit Initiative Act of 2010 (12 U.S.C. 5701(10)) is amended—

(1) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(E) a Tribal government, or a group of Tribal governments that jointly apply for an allocation.".

(f) DEFINITIONS.—Section 3002 of the State Small Business Credit Initiative Act of 2010 (12 U.S.C. 5701) is amended by adding at the end the following:

"(15) BUSINESS ENTERPRISE OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term 'business enterprise owned and controlled by socially and economically disadvantaged individuals' means a business that—

"(A) if privately owned, 51 percent is owned by one or more socially and economically disadvantaged individuals;

"(B) if publicly owned, 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; and

"(C) in the case of a mutual institution, a majority of the Board of Directors, account holders, and the community which the institution services is predominantly comprised of socially and economically disadvantaged individuals.

"(16) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term 'community development financial institution' has the meaning given that term under section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994.

"(17) MINORITY DEPOSITORY INSTITUTION.—The term 'minority depository institution' has the meaning given that term under section 308(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(18) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL.—The term 'socially and economically disadvantaged individual' means an individual who is a socially disadvantaged individual or an economically disadvantaged individual, as such

terms are defined, respectively, under section 8 of the Small Business Act (15 U.S.C. 637) and the regulations thereunder.

"(19) TRIBAL GOVERNMENT.—The term 'Tribal government' means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this paragraph pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).".

12 USC 5701 note.

(g) RULE OF APPLICATION.—The amendments made by this section shall apply with respect to funds appropriated under this section and funds appropriated on and after the date of enactment of this section.

Subtitle D—Public Transportation

49 USC 5301 note.

SEC. 3401. FEDERAL TRANSIT ADMINISTRATION GRANTS.

(a) FEDERAL TRANSIT ADMINISTRATION APPROPRIATION.—

(1) IN GENERAL.—In addition to amounts otherwise made available, there are appropriated for fiscal year 2021, out of any funds in the Treasury not otherwise appropriated, $30,461,355,534, to remain available until September 30, 2024, that shall—

(A) be for grants to eligible recipients under sections 5307, 5309, 5310, and 5311 of title 49, United States Code, to prevent, prepare for, and respond to coronavirus; and

(B) not be subject to any prior restriction on the total amount of funds available for implementation or execution of programs authorized under sections 5307, 5310, or 5311 of such title.

(2) AVAILABILITY OF FUNDS FOR OPERATING EXPENSES.—

Effective date.

(A) IN GENERAL.—Notwithstanding subsection (a)(1) or (b) of section 5307 and section 5310(b)(2)(A) of title 49, United States Code, funds provided under this section, other than subsection (b)(4), shall be available for the operating expenses of transit agencies to prevent, prepare for, and respond to the coronavirus public health emergency, including, beginning on January 20, 2020—

Reimbursement.

(i) reimbursement for payroll of public transportation (including payroll and expenses of private providers of public transportation);

(ii) operating costs to maintain service due to lost revenue due as a result of the coronavirus public health emergency, including the purchase of personal protective equipment; and

Payments.

(iii) paying the administrative leave of operations or contractor personnel due to reductions in service.

(B) USE OF FUNDS.—Funds described in subparagraph (A) shall be—

(i) available for immediate obligation, notwithstanding the requirement for such expenses to be included in a transportation improvement program, long-range transportation plan, statewide transportation plan, or statewide transportation improvement

program under sections 5303 and 5304 of title 49, United States Code;

(ii) directed to payroll and operations of public transportation (including payroll and expenses of private providers of public transportation), unless the recipient certifies to the Administrator of the Federal Transit Administration that the recipient has not furloughed any employees;

(iii) used to provide a Federal share of the costs for any grant made under this section of 100 percent.

(b) ALLOCATION OF FUNDS.—

(1) URBANIZED AREA FORMULA GRANTS.—

(A) IN GENERAL.—Of the amounts made available under subsection (a), $26,086,580,227 shall be for grants to recipients and subrecipients under section 5307 of title 49, United States Code, and shall be administered as if such funds were provided under section 5307 of such title.

(B) ALLOCATION.—Amounts made available under subparagraph (A) shall be apportioned to urbanized areas based on data contained in the National Transit Database such that— Apportionment.

(i) each urbanized area shall receive an apportionment of an amount that, when combined with amounts that were otherwise made available to such urbanized area for similar activities to prevent, prepare for, and respond to coronavirus, is equal to 132 percent of the urbanized area's 2018 operating costs; and

(ii) for funds remaining after the apportionment described in clause (i), such funds shall be apportioned such that each urbanized area that did not receive an apportionment under clause (i) shall receive an apportionment equal to 25 percent of the urbanized area's 2018 operating costs.

(2) FORMULA GRANTS FOR THE ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES.—

(A) IN GENERAL.—Of the amounts made available under subsection (a), $50,000,000 shall be for grants to recipients or subrecipients eligible under section 5310 of title 49, United States Code, and shall be apportioned in accordance with such section. Apportionment.

(B) ALLOCATION RATIO.—Amounts made available under subparagraph (A) shall be allocated in the same ratio as funds were provided under section 5310 of title 49, United States Code, for fiscal year 2020.

(3) FORMULA GRANTS FOR RURAL AREAS.—

(A) IN GENERAL.—Of the amounts made available under subsection (a), $317,214,013 shall be for grants to recipients or subrecipients eligible under section 5311 of title 49, United States Code, and shall be administered as if the funds were provided under section 5311 of such title, and shall be apportioned in accordance with such section, except as described in paragraph (B). Apportionment.

(B) ALLOCATION RATIO.—Amounts made available under subparagraph (A) to States, as defined in section 5302 of title 49, United States Code, shall be allocated to such States based on data contained in the National Transit Database, such that—

(i) any State that received an amount for similar activities to prevent, prepare for, and respond to coronavirus that is equal to or greater than 150 percent of the combined 2018 rural operating costs of the recipients and subrecipients in such State shall receive an amount equal to 5 percent of such State's 2018 rural operating costs;

(ii) any State that does not receive an allocation under clause (i) that received an amount for similar activities to prevent, prepare for, and respond to coronavirus that is equal to or greater than 140 percent of the combined 2018 rural operating costs of the recipients and subrecipients in that State shall receive an amount equal to 10 percent of such State's 2018 rural operating costs; and

(iii) any State that does not receive an allocation under clauses (i) or (ii) shall receive an amount equal to 20 percent of such State's 2018 rural operating costs.

(4) CAPITAL INVESTMENTS.—

(A) IN GENERAL.—Of the amounts made available under subsection (a)—

(i) $1,425,000,000 shall be for grants administered under subsections (d) and (e) of section 5309 of title 49, United States Code; and

(ii) $250,000,000 shall be for grants administered under subsection (h) of section 5309 of title 49, United States Code.

(B) FUNDING DISTRIBUTION.—

(i) IN GENERAL.—Of the amounts made available in subparagraph (A)(i), $1,250,000,000 shall be provided to each recipient for all projects with existing full funding grant agreements that received allocations for fiscal year 2019 or 2020, except that recipients with projects open for revenue service are not eligible to receive a grant under this subparagraph. Funds shall be provided proportionally based on the non-capital investment grant share of the amount allocated.

(ii) ALLOCATION.—Of the amounts made available in subparagraph (A)(i), $175,000,000 shall be provided to each recipient for all projects with existing full funding grant agreements that received an allocation only prior to fiscal year 2019, except that projects open for revenue service are not eligible to receive a grant under this subparagraph and no project may receive more than 40 percent of the amounts provided under this clause. The Administrator of the Federal Transit Administration shall proportionally distribute funds in excess of such percent to recipients for which the percent of funds does not exceed 40 percent. Funds shall be provided proportionally based on the non-capital investment grant share of the amount allocated.

(iii) ELIGIBLE RECIPIENTS.—For amounts made available in subparagraph (A)(ii), eligible recipients shall be any recipient of an allocation under subsection (h) of section 5309 of title 49, United States Code,

or an applicant in the project development phase described in paragraph (2) of such subsection.

(iv) AMOUNT.—Amounts distributed under clauses (i), (ii), and (iii) of subparagraph (A) shall be provided notwithstanding the limitation of any calculation of the maximum amount of Federal financial assistance for the project under subsection (k)(2)(C)(ii) or (h)(7) of section 5309 of title 49, United States Code.

(5) SECTION 5311(F) SERVICES.—

(A) IN GENERAL.—Of the amounts made available under subsection (a) and in addition to the amounts made available under paragraph (3), $100,000,000 shall be available for grants to recipients for bus operators that partner with recipients or subrecipients of funds under section 5311(f) of title 49, United States Code.

(B) ALLOCATION RATIO.—Notwithstanding paragraph (3), the Administrator of the Federal Transit Administration shall allocate amounts under subparagraph (A) in the same ratio as funds were provided under section 5311 of title 49, United States Code, for fiscal year 2020.

(C) EXCEPTION.—If a State or territory does not have bus providers eligible under section 5311(f) of title 49, United States Code, funds under this paragraph may be used by such State or territory for any expense eligible under section 5311 of title 49, United States Code.

(6) PLANNING.—

(A) IN GENERAL.—Of the amounts made available under subsection (a), $25,000,000 shall be for grants to recipients eligible under section 5307 of title 49, United States Code, for the planning of public transportation associated with the restoration of services as the coronavirus public health emergency concludes and shall be available in accordance with such section.

(B) AVAILABILITY OF FUNDS FOR ROUTE PLANNING.—Amounts made available under subparagraph (A) shall be available for route planning designed to—

(i) increase ridership and reduce travel times, while maintaining or expanding the total level of vehicle revenue miles of service provided in the planning period; or

(ii) make service adjustments to increase the quality or frequency of service provided to low-income riders and disadvantaged neighborhoods or communities.

(C) LIMITATION.—Amounts made available under subparagraph (A) shall not be used for route planning related to transitioning public transportation service provided as of the date of receipt of funds to a transportation network company or other third-party contract provider, unless the existing provider of public transportation service is a third-party contract provider.

(7) RECIPIENTS AND SUBRECIPIENTS REQUIRING ADDITIONAL ASSISTANCE.—

(A) IN GENERAL.—Of the amounts made available under subsection (a), $2,207,561,294 shall be for grants to eligible recipients or subrecipients of funds under sections 5307 or 5311 of title 49, United States Code, that,

as a result of COVID–19, require additional assistance for costs related to operations, personnel, cleaning, and sanitization combating the spread of pathogens on transit systems, and debt service payments incurred to maintain operations and avoid layoffs and furloughs.

(B) ADMINISTRATION.—Funds made available under subparagraph (A) shall, after allocation, be administered as if provided under paragraph (1) or (3), as applicable.

(C) APPLICATION REQUIREMENTS.—

(i) IN GENERAL.—The Administrator of the Federal Transit Administration may not allocate funds to an eligible recipient or subrecipient of funds under chapter 53 of title 49, United States Code, unless the recipient provides to the Administrator—

Estimates.
Data.

(I) estimates of financial need;

(II) data on reductions in farebox or other sources of local revenue for sustained operations;

Spending plan.

(III) a spending plan for such funds; and

(IV) demonstration of expenditure of greater than 90 percent of funds available to the applicant from funds made available for similar activities in fiscal year 2020.

(ii) DEADLINES.—The Administrator of the Federal Transit Administration shall—

Notice.

(I) not later than 180 days after the date of enactment of this Act, issue a Notice of Funding Opportunity for assistance under this paragraph; and

(II) not later than 120 days after the application deadline established in the Notice of Funding Opportunity under subclause (I), make awards under this paragraph to selected applicants.

(iii) EVALUATION.—

(I) IN GENERAL.—Applications for assistance under this paragraph shall be evaluated by the Administrator of the Federal Transit Administration based on the level of financial need demonstrated by an eligible recipient or subrecipient, including projections of future financial need to maintain service as a percentage of the 2018 operating costs that has not been replaced by the funds made available to the eligible recipient or subrecipient under paragraphs (1) through (5) of this subsection when combined with the amounts allocated to such eligible recipient or subrecipient from funds previously made available for the operating expenses of transit agencies related to the response to the COVID–19 public health emergency.

(II) RESTRICTION.—Amounts made available under this paragraph shall only be available for operating expenses.

(iv) STATE APPLICANTS.—A State may apply for assistance under this paragraph on behalf of an eligible recipient or subrecipient or a group of eligible recipients or subrecipients.

(D) UNOBLIGATED FUNDS.—If amounts made available under this paragraph remain unobligated on September

30, 2023, such amounts shall be available for any purpose eligible under sections 5307 or 5311 of title 49, United States Code.

TITLE IV—COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

SEC. 4001. EMERGENCY FEDERAL EMPLOYEE LEAVE FUND. 5 USC 6301 note.

(a) ESTABLISHMENT; APPROPRIATION.—There is established in the Treasury the Emergency Federal Employee Leave Fund (in this section referred to as the "Fund"), to be administered by the Director of the Office of Personnel Management, for the purposes set forth in subsection (b). In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $570,000,000, which shall be deposited into the Fund and remain available through September 30, 2022. The Fund is available for reasonable expenses incurred by the Office of Personnel Management in administering this section.

(b) PURPOSE.—Amounts in the Fund shall be available for reimbursement to an agency for the use of paid leave under this section by any employee of the agency who is unable to work because the employee— Reimbursement.

(1) is subject to a Federal, State, or local quarantine or isolation order related to COVID–19;

(2) has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;

(3) is caring for an individual who is subject to such an order or has been so advised;

(4) is experiencing symptoms of COVID–19 and seeking a medical diagnosis;

(5) is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, if the school of such son or daughter requires or makes optional a virtual learning instruction model or requires or makes optional a hybrid of in-person and virtual learning instruction models, or the child care provider of such son or daughter is unavailable, due to COVID–19 precautions;

(6) is experiencing any other substantially similar condition;

(7) is caring for a family member with a mental or physical disability or who is 55 years of age or older and incapable of self-care, without regard to whether another individual other than the employee is available to care for such family member, if the place of care for such family member is closed or the direct care provider is unavailable due to COVID–19; or

(8) is obtaining immunization related to COVID–19 or is recovering from any injury, disability, illness, or condition related to such immunization.

(c) LIMITATIONS.—

(1) PERIOD OF AVAILABILITY.—Paid leave under this section may only be provided to and used by an employee during the period beginning on the date of enactment of this Act and ending on September 30, 2021.

(2) TOTAL HOURS; AMOUNT.—Paid leave under this section—

(A) shall be provided to an employee in an amount not to exceed 600 hours of paid leave for each full-time employee, and in the case of a part-time employee, employee on an uncommon tour of duty, or employee with a seasonal work schedule, in an amount not to exceed the proportional equivalent of 600 hours to the extent amounts in the Fund remain available for reimbursement;

(B) shall be paid at the same hourly rate as other leave payments; and

(C) may not be provided to an employee if the leave would result in payments greater than $2,800 in aggregate for any biweekly pay period for a full-time employee, or a proportionally equivalent biweekly limit for a part-time employee.

(3) RELATIONSHIP TO OTHER LEAVE.—Paid leave under this section—

(A) is in addition to any other leave provided to an employee; and

(B) may not be used by an employee concurrently with any other paid leave.

(4) CALCULATION OF RETIREMENT BENEFIT.—Any paid leave provided to an employee under this section shall reduce the total service used to calculate any Federal civilian retirement benefit.

(d) EMPLOYEE DEFINED.—In this section, the term "employee" means—

(1) an individual in the executive branch for whom annual and sick leave is provided under subchapter I of chapter 63 of title 5, United States Code;

(2) an individual employed by the United States Postal Service;

(3) an individual employed by the Postal Regulatory Commission; and

(4) an employee of the Public Defender Service for the District of Columbia and the District of Columbia Courts.

SEC. 4002. FUNDING FOR THE GOVERNMENT ACCOUNTABILITY OFFICE.

In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $77,000,000, to remain available until September 30, 2025, for necessary expenses of the Government Accountability Office to prevent, prepare for, and respond to Coronavirus and to support oversight of the Coronavirus response and of funds provided in this Act or any other Act pertaining to the Coronavirus pandemic.

SEC. 4003. PANDEMIC RESPONSE ACCOUNTABILITY COMMITTEE FUNDING AVAILABILITY.

In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $40,000,000, to remain available until September 30, 2025, for the Pandemic Response Accountability Committee to support oversight of the Coronavirus response and of funds provided in this Act or any other Act pertaining to the Coronavirus pandemic.

SEC. 4004. FUNDING FOR THE WHITE HOUSE.

In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $12,800,000, to remain available until September 30, 2021, for necessary expenses for the White House, to prevent, prepare for, and respond to coronavirus.

SEC. 4005. FEDERAL EMERGENCY MANAGEMENT AGENCY APPROPRIATION.

In addition to amounts otherwise available, there is appropriated to the Federal Emergency Management Agency for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $50,000,000,000, to remain available until September 30, 2025, to carry out the purposes of the Disaster Relief Fund for costs associated with major disaster declarations.

SEC. 4006. FUNERAL ASSISTANCE.

42 USC 5174 note. President.

(a) IN GENERAL.—For the emergency declaration issued by the President on March 13, 2020, pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191(b)), and for any subsequent major disaster declaration that supersedes such emergency declaration, the President shall provide financial assistance to an individual or household to meet disaster-related funeral expenses under section 408(e)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174(e)(1)), for which the Federal cost share shall be 100 percent.

(b) USE OF FUNDS.—Funds appropriated under section 4005 may be used to carry out subsection (a) of this section.

SEC. 4007. EMERGENCY FOOD AND SHELTER PROGRAM FUNDING.

In addition to amounts otherwise made available, there is appropriated to the Federal Emergency Management Agency for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $400,000,000, to remain available until September 30, 2025, for the emergency food and shelter program.

SEC. 4008. HUMANITARIAN RELIEF.

In addition to amounts otherwise made available, there is appropriated to the Federal Emergency Management Agency for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $110,000,000, to remain available until September 30, 2025, for the emergency food and shelter program for the purposes of providing humanitarian relief to families and individuals encountered by the Department of Homeland Security.

SEC. 4009. CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY.

In addition to amounts otherwise made available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $650,000,000, to remain available until September 30, 2023, for the Cybersecurity and Infrastructure Security Agency for cybersecurity risk mitigation.

SEC. 4010. APPROPRIATION FOR THE UNITED STATES DIGITAL SERVICE.

In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury

not otherwise appropriated, $200,000,000, to remain available until September 30, 2024, for the United States Digital Service.

SEC. 4011. APPROPRIATION FOR THE TECHNOLOGY MODERNIZATION FUND.

In addition to amounts otherwise appropriated, there is appropriated to the General Services Administration for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $1,000,000,000, to remain available until September 30, 2025, to carry out the purposes of the Technology Modernization Fund.

SEC. 4012. APPROPRIATION FOR THE FEDERAL CITIZEN SERVICES FUND.

In addition to amounts otherwise available, there is appropriated to the General Services Administration for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $150,000,000, to remain available until September 30, 2024, to carry out the purposes of the Federal Citizen Services Fund.

SEC. 4013. AFG AND SAFER PROGRAM FUNDING.

In addition to amounts otherwise made available, there is appropriated to the Federal Emergency Management Agency for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $300,000,000, to remain available until September 30, 2025, of which $100,000,000 shall be for assistance to firefighter grants and $200,000,000 shall be for staffing for adequate fire and emergency response grants.

SEC. 4014. EMERGENCY MANAGEMENT PERFORMANCE GRANT FUNDING.

In addition to amounts otherwise made available, there is appropriated to the Federal Emergency Management Agency for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $100,000,000, to remain available until September 30, 2025, for emergency management performance grants.

SEC. 4015. EXTENSION OF REIMBURSEMENT AUTHORITY FOR FEDERAL CONTRACTORS.

41 USC 6301 note prec.

Section 3610 of the CARES Act (Public Law 116–136; 134 Stat. 414) is amended by striking "September 30, 2020" and inserting "September 30, 2021".

5 USC 8101 note.

SEC. 4016. ELIGIBILITY FOR WORKERS' COMPENSATION BENEFITS FOR FEDERAL EMPLOYEES DIAGNOSED WITH COVID–19.

(a) IN GENERAL.—Subject to subsection (c), a covered employee shall, with respect to any claim made by or on behalf of the covered employee for benefits under subchapter I of chapter 81 of title 5, United States Code, be deemed to have an injury proximately caused by exposure to the novel coronavirus arising out of the nature of the covered employee's employment. Such covered employee, or a beneficiary of such an employee, shall be entitled to such benefits for such claim, including disability compensation, medical services, and survivor benefits.

(b) DEFINITIONS.—In this section:

(1) COVERED EMPLOYEE.—

(A) IN GENERAL.—The term "covered employee" means an individual—

Time period.

(i) who is an employee under section 8101(1) of title 5, United States Code, employed in the Federal

service at anytime during the period beginning on January 27, 2020, and ending on January 27, 2023;

(ii) who is diagnosed with COVID–19 during such period; and

(iii) who, during a covered exposure period prior to such diagnosis, carries out duties that—

(I) require contact with patients, members of the public, or co-workers; or

(II) include a risk of exposure to the novel coronavirus.

(B) TELEWORKING EXCEPTION.—The term "covered employee" does not include any employee otherwise covered by subparagraph (A) who is exclusively teleworking during a covered exposure period, regardless of whether such employment is full time or part time.

(2) COVERED EXPOSURE PERIOD.—The term "covered exposure period" means, with respect to a diagnosis of COVID–19, the period beginning on a date to be determined by the Secretary of Labor. Determination.

(3) NOVEL CORONAVIRUS.—The term "novel coronavirus" means SARS–CoV–2 or another coronavirus declared to be a pandemic by public health authorities.

(c) LIMITATION.—

(1) DETERMINATIONS MADE ON OR BEFORE THE DATE OF ENACTMENT.—This section shall not apply with respect to a covered employee who is determined to be entitled to benefits under subchapter I of chapter 81 of title 5, United States Code, for a claim described in subsection (a) if such determination is made on or before the date of enactment of this Act.

(2) LIMITATION ON DURATION OF BENEFITS.—No funds are authorized to be appropriated to pay, and no benefits may be paid for, claims approved on the basis of subsection (a) after September 30, 2030. No administrative costs related to any such claim may be paid after such date. Termination date.

(d) EMPLOYEES' COMPENSATION FUND.—

(1) IN GENERAL.—The costs of benefits for claims approved on the basis of subsection (a) shall not be included in the annual statement of the cost of benefits and other payments of an agency or instrumentality under section 8147(b) of title 5, United States Code.

(2) FAIR SHARE PROVISION.—Costs of administration for claims described in paragraph (1)—

(A) may be paid from the Employees' Compensation Fund; and

(B) shall not be subject to the fair share provision in section 8147(c) of title 5, United States Code.

TITLE V—COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

SEC. 5001. MODIFICATIONS TO PAYCHECK PROTECTION PROGRAM.

(a) ELIGIBILITY OF CERTAIN NONPROFIT ENTITIES FOR COVERED LOANS UNDER THE PAYCHECK PROTECTION PROGRAM.—

(1) IN GENERAL.—Section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)), as amended by the Economic Aid

to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260), is amended—

134 Stat. 1993.

(A) in subparagraph (A)—

(i) in clause (xv), by striking "and" at the end;

(ii) in clause (xvi), by striking the period at the end and inserting "; and"; and

(iii) by adding at the end the following:

Definition.

"(xvii) the term 'additional covered nonprofit entity'—

"(I) means an organization described in any paragraph of section 501(c) of the Internal Revenue Code of 1986, other than paragraph (3), (4), (6), or (19), and exempt from tax under section 501(a) of such Code; and

"(II) does not include any entity that, if the entity were a business concern, would be described in section 120.110 of title 13, Code of Federal Regulations (or in any successor regulation or other related guidance or rule that may be issued by the Administrator) other than a business concern described in paragraph (a) or (k) of such section."; and

(B) in subparagraph (D)—

(i) in clause (iii), by adding at the end the following:

"(III) ELIGIBILITY OF CERTAIN ORGANIZATIONS.—Subject to the provisions in this subparagraph, during the covered period—

"(aa) a nonprofit organization shall be eligible to receive a covered loan if the nonprofit organization employs not more than 500 employees per physical location of the organization; and

"(bb) an additional covered nonprofit entity and an organization that, but for subclauses (I)(dd) and (II)(dd) of clause (vii), would be eligible for a covered loan under clause (vii) shall be eligible to receive a covered loan if the entity or organization employs not more than 300 employees per physical location of the entity or organization."; and

(ii) by adding at the end the following:

"(ix) ELIGIBILITY OF ADDITIONAL COVERED NONPROFIT ENTITIES.—An additional covered nonprofit entity shall be eligible to receive a covered loan if—

"(I) the additional covered nonprofit entity does not receive more than 15 percent of its receipts from lobbying activities;

"(II) the lobbying activities of the additional covered nonprofit entity do not comprise more than 15 percent of the total activities of the organization;

"(III) the cost of the lobbying activities of the additional covered nonprofit entity did not exceed $1,000,000 during the most recent tax year of the additional covered nonprofit entity that ended prior to February 15, 2020; and

"(IV) the additional covered nonprofit entity employs not more than 300 employees.".

(2) ELIGIBILITY FOR SECOND DRAW LOANS.—Paragraph (37)(A)(i) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260), is amended by inserting "'additional covered nonprofit entity'," after "the terms". 134 Stat. 2001.

(b) ELIGIBILITY OF INTERNET PUBLISHING ORGANIZATIONS FOR COVERED LOANS UNDER THE PAYCHECK PROTECTION PROGRAM.—

(1) IN GENERAL.—Section 7(a)(36)(D) of the Small Business Act (15 U.S.C. 636(a)(36)(D)), as amended by subsection (a), is further amended—

(A) in clause (iii), by adding at the end the following:

"(IV) ELIGIBILITY OF INTERNET PUBLISHING ORGANIZATIONS.—A business concern or other organization that was not eligible to receive a covered loan the day before the date of enactment of this subclause, is assigned a North American Industry Classification System code of 519130, certifies in good faith as an Internet-only news publisher or Internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information shall be eligible to receive a covered loan for the continued provision of news, information, content, or emergency information if—

"(aa) the business concern or organization employs not more than 500 employees, or the size standard established by the Administrator for that North American Industry Classification code, per physical location of the business concern or organization; and

"(bb) the business concern or organization makes a good faith certification that proceeds of the loan will be used to support expenses at the component of the business concern or organization that supports local or regional news."; Certification.

(B) in clause (iv)—

(i) in subclause (III), by striking "and" at the end;

(ii) in subclause (IV)(bb), by striking the period at the end and inserting "; and"; and

(iii) by adding at the end the following:

"(V) any business concern or other organization that was not eligible to receive a covered loan the day before the date of enactment of this subclause, is assigned a North American Industry Classification System code of 519130, certifies in good faith as an Internet-only news publisher or Internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information, if the business concern or organization— Certification.

"(aa) employs not more than 500 employees, or the size standard established by the Administrator for that North American

Industry Classification code, per physical location of the business concern or organization; and

"(bb) is majority owned or controlled by a business concern or organization that is assigned a North American Industry Classification System code of 519130.";

(C) in clause (v), by striking "clause (iii)(II), (iv)(IV), or (vii)" and inserting "subclause (II), (III), or (IV) of clause (iii), subclause (IV) or (V) of clause (iv), clause (vii), or clause (ix)"; and

(D) in clause (viii)(II)—

(i) by striking "business concern made eligible by clause (iii)(II) or clause (iv)(IV) of this subparagraph" and inserting "business concern made eligible by subclause (II) or (IV) of clause (iii) or subclause (IV) or (V) of clause (iv) of this subparagraph"; and

(ii) by inserting "or organization" after "business concern" each place it appears.

(2) ELIGIBILITY FOR SECOND DRAW LOANS.—Section 7(a)(37)(A)(iv)(II) of the Small Business Act, as amended by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260), is amended by striking "clause (iii)(II), (iv)(IV), or (vii)" and inserting "subclause (II), (III), or (IV) of clause (iii), subclause (IV) or (V) of clause (iv), clause (vii), or clause (ix)".

134 Stat. 2002.

(c) COORDINATION WITH CONTINUATION COVERAGE PREMIUM ASSISTANCE.—

(1) PAYCHECK PROTECTION PROGRAM.—Section 7A(a)(12) of the Small Business Act (as redesignated, transferred, and amended by section 304(b) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Public Law 116–260)) is amended—

134 Stat. 1993.

(A) by striking "CARES Act or" and inserting "CARES Act,"; and

(B) by inserting before the period at the end the following: ", or premiums taken into account in determining the credit allowed under section 6432 of the Internal Revenue Code of 1986".

(2) PAYCHECK PROTECTION PROGRAM SECOND DRAW.—Section 7(a)(37)(J)(iii)(I) of the Small Business Act, as amended by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260), is amended—

134 Stat. 2005.

(A) by striking "or" at the end of item (aa);

(B) by striking the period at the end of item (bb) and inserting "; or"; and

(C) by adding at the end the following new item:

"(cc) premiums taken into account in determining the credit allowed under section 6432 of the Internal Revenue Code of 1986.".

15 USC 636 note.

(3) APPLICABILITY.—The amendments made by this subsection shall apply only with respect to applications for forgiveness of covered loans made under paragraphs (36) or (37) of section 7(a) of the Small Business Act, as amended by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260),

that are received on or after the date of the enactment of this Act.

(d) COMMITMENT AUTHORITY AND APPROPRIATIONS.—

(1) COMMITMENT AUTHORITY.—Section 1102(b)(1) of the CARES Act (Public Law 116–136) is amended by striking "$806,450,000,000" and inserting "$813,700,000,000". 134 Stat. 293, 660, 2019.

(2) DIRECT APPROPRIATIONS.—In addition to amounts otherwise available, there is appropriated to the Administrator of the Small Business Administration for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $7,250,000,000, to remain available until expended, for carrying out this section.

SEC. 5002. TARGETED EIDL ADVANCE. 15 USC 9009 note.

(a) DEFINITIONS.—In this section—

(1) the term "Administrator" means the Administrator of the Small Business Administration; and

(2) the terms "covered entity" and "economic loss" have the meanings given the terms in section 331(a) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260).

(b) APPROPRIATIONS.—In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $15,000,000,000—

(1) to remain available until expended; and

(2) of which, the Administrator shall use—

(A) $10,000,000,000 to make payments to covered entities that have not received the full amounts to which the covered entities are entitled under section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260); and

(B) $5,000,000,000 to make payments under section 1110(e) of the CARES Act (15 U.S.C. 9009(e)), each of which shall be—

(i) made to a covered entity that—

(I) has suffered an economic loss of greater than 50 percent; and

(II) employs not more than 10 employees;

(ii) in an amount that is $5,000; and

(iii) with respect to the covered entity to which the payment is made, in addition to any payment made to the covered entity under section 1110(e) of the CARES Act (15 U.S.C. 9009(e)) or section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260).

SEC. 5003. SUPPORT FOR RESTAURANTS. 15 USC 9009c.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Small Business Administration.

(2) AFFILIATED BUSINESS.—The term "affiliated business" means a business in which an eligible entity has an equity or right to profit distributions of not less than 50 percent, or in which an eligible entity has the contractual authority to control the direction of the business, provided that such Determination. Agreement date.

affiliation shall be determined as of any arrangements or agreements in existence as of March 13, 2020.

(3) COVERED PERIOD.—The term "covered period" means the period—

(A) beginning on February 15, 2020; and

Determination. Deadline.

(B) ending on December 31, 2021, or a date to be determined by the Administrator that is not later than 2 years after the date of enactment of this section.

(4) ELIGIBLE ENTITY.—The term "eligible entity"—

(A) means a restaurant, food stand, food truck, food cart, caterer, saloon, inn, tavern, bar, lounge, brewpub, tasting room, taproom, licensed facility or premise of a beverage alcohol producer where the public may taste, sample, or purchase products, or other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink;

(B) includes an entity described in subparagraph (A) that is located in an airport terminal or that is a Tribally-owned concern; and

(C) does not include—

(i) an entity described in subparagraph (A) that—

(I) is a State or local government-operated business;

Agreement date.

(II) as of March 13, 2020, owns or operates (together with any affiliated business) more than 20 locations, regardless of whether those locations do business under the same or multiple names; or

(III) has a pending application for or has received a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260); or

(ii) a publicly-traded company.

(5) EXCHANGE; ISSUER; SECURITY.—The terms "exchange", "issuer", and "security" have the meanings given those terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(6) FUND.—The term "Fund" means the Restaurant Revitalization Fund established under subsection (b).

(7) PANDEMIC-RELATED REVENUE LOSS.—The term "pandemic-related revenue loss" means, with respect to an eligible entity—

(A) except as provided in subparagraphs (B), (C), and (D), the gross receipts, as established using such verification documentation as the Administrator may require, of the eligible entity during 2020 subtracted from the gross receipts of the eligible entity in 2019, if such sum is greater than zero;

(B) if the eligible entity was not in operation for the entirety of 2019—

(i) the difference between—

(I) the product obtained by multiplying the average monthly gross receipts of the eligible entity in 2019 by 12; and

(II) the product obtained by multiplying the average monthly gross receipts of the eligible entity in 2020 by 12; or

(ii) an amount based on a formula determined by the Administrator; Determination.

(C) if the eligible entity opened during the period beginning on January 1, 2020, and ending on the day before the date of enactment of this section— Time period.

(i) the expenses described in subsection (c)(5)(A) that were incurred by the eligible entity minus any gross receipts received; or

(ii) an amount based on a formula determined by the Administrator; or Determination.

(D) if the eligible entity has not yet opened as of the date of application for a grant under subsection (c), but has incurred expenses described in subsection (c)(5)(A) as of the date of enactment of this section—

(i) the amount of those expenses; or

(ii) an amount based on a formula determined by the Administrator. Determination.

For purposes of this paragraph, the pandemic-related revenue losses for an eligible entity shall be reduced by any amounts received from a covered loan made under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) in 2020 or 2021.

(8) PAYROLL COSTS.—The term "payroll costs" has the meaning given the term in section 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A)), except that such term shall not include—

(A) qualified wages (as defined in subsection (c)(3) of section 2301 of the CARES Act) taken into account in determining the credit allowed under such section 2301; or

(B) premiums taken into account in determining the credit allowed under section 6432 of the Internal Revenue Code of 1986.

(9) PUBLICLY-TRADED COMPANY.—The term "publicly-traded company" means an entity that is majority owned or controlled by an entity that is an issuer, the securities of which are listed on a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(10) TRIBALLY-OWNED CONCERN.—The term "Tribally-owned concern" has the meaning given the term in section 124.3 of title 13, Code of Federal Regulations, or any successor regulation.

(b) RESTAURANT REVITALIZATION FUND.—

(1) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the Restaurant Revitalization Fund.

(2) APPROPRIATIONS.—

(A) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Restaurant Revitalization Fund for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $28,600,000,000, to remain available until expended.

(B) DISTRIBUTION.—

(i) IN GENERAL.—Of the amounts made available under subparagraph (A)—

(I) $5,000,000,000 shall be available to eligible entities with gross receipts during 2019 of not more than $500,000; and

(II) $23,600,000,000 shall be available to the Administrator to award grants under subsection (c) in an equitable manner to eligible entities of different sizes based on annual gross receipts.

(ii) ADJUSTMENTS.—The Administrator may make adjustments as necessary to the distribution of funds under clause (i)(II) based on demand and the relative local costs in the markets in which eligible entities operate.

Effective date. Determination.

(C) GRANTS AFTER INITIAL PERIOD.—Notwithstanding subparagraph (B), on and after the date that is 60 days after the date of enactment of this section, or another period of time determined by the Administrator, the Administrator may make grants using amounts appropriated under subparagraph (A) to any eligible entity regardless of the annual gross receipts of the eligible entity.

(3) USE OF FUNDS.—The Administrator shall use amounts in the Fund to make grants described in subsection (c).

(c) RESTAURANT REVITALIZATION GRANTS.—

(1) IN GENERAL.—Except as provided in subsection (b) and paragraph (3), the Administrator shall award grants to eligible entities in the order in which applications are received by the Administrator.

(2) APPLICATION.—

(A) CERTIFICATION.—An eligible entity applying for a grant under this subsection shall make a good faith certification that—

(i) the uncertainty of current economic conditions makes necessary the grant request to support the ongoing operations of the eligible entity; and

(ii) the eligible entity has not applied for or received a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260).

(B) BUSINESS IDENTIFIERS.—In accepting applications for grants under this subsection, the Administrator shall prioritize the ability of each applicant to use their existing business identifiers over requiring other forms of registration or identification that may not be common to their industry and imposing additional burdens on applicants.

(3) PRIORITY IN AWARDING GRANTS.—

Time period.

(A) IN GENERAL.—During the initial 21-day period in which the Administrator awards grants under this subsection, the Administrator shall prioritize awarding grants to eligible entities that are small business concerns owned and controlled by women (as defined in section 3(n) of the Small Business Act (15 U.S.C. 632(n))), small business concerns owned and controlled by veterans (as defined in section 3(q) of such Act (15 U.S.C. 632(q))), or socially and economically disadvantaged small business concerns (as defined in section 8(a)(4)(A) of the Small Business Act

(15 U.S.C. 637(a)(4)(A))). The Administrator may take such steps as necessary to ensure that eligible entities described in this subparagraph have access to grant funding under this section after the end of such 21-day period.

(B) CERTIFICATION.—For purposes of establishing priority under subparagraph (A), an applicant shall submit a self-certification of eligibility for priority with the grant application.

(4) GRANT AMOUNT.—

(A) AGGREGATE MAXIMUM AMOUNT.—The aggregate amount of grants made to an eligible entity and any affiliated businesses of the eligible entity under this subsection—

(i) shall not exceed $10,000,000; and

(ii) shall be limited to $5,000,000 per physical location of the eligible entity.

(B) DETERMINATION OF GRANT AMOUNT.—

(i) IN GENERAL.—Except as provided in this paragraph, the amount of a grant made to an eligible entity under this subsection shall be equal to the pandemic-related revenue loss of the eligible entity.

(ii) RETURN TO TREASURY.—Any amount of a grant made under this subsection to an eligible entity based on estimated receipts that is greater than the actual gross receipts of the eligible entity in 2020 shall be returned to the Treasury.

(5) USE OF FUNDS.—During the covered period, an eligible entity that receives a grant under this subsection may use the grant funds for the following expenses incurred as a direct result of, or during, the COVID–19 pandemic:

(A) Payroll costs.

(B) Payments of principal or interest on any mortgage obligation (which shall not include any prepayment of principal on a mortgage obligation).

(C) Rent payments, including rent under a lease agreement (which shall not include any prepayment of rent).

(D) Utilities.

(E) Maintenance expenses, including—

(i) construction to accommodate outdoor seating; and

(ii) walls, floors, deck surfaces, furniture, fixtures, and equipment.

(F) Supplies, including protective equipment and cleaning materials.

(G) Food and beverage expenses that are within the scope of the normal business practice of the eligible entity before the covered period.

(H) Covered supplier costs, as defined in section 7A(a) of the Small Business Act (as redesignated, transferred, and amended by section 304(b) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Public Law 116–260)).

(I) Operational expenses.

(J) Paid sick leave.

(K) Any other expenses that the Administrator determines to be essential to maintaining the eligible entity.

(6) RETURNING FUNDS.—If an eligible entity that receives a grant under this subsection fails to use all grant funds or permanently ceases operations on or before the last day of the covered period, the eligible entity shall return to the Treasury any funds that the eligible entity did not use for the allowable expenses under paragraph (5).

15 USC 9013.

SEC. 5004. COMMUNITY NAVIGATOR PILOT PROGRAM.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATION.—The term "Administration" means the Small Business Administration.

(2) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Small Business Administration.

(3) COMMUNITY NAVIGATOR SERVICES.—The term "community navigator services" means the outreach, education, and technical assistance provided by community navigators that target eligible businesses to increase awareness of, and participation in, programs of the Small Business Administration.

(4) COMMUNITY NAVIGATOR.—The term "community navigator" means a community organization, community financial institution as defined in section 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A)), or other private nonprofit organization engaged in the delivery of community navigator services.

(5) ELIGIBLE BUSINESS.—The term "eligible business" means any small business concern, with priority for small business concerns owned and controlled by women (as defined in section 3(n) of the Small Business Act (15 U.S.C. 632(n))), small business concerns owned and controlled by veterans (as defined in section 3(q) of such Act (15 U.S.C. 632(q))), and socially and economically disadvantaged small business concerns (as defined in section 8(a)(4)(A) of the Small Business Act (15 U.S.C. 637(a)(4)(A))).

(6) PRIVATE NONPROFIT ORGANIZATION.—The term "private nonprofit organization" means an entity that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

(7) RESOURCE PARTNER.—The term "resource partner" means—

(A) a small business development center (as defined in section 3 of the Small Business Act (15 U.S.C. 632));

(B) a women's business center (as described in section 29 of the Small Business Act (15 U.S.C. 656)); and

(C) a chapter of the Service Corps of Retired Executives (as defined in section 8(b)(1)(B) of the Act (15 U.S.C. 637(b)(1)(B))).

(8) SMALL BUSINESS CONCERN.—The term "small business concern" has the meaning given under section 3 of the Small Business Act (15 U.S.C. 632).

(9) STATE.—The term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam, or an agency, instrumentality, or fiscal agent thereof.

(10) UNIT OF GENERAL LOCAL GOVERNMENT.—The term "unit of general local government" means a county, city, town, village, or other general purpose political subdivision of a State.

(b) COMMUNITY NAVIGATOR PILOT PROGRAM.—

(1) IN GENERAL.—The Administrator of the Small Business Administration shall establish a Community Navigator pilot program to make grants to, or enter into contracts or cooperative agreements with, private nonprofit organizations, resource partners, States, Tribes, and units of local government to ensure the delivery of free community navigator services to current or prospective owners of eligible businesses in order to improve access to assistance programs and resources made available because of the COVID–19 pandemic by Federal, State, Tribal, and local entities. Grants. Contracts.

(2) APPROPRIATIONS.—In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $100,000,000, to remain available until September 30, 2022, for carrying out this subsection.

(c) OUTREACH AND EDUCATION.—

(1) PROMOTION.—The Administrator shall develop and implement a program to promote community navigator services to current or prospective owners of eligible businesses.

(2) CALL CENTER.—The Administrator shall establish a telephone hotline to offer information about Federal programs to assist eligible businesses and offer referral services to resource partners, community navigators, potential lenders, and other persons that the Administrator determines appropriate for current or prospective owners of eligible businesses. Determination.

(3) OUTREACH.—The Administrator shall—

(A) conduct outreach and education, in the 10 most commonly spoken languages in the United States, to current or prospective owners of eligible businesses on community navigator services and other Federal programs to assist eligible businesses;

(B) improve the website of the Administration to describe such community navigator services and other Federal programs; and

(C) implement an education campaign by advertising in media targeted to current or prospective owners of eligible businesses.

(4) APPROPRIATIONS.—In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $75,000,000, to remain available until September 30, 2022, for carrying out this subsection.

(d) SUNSET.—The authority of the Administrator to make grants under this section shall terminate on December 31, 2025.

SEC. 5005. SHUTTERED VENUE OPERATORS.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $1,250,000,000, to remain available until expended, to carry out section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260), of which $500,000 shall be used to provide technical assistance to help applicants access the System for Award Management (or any successor thereto) or to assist applicants with an alternative grant application system.

(b) REDUCTION OF SHUTTERED VENUES ASSISTANCE FOR NEW PPP RECIPIENTS.—Section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260), is amended—

134 Stat. 2024.

(1) in subsection (a)(1)(A)(vi)—

(A) by striking subclause (III);

(B) by redesignating subclause (IV) as subclause (III); and

(C) in subclause (III), as so redesignated, by striking "subclauses (I), (II), and (III)" and inserting "subclauses (I) and (II)"; and

134 Stat. 2029.

(2) in subsection (c)(1)—

(A) in subparagraph (A), in the matter preceding clause (i), by striking "A grant" and inserting "Subject to subparagraphs (B) and (C), a grant"; and

(B) by adding at the end the following:

"(C) REDUCTION FOR RECIPIENTS OF NEW PPP LOANS.—

Effective date.

"(i) IN GENERAL.—The otherwise applicable amount of a grant under subsection (b)(2) to an eligible person or entity shall be reduced by the total amount of loans guaranteed under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) that are received on or after December 27, 2020 by the eligible person or entity.

"(ii) APPLICATION TO GOVERNMENTAL ENTITIES.—For purposes of applying clause (i) to an eligible person or entity owned by a State or a political subdivision of a State, the relevant entity—

"(I) shall be the eligible person or entity; and

"(II) shall not include entities of the State or political subdivision other than the eligible person or entity.".

SEC. 5006. DIRECT APPROPRIATIONS.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Administrator for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, to remain available until expended—

(1) $840,000,000 for administrative expenses, including to prevent, prepare for, and respond to the COVID–19 pandemic, domestically or internationally, including administrative expenses related to paragraphs (36) and (37) of section 7(a) of the Small Business Act, section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260), section 5002 of this title, and section 5003 of this title; and

(2) $460,000,000 to carry out the disaster loan program authorized by section 7(b) of the Small Business Act (15 U.S.C. 636(b)), of which $70,000,000 shall be for the cost of direct loans authorized by such section and $390,000,000 shall be for administrative expenses to carry out such program.

(b) INSPECTOR GENERAL.—In addition to amounts otherwise available, there is appropriated to the Inspector General of the Small Business Administration for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $25,000,000, to remain available until expended, for necessary expenses of the Office of Inspector General.

TITLE VI—COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

SEC. 6001. ECONOMIC ADJUSTMENT ASSISTANCE.

(a) ECONOMIC DEVELOPMENT ADMINISTRATION APPROPRIATION.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $3,000,000,000, to remain available until September 30, 2022, to the Department of Commerce for economic adjustment assistance as authorized by sections 209 and 703 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3149 and 3233) to prevent, prepare for, and respond to coronavirus and for necessary expenses for responding to economic injury as a result of coronavirus.

(b) Of the funds provided by this section, up to 2 percent shall be used for Federal costs to administer such assistance utilizing temporary Federal personnel as may be necessary consistent with the requirements applicable to such administrative funding in fiscal year 2020 to prevent, prepare for, and respond to coronavirus and which shall remain available until September 30, 2027.

(c) Of the funds provided by this section, 25 percent shall be for assistance to States and communities that have suffered economic injury as a result of job and gross domestic product losses in the travel, tourism, or outdoor recreation sectors.

SEC. 6002. FUNDING FOR POLLUTION AND DISPARATE IMPACTS OF THE COVID–19 PANDEMIC.

(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Environmental Protection Agency for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $100,000,000, to remain available until expended, to address health outcome disparities from pollution and the COVID–19 pandemic, of which—

(1) $50,000,000, shall be for grants, contracts, and other agency activities that identify and address disproportionate environmental or public health harms and risks in minority populations or low-income populations under—

(A) section 103(b) of the Clean Air Act (42 U.S.C. 7403(b));

(B) section 1442 of the Safe Drinking Water Act (42 U.S.C. 300j–1);

(C) section 104(k)(7)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(k)(7)(A)); and

(D) sections 791 through 797 of the Energy Policy Act of 2005 (42 U.S.C. 16131 through 16137); and

(2) $50,000,000 shall be for grants and activities authorized under subsections (a) through (c) of section 103 of the Clean Air Act (42 U.S.C. 7403) and grants and activities authorized under section 105 of such Act (42 U.S.C. 7405).

(b) ADMINISTRATION OF FUNDS.—

(1) Of the funds made available pursuant to subsection (a)(1), the Administrator shall reserve 2 percent for administrative costs necessary to carry out activities funded pursuant to such subsection.

(2) Of the funds made available pursuant to subsection (a)(2), the Administrator shall reserve 5 percent for activities funded pursuant to such subsection other than grants.

SEC. 6003. UNITED STATES FISH AND WILDLIFE SERVICE.

(a) INSPECTION, INTERDICTION, AND RESEARCH RELATED TO CERTAIN SPECIES AND COVID–19.—In addition to amounts otherwise made available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $95,000,000 to remain available until expended, to carry out the provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) through direct expenditure, contracts, and grants, of which—

(1) $20,000,000 shall be for wildlife inspections, interdictions, investigations, and related activities, and for efforts to address wildlife trafficking;

(2) $30,000,000 shall be for the care of captive species listed under the Endangered Species Act of 1973, for the care of rescued and confiscated wildlife, and for the care of Federal trust species in facilities experiencing lost revenues due to COVID–19; and

(3) $45,000,000 shall be for research and extension activities to strengthen early detection, rapid response, and science-based management to address wildlife disease outbreaks before they become pandemics and strengthen capacity for wildlife health monitoring to enhance early detection of diseases that have capacity to jump the species barrier and pose a risk in the United States, including the development of a national wildlife disease database.

(b) LACEY ACT PROVISIONS.—In addition to amounts otherwise made available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $10,000,000, to remain available until expended, to carry out the provisions of section 42(a) of title 18, United States Code, and the Lacey Act Amendments of 1981 (16 U.S.C. 3371–3378).

TITLE VII—COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Subtitle A—Transportation and Infrastructure

SEC. 7101. GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION.

(a) NORTHEAST CORRIDOR APPROPRIATION.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $970,388,160, to remain available until September 30, 2024, for grants as authorized under section 11101(a) of the FAST Act (Public Law 114–94) to prevent, prepare for, and respond to coronavirus.

(b) NATIONAL NETWORK APPROPRIATION.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $729,611,840, to remain available until September 30, 2024, for

grants as authorized under section 11101(b) of the FAST Act (Public Law 114–94) to prevent, prepare for, and respond to coronavirus.

(c) LONG-DISTANCE SERVICE RESTORATION AND EMPLOYEE RECALLS.—Not less than $165,926,000 of the aggregate amounts made available under subsections (a) and (b) shall be for use by the National Railroad Passenger Corporation to— Effective dates.

(1) restore, not later than 90 days after the date of enactment of this Act, the frequency of rail service on long-distance routes (as defined in section 24102 of title 49, United States Code) that the National Railroad Passenger Corporation reduced the frequency of on or after July 1, 2020, and continue to operate such service at such frequency; and Deadline.

(2) recall and manage employees furloughed on or after October 1, 2020, as a result of efforts to prevent, prepare for, and respond to coronavirus. Furloughs.

(d) USE OF FUNDS IN LIEU OF CAPITAL PAYMENTS.—Not less than $109,805,000 of the aggregate amounts made available under subsections (a) and (b)—

(1) shall be for use by the National Railroad Passenger Corporation in lieu of capital payments from States and commuter rail passenger transportation providers that are subject to the cost allocation policy under section 24905(c) of title 49, United States Code; and

(2) notwithstanding sections 24319(g) and 24905(c)(1)(A)(i) of title 49, United States Code, such amounts do not constitute cross-subsidization of commuter rail passenger transportation.

(e) USE OF FUNDS FOR STATE PAYMENTS FOR STATE-SUPPORTED ROUTES.—

(1) IN GENERAL.—Of the amounts made available under subsection (b), $174,850,000 shall be for use by the National Railroad Passenger Corporation to offset amounts required to be paid by States for covered State-supported routes.

(2) FUNDING SHARE.—The share of funding provided under paragraph (1) with respect to a covered State-supported route shall be distributed as follows:

(A) Each covered State-supported route shall receive 7 percent of the costs allocated to the route in fiscal year 2019 under the cost allocation methodology adopted pursuant to section 209 of the Passenger Rail Investment and Improvement Act of 2008 (Public Law 110–432).

(B) Any remaining amounts after the distribution described in subparagraph (A) shall be apportioned to each covered State-supported route in proportion to the passenger revenue of such route and other revenue allocated to such route in fiscal year 2019 divided by the total passenger revenue and other revenue allocated to all covered State-supported routes in fiscal year 2019. Apportionment.

(3) COVERED STATE-SUPPORTED ROUTE DEFINED.—In this subsection, the term "covered State-supported route" means a State-supported route, as such term is defined in section 24102 of title 49, United States Code, but does not include a State-supported route for which service was terminated on or before February 1, 2020. Termination date.

(f) USE OF FUNDS FOR DEBT REPAYMENT OR PREPAYMENT.—Not more than $100,885,000 of the aggregate amounts made available under subsections (a) and (b) shall be—

(1) for the repayment or prepayment of debt incurred by the National Railroad Passenger Corporation under financing arrangements entered into prior to the date of enactment of this Act; and

(2) to pay required reserves, costs, and fees related to such debt, including for loans from the Department of Transportation and loans that would otherwise have been paid from National Railroad Passenger Corporation revenues.

(g) PROJECT MANAGEMENT OVERSIGHT.—Not more than $2,000,000 of the aggregate amounts made available under subsections (a) and (b) shall be for activities authorized under section 11101(c) of the FAST Act (Public Law 114–94).

15 USC 9121.

SEC. 7102. RELIEF FOR AIRPORTS.

(a) IN GENERAL.—

(1) IN GENERAL.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any funds in the Treasury not otherwise appropriated, $8,000,000,000, to remain available until September 30, 2024, for assistance to sponsors of airports, as such terms are defined in section 47102 of title 49, United States Code, to be made available to prevent, prepare for, and respond to coronavirus.

(2) REQUIREMENTS AND LIMITATIONS.—Amounts made available under this section—

(A) may not be used for any purpose not directly related to the airport; and

(B) may not be provided to any airport that was allocated in excess of 4 years of operating funds to prevent, prepare for, and respond to coronavirus in fiscal year 2020.

Applicability.

(b) ALLOCATIONS.—The following terms shall apply to the amounts made available under this section:

(1) OPERATING EXPENSES AND DEBT SERVICE PAYMENTS.—

(A) IN GENERAL.—Not more than $6,492,000,000 shall be made available for primary airports, as such term is defined in section 47102 of title 49, United States Code, and certain cargo airports, for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments.

(B) DISTRIBUTION.— Amounts made available under this paragraph—

(i) shall not be subject to the reduced apportionments under section 47114(f) of title 49, United States Code;

(ii) shall first be apportioned as set forth in sections 47114(c)(1)(A), 47114(c)(1)(C)(i), 47114(c)(1)(C)(ii), 47114(c)(2)(A), 47114(c)(2)(B), and 47114(c)(2)(E) of title 49, United States Code; and

(iii) shall not be subject to a maximum apportionment limit set forth in section 47114(c)(1)(B) of title 49, United States Code.

(C) REMAINING AMOUNTS.—Any amount remaining after distribution under subparagraph (B) shall be distributed to the sponsor of each primary airport (as such term is defined in section 47102 of title 49, United States Code) based on each such primary airport's passenger enplanements compared to the total passenger

enplanements of all such primary airports in calendar year 2019.

(2) FEDERAL SHARE FOR DEVELOPMENT PROJECTS.—

(A) IN GENERAL.—Not more than $608,000,000 allocated under subsection (a)(1) shall be available to pay a Federal share of 100 percent of the costs for any grant awarded in fiscal year 2021, or in fiscal year 2020 with less than a 100-percent Federal share, for an airport development project (as such term is defined in section 47102 of title 49).

(B) REMAINING AMOUNTS.—Any amount remaining under this paragraph shall be distributed as described in paragraph (1)(C).

(3) NONPRIMARY AIRPORTS.—

(A) IN GENERAL.—Not more than $100,000,000 shall be made available for general aviation and commercial service airports that are not primary airports (as such terms are defined in section 47102 of title 49, United States Code) for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments.

(B) DISTRIBUTION.—Amounts made available under this paragraph shall be apportioned to each non-primary airport based on the categories published in the most current National Plan of Integrated Airport Systems, reflecting the percentage of the aggregate published eligible development costs for each such category, and then dividing the allocated funds evenly among the eligible airports in each category, rounding up to the nearest thousand dollars.

(C) REMAINING AMOUNTS.—Any amount remaining under this paragraph shall be distributed as described in paragraph (1)(C).

(4) AIRPORT CONCESSIONS.—

(A) IN GENERAL.—Not more than $800,000,000 shall be made available for sponsors of primary airports to provide relief from rent and minimum annual guarantees to airport concessions, of which at least $640,000,000 shall be available to provide relief to eligible small airport concessions and of which at least $160,000,000 shall be available to provide relief to eligible large airport concessions located at primary airports.

(B) DISTRIBUTION.—The amounts made available for each set-aside in this paragraph shall be distributed to the sponsor of each primary airport (as such term is defined in section 47102 of title 49, United States Code) based on each such primary airport's passenger enplanements compared to the total passenger enplanements of all such primary airports in calendar year 2019.

(C) CONDITIONS.—As a condition of approving a grant under this paragraph—

(i) the sponsor shall provide such relief from the date of enactment of this Act until the sponsor has provided relief equaling the total grant amount, to the extent practicable and to the extent permissible under State laws, local laws, and applicable trust indentures; and

(ii) for each set-aside, the sponsor shall provide relief from rent and minimum annual guarantee obligations to each eligible airport concession in an amount that reflects each eligible airport concession's proportional share of the total amount of the rent and minimum annual guarantees of those eligible airport concessions at such airport.

(c) ADMINISTRATION.—

(1) ADMINISTRATIVE EXPENSES.—The Administrator of the Federal Aviation Administration may retain up to 0.1 percent of the funds provided under this section to fund the award of, and oversight by the Administrator of, grants made under this section.

(2) WORKFORCE RETENTION REQUIREMENTS.—

Extension.
Retention date.

(A) REQUIRED RETENTION.—As a condition for receiving funds provided under this section, an airport shall continue to employ, through September 30, 2021, at least 90 percent of the number of individuals employed (after making adjustments for retirements or voluntary employee separations) by the airport as of March 27, 2020.

Determination.

(B) WAIVER OF RETENTION REQUIREMENT.—The Secretary shall waive the workforce retention requirement if the Secretary determines that—

(i) the airport is experiencing economic hardship as a direct result of the requirement; or

(ii) the requirement reduces aviation safety or security.

(C) EXCEPTION.—The workforce retention requirement shall not apply to nonhub airports or nonprimary airports receiving funds under this section.

(D) NONCOMPLIANCE.—Any financial assistance provided under this section to an airport that fails to comply with the workforce retention requirement described in subparagraph (A), and does not otherwise qualify for a waiver or exception under this paragraph, shall be subject to clawback by the Secretary.

(d) DEFINITIONS.—In this section:

(1) ELIGIBLE LARGE AIRPORT CONCESSION.—The term "eligible large airport concession" means a concession (as defined in section 23.3 of title 49, Code of Federal Regulations), that is in-terminal and has maximum gross receipts, averaged over the previous three fiscal years, of more than $56,420,000.

(2) ELIGIBLE SMALL AIRPORT CONCESSION.—The term "eligible small airport concession" means a concession (as defined in section 23.3 of title 49, Code of Federal Regulations), that is in-terminal and—

Time period.

(A) a small business with maximum gross receipts, averaged over the previous 3 fiscal years, of less than $56,420,000; or

(B) is a joint venture (as defined in section 23.3 of title 49, Code of Federal Regulations).

49 USC 106 note.

SEC. 7103. EMERGENCY FAA EMPLOYEE LEAVE FUND.

(a) ESTABLISHMENT; APPROPRIATION.—There is established in the Federal Aviation Administration the Emergency FAA Employee Leave Fund (in this section referred to as the "Fund"), to be

administered by the Administrator of the Federal Aviation Administration, for the purposes set forth in subsection (b). In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $9,000,000, which shall be deposited into the Fund and remain available through September 30, 2022.

(b) PURPOSE.—Amounts in the Fund shall be available to the Administrator for the use of paid leave under this section by any employee of the Administration who is unable to work because the employee—

(1) is subject to a Federal, State, or local quarantine or isolation order related to COVID–19;

(2) has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;

(3) is caring for an individual who is subject to such an order or has been so advised;

(4) is experiencing symptoms of COVID–19 and seeking a medical diagnosis;

(5) is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, if the school of such son or daughter requires or makes optional a virtual learning instruction model or requires or makes optional a hybrid of in-person and virtual learning instruction models, or the child care provider of such son or daughter is unavailable, due to COVID–19 precautions;

(6) is experiencing any other substantially similar condition;

(7) is caring for a family member with a mental or physical disability or who is 55 years of age or older and incapable of self-care, without regard to whether another individual other than the employee is available to care for such family member, if the place of care for such family member is closed or the direct care provider is unavailable due to COVID–19; or

(8) is obtaining immunization related to COVID–19 or is recovering from any injury, disability, illness, or condition related to such immunization.

(c) LIMITATIONS.—

(1) PERIOD OF AVAILABILITY.—Paid leave under this section may only be provided to and used by an employee of the Administration during the period beginning on the date of enactment of this section and ending on September 30, 2021.

(2) TOTAL HOURS; AMOUNT.—Paid leave under this section—

(A) shall be provided to an employee of the Administration in an amount not to exceed 600 hours of paid leave for each full-time employee, and in the case of a part-time employee, employee on an uncommon tour of duty, or employee with a seasonal work schedule, in an amount not to exceed the proportional equivalent of 600 hours to the extent amounts in the Fund remain available for reimbursement;

(B) shall be paid at the same hourly rate as other leave payments; and

(C) may not be provided to an employee if the leave would result in payments greater than $2,800 in aggregate for any biweekly pay period for a full-time employee, or a proportionally equivalent biweekly limit for a part-time employee.

(3) RELATIONSHIP TO OTHER LEAVE.—Paid leave under this section—

(A) is in addition to any other leave provided to an employee of the Administration; and

(B) may not be used by an employee of the Administration concurrently with any other paid leave.

(4) CALCULATION OF RETIREMENT BENEFIT.—Any paid leave provided to an employee of the Administration under this section shall reduce the total service used to calculate any Federal civilian retirement benefit.

49 USC 114 note.

SEC. 7104. EMERGENCY TSA EMPLOYEE LEAVE FUND.

(a) ESTABLISHMENT; APPROPRIATION.—There is established in the Transportation Security Administration (in this section referred to as the "Administration") the Emergency TSA Employee Leave Fund (in this section referred to as the "Fund"), to be administered by the Administrator of the Administration, for the purposes set forth in subsection (b). In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $13,000,000, which shall be deposited into the Fund and remain available through September 30, 2022.

(b) PURPOSE.—Amounts in the Fund shall be available to the Administration for the use of paid leave under this section by any employee of the Administration who is unable to work because the employee—

(1) is subject to a Federal, State, or local quarantine or isolation order related to COVID–19;

(2) has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;

(3) is caring for an individual who is subject to such an order or has been so advised;

(4) is experiencing symptoms of COVID–19 and seeking a medical diagnosis;

(5) is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, if the school of such son or daughter requires or makes optional a virtual learning instruction model or requires or makes optional a hybrid of in-person and virtual learning instruction models, or the child care provider of such son or daughter is unavailable, due to COVID–19 precautions;

(6) is experiencing any other substantially similar condition;

(7) is caring for a family member with a mental or physical disability or who is 55 years of age or older and incapable of self-care, without regard to whether another individual other than the employee is available to care for such family member, if the place of care for such family member is closed or the direct care provider is unavailable due to COVID–19; or

(8) is obtaining immunization related to COVID–19 or is recovering from any injury, disability, illness, or condition related to such immunization.

(c) LIMITATIONS.—

(1) PERIOD OF AVAILABILITY.—Paid leave under this section may only be provided to and used by an employee of the Administration during the period beginning on the date of enactment of this section and ending on September 30, 2021.

(2) TOTAL HOURS; AMOUNT.—Paid leave under this section—

(A) shall be provided to an employee of the Administration in an amount not to exceed 600 hours of paid leave for each full-time employee, and in the case of a part-time employee, employee on an uncommon tour of duty, or employee with a seasonal work schedule, in an amount not to exceed the proportional equivalent of 600 hours to the extent amounts in the Fund remain available for reimbursement;

(B) shall be paid at the same hourly rate as other leave payments; and

(C) may not be provided to an employee if the leave would result in payments greater than $2,800 in aggregate for any biweekly pay period for a full-time employee, or a proportionally equivalent biweekly limit for a part-time employee.

(3) RELATIONSHIP TO OTHER LEAVE.—Paid leave under this section—

(A) is in addition to any other leave provided to an employee of the Administration; and

(B) may not be used by an employee of the Administration concurrently with any other paid leave.

(4) CALCULATION OF RETIREMENT BENEFIT.—Any paid leave provided to an employee of the Administration under this section shall reduce the total service used to calculate any Federal civilian retirement benefit.

Subtitle B—Aviation Manufacturing Jobs Protection

SEC. 7201. DEFINITIONS. 15 USC 9131.

In this subtitle:

(1) ELIGIBLE EMPLOYEE GROUP.—The term "eligible employee group" means the portion of an employer's United States workforce that—

(A) does not exceed 25 percent of the employer's total United States workforce as of April 1, 2020; and

(B) contains only employees with a total compensation level of $200,000 or less per year; and

(C) is engaged in aviation manufacturing activities and services, or maintenance, repair, and overhaul activities and services.

(2) AVIATION MANUFACTURING COMPANY.—The term "aviation manufacturing company" means a corporation, firm, or other business entity—

(A) that—

(i) actively manufactures an aircraft, aircraft engine, propeller, or a component, part, or systems of an aircraft or aircraft engine under a Federal Aviation Administration production approval;

(ii) holds a certificate issued under part 145 of title 14, Code of Federal Regulations, for maintenance, repair, and overhaul of aircraft, aircraft engines, components, or propellers; or

(iii) operates a process certified to SAE AS9100 related to the design, development, or provision of an

aviation product or service, including a part, component, or assembly;

(B) which—

(i) is established, created, or organized in the United States or under the laws of the United States; and

(ii) has significant operations in, and a majority of its employees engaged in aviation manufacturing activities and services, or maintenance, repair, and overhaul activities and services based in the United States;

(C) which has involuntarily furloughed or laid off at least 10 percent of its workforce in 2020 as compared to 2019 or has experienced at least a 15 percent decline in 2020 revenues as compared to 2019;

(D) that, as supported by sworn financial statements or other appropriate data, has identified the eligible employee group and the amount of total compensation level for the eligible employee group;

(E) that agrees to provide private contributions and maintain the total compensation level for the eligible employee group for the duration of an agreement under this subtitle;

(F) that agrees to provide immediate notice and justification to the Secretary of involuntary furloughs or layoffs exceeding 10 percent of the workforce that is not included in an eligible employee group for the duration of an agreement and receipt of public contributions under this subtitle;

(G) that has not conducted involuntary furloughs or reduced pay rates or benefits for the eligible employee group, subject to the employer's right to discipline or terminate an employee in accordance with employer policy, between the date of application and the date on which such a corporation, firm, or other business entity enters into an agreement with the Secretary under this subtitle; and

(H) that—

Time period.

(i) in the case of a corporation, firm, or other business entity including any parent company or subsidiary of such a corporation, firm, or other business entity, that holds any type or production certificate or similar authorization issued under section 44704 of title 49, United States Code, with respect to a transport-category airplane covered under part 25 of title 14, Code of Federal Regulations, certificated with a passenger seating capacity of 50 or more, agrees to refrain from conducting involuntary layoffs or furloughs, or reducing pay rates and benefits, for the eligible employee group, subject to the employer's right to discipline or terminate an employee in accordance with employer policy from the date of agreement until September 30, 2021, or the duration of the agreement and receipt of public contributions under this subtitle, whichever period ends later; or

(ii) in the case of corporation, firm, or other business entity not specified under subparagraph (i), agrees

to refrain from conducting involuntary layoffs or furloughs, or reducing pay rates and benefits, for the eligible employee group, subject to the employer's right to discipline or terminate an employee in accordance with employer policy for the duration of the agreement and receipt of public contributions under this subtitle.

(3) EMPLOYEE.—The term "employee" has the meaning given that term in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(4) EMPLOYER.—The term "employer" means an aviation manufacturing company that is an employer (as defined in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203)).

(5) PRIVATE CONTRIBUTION.—The term "private contribution" means the contribution funded by the employer under this subtitle to maintain 50 percent of the eligible employee group's total compensation level, and combined with the public contribution, is sufficient to maintain the total compensation level for the eligible employee group as of April 1, 2020.

(6) PUBLIC CONTRIBUTION.—The term "public contribution" means the contribution funded by the Federal Government under this subtitle to provide 50 percent of the eligible employees group's total compensation level, and combined with the private contribution, is sufficient to maintain the total compensation level for those in the eligible employee group as of April 1, 2020. Effective date.

(7) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(8) TOTAL COMPENSATION LEVEL.—The term "total compensation level" means the level of total base compensation and benefits being provided to an eligible employee group employee, excluding overtime and premium pay, and excluding any Federal, State, or local payroll taxes paid, as of April 1, 2020. Effective date.

SEC. 7202. PAYROLL SUPPORT PROGRAM.

Contracts.
15 USC 9132.

(a) IN GENERAL.—The Secretary shall establish a payroll support program and enter into agreements with employers who meet the eligibility criteria specified in subsection (b) and are not ineligible under subsection (c), to provide public contributions to supplement compensation of an eligible employee group. There is appropriated for fiscal year 2021, out of amounts in the Treasury not otherwise appropriated, $3,000,000,000, to remain available until September 30, 2023, for the Secretary to carry out the payroll support program authorized under the preceding sentence for which 1 percent of the funds may be used for implementation costs and administrative expenses.

(b) ELIGIBILITY.—The Secretary shall enter into an agreement and provide public contributions, for a term no longer than 6 months, solely with an employer that agrees to use the funds received under an agreement exclusively for the continuation of employee wages, salaries, and benefits, to maintain the total compensation level for the eligible employee group as of April 1, 2020 for the duration of the agreement, and to facilitate the retention, rehire, or recall of employees of the employer, except that such funds may not be used for back pay of returning rehired or recalled employees. Time period.
Effective date.

(c) INELIGIBILITY.—The Secretary may not enter into any agreement under this section with an employer who was allowed a credit under section 2301 of the CARES Act (26 U.S.C. 3111 note) for the immediately preceding calendar quarter ending before such agreement is entered into, who received financial assistance under section 4113 of the CARES Act (15 U.S.C. 9073), or who is currently expending financial assistance under the paycheck protection program established under section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)), as of the date the employer submits an application under the payroll support program established under subsection (a).

(d) REDUCTIONS.—To address any shortfall in assistance that would otherwise be provided under this subtitle, the Secretary shall reduce, on a pro rata basis, the financial assistance provided under this subtitle.

(e) AGREEMENT DEADLINE.—No agreement may be entered into by the Secretary under the payroll support program established under subsection (a) after the last day of the 6 month period that begins on the effective date of the first agreement entered into under such program.

Subtitle C—Airlines

15 USC 9141.

SEC. 7301. AIR TRANSPORTATION PAYROLL SUPPORT PROGRAM EXTENSION.

Applicability.

(a) DEFINITIONS.—The definitions in section 40102(a) of title 49, United States Code, shall apply with respect to terms used in this section, except that—

(1) the term "catering functions" means preparation, assembly, or both, of food, beverages, provisions and related supplies for delivery, and the delivery of such items, directly to aircraft or to a location on or near airport property for subsequent delivery to aircraft;

(2) the term "contractor" means—

(A) a person that performs, under contract with a passenger air carrier conducting operations under part 121 of title 14, Code of Federal Regulations—

(i) catering functions; or

(ii) functions on the property of an airport that are directly related to the air transportation of persons, property, or mail, including the loading and unloading of property on aircraft, assistance to passengers under part 382 of title 14, Code of Federal Regulations, security, airport ticketing and check-in functions, ground-handling of aircraft, or aircraft cleaning and sanitization functions and waste removal; or

(B) a subcontractor that performs such functions;

(3) the term "employee" means an individual, other than a corporate officer, who is employed by an air carrier or a contractor;

(4) the term "eligible air carrier" means an air carrier that—

(A) received financial assistance pursuant section 402(a)(1) of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260);

Effective date.

(B) provides air transportation as of March 31, 2021;

(C) has not conducted involuntary furloughs or reduced pay rates or benefits between March 31, 2021, and the date on which the air carrier makes a certification to the Secretary pursuant to subparagraph (D); and Time period.

(D) certifies to the Secretary that such air carrier will— Certification. Extensions.

(i) refrain from conducting involuntary furloughs or reducing pay rates or benefits until September 30, 2021, or the date on which assistance provided under this section is exhausted, whichever is later;

(ii) refrain from purchasing an equity security of the air carrier or the parent company of the air carrier that is listed on a national securities exchange through September 30, 2022;

(iii) refrain from paying dividends, or making other capital distributions, with respect to common stock (or equivalent interest) of such air carrier through September 30, 2022;

(iv) during the 2-year period beginning April 1, 2021, and ending April 1, 2023, refrain from paying— Time periods.

(I) any officer or employee of the air carrier whose total compensation exceeded $425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to the date of enactment of this Act)—

(aa) total compensation that exceeds, during any 12 consecutive months of such 2-year period, the total compensation received by the officer or employee from the air carrier in calendar year 2019; or

(bb) severance pay or other benefits upon termination of employment with the air carrier which exceeds twice the maximum total compensation received by the officer or employee from the air carrier in calendar year 2019; and

(II) any officer or employee of the air carrier whose total compensation exceeded $3,000,000 in calendar year 2019 during any 12 consecutive months of such period total compensation in excess of the sum of—

(aa) $3,000,000; and

(bb) 50 percent of the excess over $3,000,000 of the total compensation received by the officer or employee from the air carrier in calendar year 2019.

(5) the term "eligible contractor" means a contractor that—

(A) received financial assistance pursuant to section 402(a)(2) of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260);

(B) performs one or more of the functions described under paragraph (2) as of March 31, 2021; Effective date.

(C) has not conducted involuntary furloughs or reduced pay rates or benefits between March 31, 2021, and the date on which the contractor makes a certification to the Secretary pursuant to subparagraph (D); and Time period.

(D) certifies to the Secretary that such contractor will— Certification. Extensions.

(i) refrain from conducting involuntary furloughs or reducing pay rates or benefits until September 30, 2021, or the date on which assistance provided under this section is exhausted, whichever is later;

(ii) refrain from purchasing an equity security of the contractor or the parent company of the contractor that is listed on a national securities exchange through September 30, 2022;

(iii) refrain from paying dividends, or making other capital distributions, with respect to common stock (or equivalent interest) of the contractor through September 30, 2022;

Time periods.

(iv) during the 2-year period beginning April 1, 2021, and ending April 1, 2023, refrain from paying—

(I) any officer or employee of the contractor whose total compensation exceeded $425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to the date of enactment of this Act)—

(aa) total compensation that exceeds, during any 12 consecutive months of such 2-year period, the total compensation received by the officer or employee from the contractor in calendar year 2019; or

(bb) severance pay or other benefits upon termination of employment with the contractor which exceeds twice the maximum total compensation received by the officer or employee from the contractor in calendar year 2019; and

(II) any officer or employee of the contractor whose total compensation exceeded $3,000,000 in calendar year 2019 during any 12 consecutive months of such period total compensation in excess of the sum of—

(aa) $3,000,000; and

(bb) 50 percent of the excess over $3,000,000 of the total compensation received by the officer or employee from the contractor in calendar year 2019.

(6) the term "Secretary" means the Secretary of the Treasury.

(b) PAYROLL SUPPORT GRANTS.—

(1) IN GENERAL.—The Secretary shall make available to eligible air carriers and eligible contractors, financial assistance exclusively for the continuation of payment of employee wages, salaries, and benefits to—

(A) eligible air carriers, in an aggregate amount of $14,000,000,000; and

(B) eligible contractors, in an aggregate amount of $1,000,000,000.

(2) APPORTIONMENTS.—

Deadline.

(A) IN GENERAL.—The Secretary shall apportion funds to eligible air carriers and eligible contractors in accordance with the requirements of this section not later than April 15, 2021.

(B) ELIGIBLE AIR CARRIERS.—The Secretary shall apportion funds made available under paragraph (1)(A) to each eligible air carrier in the ratio that—

(i) the amount received by the air carrier pursuant to section 403(a) of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260) bears to

(ii) $15,000,000,000.

(C) ELIGIBLE CONTRACTORS.—The Secretary shall apportion, to each eligible contractor, an amount equal to the total amount such contractor received pursuant to section 403(a) of division N of the Consolidated Appropriations Act, 2021 (Public Law 116–260).

(3) IN GENERAL.—

(A) FORMS; TERMS AND CONDITIONS.—The Secretary shall provide financial assistance to an eligible air carrier or eligible contractor under this section in the same form and on the same terms and conditions as determined by pursuant to section 403(b)(1)(A) of subtitle A of title IV of division N of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116–260).

(B) PROCEDURES.—The Secretary shall publish streamlined and expedited procedures not later than 5 days after the date of enactment of this section for eligible air carriers and eligible contractors to submit requests for financial assistance under this section. Publication. Deadline.

(C) DEADLINE FOR IMMEDIATE PAYROLL ASSISTANCE.—Not later than 10 days after the date of enactment of this section, the Secretary shall make initial payments to air carriers and contractors that submit requests for financial assistance approved by the Secretary. Payments.

(4) TAXPAYER PROTECTION.—The Secretary shall receive financial instruments issued by recipients of financial assistance under this section in the same form and amount, and under the same terms and conditions, as determined by the Secretary under section 408 of subtitle A of title IV of division N of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116–260). Determination.

(5) ADMINISTRATIVE EXPENSES.—Of the amounts made available under paragraph (1)(A), $10,000,000 shall be made available to the Secretary for costs and administrative expenses associated with providing financial assistance under this section.

(c) FUNDING.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $15,000,000,000, to remain available until expended, to carry out this section.

Subtitle D—Consumer Protection and Commerce Oversight

15 USC 2066 note.

SEC. 7401. FUNDING FOR CONSUMER PRODUCT SAFETY FUND TO PROTECT CONSUMERS FROM POTENTIALLY DANGEROUS PRODUCTS RELATED TO COVID–19.

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Consumer Product Safety Commission for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $50,000,000, to remain available until September 30, 2026, for the purposes described in subsection (b).

(b) PURPOSES.—The funds made available in subsection (a) shall only be used for purposes of the Consumer Product Safety Commission to—

(1) carry out the requirements in title XX of division FF of the Consolidated Appropriations Act, 2021 (Public Law 116–260);

(2) enhance targeting, surveillance, and screening of consumer products, particularly COVID–19 products, entering the United States at ports of entry, including ports of entry for de minimis shipments;

Coordination.

(3) enhance monitoring of internet websites for the offering for sale of new and used violative consumer products, particularly COVID–19 products, and coordination with retail and resale websites to improve identification and elimination of listings of such products;

(4) increase awareness and communication particularly of COVID–19 product related risks and other consumer product safety information; and

Data.

(5) improve the Commission's data collection and analysis system especially with a focus on consumer product safety risks resulting from the COVID–19 pandemic to socially disadvantaged individuals and other vulnerable populations.

(c) DEFINITIONS.—In this section—

(1) the term "Commission" means the Consumer Product Safety Commission;

(2) the term "violative consumer products" means consumer products in violation of an applicable consumer product safety standard under the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) or any similar rule, regulation, standard, or ban under any other Act enforced by the Commission;

(3) the term "COVID–19 emergency period" means the period during which a public health emergency declared pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) with respect to the 2019 novel coronavirus (COVID–19), including under any renewal of such declaration, is in effect; and

(4) the term "COVID–19 products" means consumer products, as defined by section 3(a)(5) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(5)), whose risks have been significantly affected by COVID–19 or whose sales have materially increased during the COVID–19 emergency period as a result of the COVID–19 pandemic.

SEC. 7402. FUNDING FOR E-RATE SUPPORT FOR EMERGENCY EDUCATIONAL CONNECTIONS AND DEVICES. 47 USC 254 note.

(a) REGULATIONS REQUIRED.—Not later than 60 days after the date of the enactment of this Act, the Commission shall promulgate regulations providing for the provision, from amounts made available from the Emergency Connectivity Fund, of support under paragraphs (1)(B) and (2) of section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)) to an eligible school or library, for the purchase during a COVID–19 emergency period of eligible equipment or advanced telecommunications and information services (or both), for use by— Deadline.

(1) in the case of a school, students and staff of the school at locations that include locations other than the school; and

(2) in the case of a library, patrons of the library at locations that include locations other than the library.

(b) SUPPORT AMOUNT.—In providing support under the covered regulations, the Commission shall reimburse 100 percent of the costs associated with the eligible equipment, advanced telecommunications and information services, or eligible equipment and advanced telecommunications and information services, except that any reimbursement of a school or library for the costs associated with any eligible equipment may not exceed an amount that the Commission determines, with respect to the request by the school or library for the reimbursement, is reasonable. Reimbursement. Determination.

(c) EMERGENCY CONNECTIVITY FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the "Emergency Connectivity Fund".

(2) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Emergency Connectivity Fund for fiscal year 2021, out of any money in the Treasury not otherwise appropriated—

(A) $7,171,000,000, to remain available until September 30, 2030, for—

(i) the provision of support under the covered regulations; and

(ii) the Commission to adopt, and the Commission and the Universal Service Administrative Company to administer, the covered regulations; and

(B) $1,000,000, to remain available until September 30, 2030, for the Inspector General of the Commission to conduct oversight of support provided under the covered regulations.

(3) LIMITATION.—Not more than 2 percent of the amount made available under paragraph (2)(A) may be used for the purposes described in clause (ii) of such paragraph.

(4) RELATIONSHIP TO UNIVERSAL SERVICE CONTRIBUTIONS.—Support provided under the covered regulations shall be provided from amounts made available from the Emergency Connectivity Fund and not from contributions under section 254(d) of the Communications Act of 1934 (47 U.S.C. 254(d)).

(d) DEFINITIONS.—In this section:

(1) ADVANCED TELECOMMUNICATIONS AND INFORMATION SERVICES.—The term "advanced telecommunications and information services" means advanced telecommunications and information services, as such term is used in section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)).

(2) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(3) CONNECTED DEVICE.—The term "connected device" means a laptop computer, tablet computer, or similar end-user device that is capable of connecting to advanced telecommunications and information services.

(4) COVERED REGULATIONS.—The term "covered regulations" means the regulations promulgated under subsection (a).

(5) COVID–19 EMERGENCY PERIOD.—The term "COVID–19 emergency period" means a period that—

(A) begins on the date of a determination by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists as a result of COVID–19; and

(B) ends on the June 30 that first occurs after the date that is 1 year after the date on which such determination (including any renewal thereof) terminates.

(6) ELIGIBLE EQUIPMENT.—The term "eligible equipment" means the following:

(A) Wi-Fi hotspots.

(B) Modems.

(C) Routers.

(D) Devices that combine a modem and router.

(E) Connected devices.

(7) ELIGIBLE SCHOOL OR LIBRARY.—The term "eligible school or library" means an elementary school, secondary school, or library (including a Tribal elementary school, Tribal secondary school, or Tribal library) eligible for support under paragraphs (1)(B) and (2) of section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)).

(8) EMERGENCY CONNECTIVITY FUND.—The term "Emergency Connectivity Fund" means the fund established under subsection (c)(1).

(9) LIBRARY.—The term "library" includes a library consortium.

(10) WI-FI.—The term "Wi-Fi" means a wireless networking protocol based on Institute of Electrical and Electronics Engineers standard 802.11 (or any successor standard).

(11) WI-FI HOTSPOT.—The term "Wi-Fi hotspot" means a device that is capable of—

(A) receiving advanced telecommunications and information services; and

(B) sharing such services with a connected device through the use of Wi-Fi.

SEC. 7403. FUNDING FOR DEPARTMENT OF COMMERCE INSPECTOR GENERAL.

In addition to amounts otherwise available, there is appropriated to the Office of the Inspector General of the Department of Commerce for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $3,000,000, to remain available until September 30, 2022, for oversight of activities supported with funds appropriated to the Department of Commerce to prevent, prepare for, and respond to COVID–19.

SEC. 7404. FEDERAL TRADE COMMISSION FUNDING FOR COVID–19 RELATED WORK.

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Federal Trade Commission for fiscal year 2021, $30,400,000, to remain available until September 30, 2026, for the purposes described in subsection (b).

(b) PURPOSES.—From the amount appropriated under subsection (a), the Federal Trade Commission shall use—

(1) $4,400,000 to process and monitor consumer complaints received into the Consumer Sentinel Network, including increased complaints received regarding unfair or deceptive acts or practices related to COVID–19;

(2) $2,000,000 for consumer-related education, including in connection with unfair or deceptive acts or practices related to COVID–19; and

(3) $24,000,000 to fund full-time employees of the Federal Trade Commission to address unfair or deceptive acts or practices, including those related to COVID–19.

Subtitle E—Science and Technology

SEC. 7501. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

In addition to amounts otherwise made available, there are appropriated to the National Institute of Standards and Technology for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $150,000,000, to remain available until September 30, 2022, to fund awards for research, development, and testbeds to prevent, prepare for, and respond to coronavirus. None of the funds provided by this section shall be subject to cost share requirements.

SEC. 7502. NATIONAL SCIENCE FOUNDATION.

In addition to amounts otherwise made available, there are appropriated to the National Science Foundation for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $600,000,000, to remain available until September 30, 2022, to fund or extend new and existing research grants, cooperative agreements, scholarships, fellowships, and apprenticeships, and related administrative expenses to prevent, prepare for, and respond to coronavirus.

Subtitle F—Corporation for Public Broadcasting

SEC. 7601. SUPPORT FOR THE CORPORATION FOR PUBLIC BROADCASTING.

In addition to amounts otherwise made available, there is appropriated to the Corporation for Public Broadcasting for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $175,000,000, to remain available until expended, to prevent, prepare for, and respond to coronavirus, including for fiscal stabilization grants to public telecommunications entities, as defined in section 397 of the Communications Act of 1934 (47 U.S.C. 397), with no deduction for administrative or other costs of the Corporation, to maintain programming and services and

preserve small and rural stations threatened by declines in non-Federal revenues.

TITLE VIII—COMMITTEE ON VETERANS' AFFAIRS

SEC. 8001. FUNDING FOR CLAIMS AND APPEALS PROCESSING.

In addition to amounts otherwise made available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $272,000,000, to remain available until September 30, 2023, pursuant to sections 308, 310, 7101 through 7113, 7701, and 7703 of title 38, United States Code.

SEC. 8002. FUNDING AVAILABILITY FOR MEDICAL CARE AND HEALTH NEEDS.

In addition to amounts otherwise made available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $14,482,000,000, to remain available until September 30, 2023, for allocation under chapters 17, 20, 73, and 81 of title 38, United States Code, of which not more than $4,000,000,000 shall be available pursuant to section 1703 of title 38, United States Code for health care furnished through the Veterans Community Care program in sections 1703(c)(1) and 1703(c)(5) of such title.

SEC. 8003. FUNDING FOR SUPPLY CHAIN MODERNIZATION.

In addition to amounts otherwise made available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $100,000,000, to remain available until September 30, 2022, for the supply chain modernization initiative under sections 308, 310, and 7301(b) of title 38, United States Code.

SEC. 8004. FUNDING FOR STATE HOMES.

In addition to amounts otherwise made available, there are appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated—

(1) $500,000,000, to remain available until expended, for allocation under sections 8131 through 8137 of title 38, United States Code: and

(2) $250,000,000, to remain available until September 30, 2022, for a one-time only obligation and expenditure to existing State extended care facilities for veterans in proportion to each State's share of the total resident capacity in such facilities as of the date of enactment of this Act where such capacity includes only veterans on whose behalf the Department pays a per diem payment pursuant to section 1741 or 1745 of title 38, United States Code.

SEC. 8005. FUNDING FOR THE DEPARTMENT OF VETERANS AFFAIRS OFFICE OF INSPECTOR GENERAL.

In addition to amounts otherwise made available, there is appropriated to the Office of Inspector General of the Department of Veterans Affairs for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $10,000,000, to remain available until expended, for audits, investigations, and other oversight

of projects and activities carried out with funds made available to the Department of Veterans Affairs.

SEC. 8006. COVID–19 VETERAN RAPID RETRAINING ASSISTANCE PROGRAM.

36 USC 3001 note prec.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall carry out a program under which the Secretary shall provide up to 12 months of retraining assistance to an eligible veteran for the pursuit of a covered program of education. Such retraining assistance shall be in addition to any other entitlement to educational assistance or benefits for which a veteran is, or has been, eligible.

(b) ELIGIBLE VETERANS.—

(1) IN GENERAL.—In this section, the term "eligible veteran" means a veteran who—

(A) as of the date of the receipt by the Department of Veterans Affairs of an application for assistance under this section, is at least 22 years of age but not more than 66 years of age;

(B) as of such date, is unemployed by reason of the covered public health emergency, as certified by the veteran;

(C) as of such date, is not eligible to receive educational assistance under chapter 30, 31, 32, 33, or 35 of title 38, United States Code, or chapter 1606 of title 10, United States Code;

(D) is not enrolled in any Federal or State jobs program;

(E) is not in receipt of compensation for a service-connected disability rated totally disabling by reason of unemployability; and

(F) will not be in receipt of unemployment compensation (as defined in section 85(b) of the Internal Revenue Code of 1986), including any cash benefit received pursuant to subtitle A of title II of division A of the CARES Act (Public Law 116–136), as of the first day on which the veteran would receive a housing stipend payment under this section.

(2) TREATMENT OF VETERANS WHO TRANSFER ENTITLEMENT.—For purposes of paragraph (1)(C), a veteran who has transferred all of the veteran's entitlement to educational assistance under section 3319 of title 38, United States Code, shall be considered to be a veteran who is not eligible to receive educational assistance under chapter 33 of such title.

(3) FAILURE TO COMPLETE.—A veteran who receives retraining assistance under this section to pursue a program of education and who fails to complete the program of education shall not be eligible to receive additional assistance under this section.

(c) COVERED PROGRAMS OF EDUCATION.—

(1) IN GENERAL.—For purposes of this section, a covered program of education is a program of education (as such term is defined in section 3452(b) of title 38, United States Code) for training, pursued on a full-time or part-time basis—

(A) that—

(i) is approved under chapter 36 of such title;

(ii) does not lead to a bachelors or graduate degree; and

(iii) is designed to provide training for a high-demand occupation, as determined under paragraph (3); or

(B) that is a high technology program of education offered by a qualified provider, under the meaning given such terms in section 116 of the Harry W. Colmery Veterans Educational Assistance Act of 2017 (Public Law 115–48; 38 U.S.C. 3001 note).

(2) ACCREDITED PROGRAMS.—In the case of an accredited program of education, the program of education shall not be considered a covered program of education under this section if the program has received a show cause order from the accreditor of the program during the five-year period preceding the date of the enactment of this Act.

List.

(3) DETERMINATION OF HIGH-DEMAND OCCUPATIONS.—In carrying out this section, the Secretary shall use the list of high-demand occupations compiled by the Commissioner of Labor Statistics.

(4) FULL-TIME DEFINED.—For purposes of this subsection, the term "full-time" has the meaning given such term under section 3688 of title 38, United States Code.

(d) AMOUNT OF ASSISTANCE.—

(1) RETRAINING ASSISTANCE.—The Secretary of Veterans Affairs shall provide to an eligible veteran pursuing a covered program of education under the retraining assistance program under this section an amount equal to the amount of educational assistance payable under section 3313(c)(1)(A) of title 38, United States Code, for each month the veteran pursues the covered program of education. Such amount shall be payable directly to the educational institution offering the covered program of education pursued by the veteran as follows:

(A) 50 percent of the total amount payable shall be paid when the eligible veteran begins the program of education.

(B) 25 percent of the total amount payable shall be paid when the eligible veteran completes the program of education.

(C) 25 percent of the total amount payable shall be paid when the eligible veteran finds employment in a field related to the program of education.

(2) FAILURE TO COMPLETE.—

(A) PRO-RATED PAYMENTS.—In the case of a veteran who pursues a covered program of education under the retraining assistance program under this section, but who does not complete the program of education, the Secretary shall pay to the educational institution offering such program of education a pro-rated amount based on the number of months the veteran pursued the program of education in accordance with this paragraph.

Notice.

(B) PAYMENT OTHERWISE DUE UPON COMPLETION OF PROGRAM.—The Secretary shall pay to the educational institution a pro-rated amount under paragraph (1)(B) when the veteran provides notice to the educational institution that the veteran no longer intends to pursue the program of education.

(C) NONRECOVERY FROM VETERAN.—In the case of a veteran referred to in subparagraph (A), the educational

institution may not seek payment from the veteran for any amount that would have been payable under paragraph (1)(B) had the veteran completed the program of education.

(D) PAYMENT DUE UPON EMPLOYMENT.— Time period.

(i) VETERANS WHO FIND EMPLOYMENT.—In the case of a veteran referred to in subparagraph (A) who finds employment in a field related to the program of education during the 180-day period beginning on the date on which the veteran withdraws from the program of education, the Secretary shall pay to the educational institution a pro-rated amount under paragraph (1)(C) when the veteran finds such employment.

(ii) VETERANS WHO DO NOT FIND EMPLOYMENT.—In the case of a veteran referred to in subparagraph (A) who does not find employment in a field related to the program of education during the 180-day period beginning on the date on which the veteran withdraws from the program of education—

(I) the Secretary shall not make a payment to the educational institution under paragraph (1)(C); and

(II) the educational institution may not seek payment from the veteran for any amount that would have been payable under paragraph (1)(C) had the veteran found employment during such 180-day period.

(3) HOUSING STIPEND.—For each month that an eligible veteran pursues a covered program of education under the retraining assistance program under this section, the Secretary shall pay to the veteran a monthly housing stipend in an amount equal to—

(A) in the case of a covered program of education leading to a degree, or a covered program of education not leading to a degree, at an institution of higher learning (as that term is defined in section 3452(f) of title 38, United States Code) pursued on more than a half-time basis, the amount specified under subsection (c)(1)(B) of section 3313 of title 38, United States Code;

(B) in the case of a covered program of education other than a program of education leading to a degree at an institution other than an institution of higher learning pursued on more than a half-time basis, the amount specified under subsection (g)(3)(A)(ii) of such section; or

(C) in the case of a covered program of education pursued on less than a half-time basis, or a covered program of education pursued solely through distance learning on more than a half-time basis, the amount specified under subsection (c)(1)(B)(iii) of such section.

(4) FAILURE TO FIND EMPLOYMENT.—The Secretary shall not make a payment under paragraph (1)(C) with respect to an eligible veteran who completes or fails to complete a program of education under the retraining assistance program under this section if the veteran fails to find employment in a field related to the program of education within the 180-period beginning on the date on which the veteran withdraws from or completes the program. Time period.

(e) NO TRANSFERABILITY.—Retraining assistance provided under this section may not be transferred to another individual.

(f) LIMITATION.—Not more than 17,250 eligible veterans may receive retraining assistance under this section.

(g) TERMINATION.—No retraining assistance may be paid under this section after the date that is 21 months after the date of the enactment of this Act.

(h) FUNDING.—In addition to amounts otherwise available there is appropriated to the Department of Veterans Affairs for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $386,000,000, to remain available until expended, to carry out this section.

38 USC 1701 note.

SEC. 8007. PROHIBITION ON COPAYMENTS AND COST SHARING FOR VETERANS DURING EMERGENCY RELATING TO COVID–19.

(a) IN GENERAL.—The Secretary of Veterans Affairs—

(1) shall provide for any copayment or other cost sharing with respect to health care under the laws administered by the Secretary received by a veteran during the period specified in subsection (b); and

Reimbursement.

(2) shall reimburse any veteran who paid a copayment or other cost sharing for health care under the laws administered by the Secretary received by a veteran during such period the amount paid by the veteran.

(b) PERIOD SPECIFIED.—The period specified in this subsection is the period beginning on April 6, 2020, and ending on September 30, 2021.

(c) FUNDING.—In addition to amounts otherwise available, there is appropriated to the Secretary of Veterans Affairs for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $1,000,000,000, to remain available until expended, to carry out this section, except for health care furnished pursuant to section 1703(c)(2)–(c)(4) of title 38, United States Code.

38 USC 7401 note.

SEC. 8008. EMERGENCY DEPARTMENT OF VETERANS AFFAIRS EMPLOYEE LEAVE FUND.

(a) ESTABLISHMENT; APPROPRIATION.—There is established in the Treasury the Emergency Department of Veterans Affairs Employee Leave Fund (in this section referred to as the "Fund"), to be administered by the Secretary of Veterans Affairs, for the purposes set forth in subsection (b). In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $80,000,000, which shall be deposited into the Fund and remain available through September 20, 2022.

(b) PURPOSE.—Amounts in the Fund shall be available for payment to the Department of Veterans Affairs for the use of paid leave by any covered employee who is unable to work because the employee—

(1) is subject to a Federal, State, or local quarantine or isolation order related to COVID–19;

(2) has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;

(3) is caring for an individual who is subject to such an order or has been so advised;

(4) is experiencing symptoms of COVID–19 and seeking a medical diagnosis;

(5) is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, if the school of such son or daughter requires or makes optional a virtual learning instruction model or requires or makes optional a hybrid of in-person and virtual learning instruction models, or the child care provider of such son or daughter is unavailable, due to COVID–19 precautions;

(6) is experiencing any other substantially similar condition;

(7) is caring for a family member with a mental or physical disability or who is 55 years of age or older and incapable of self-care, without regard to whether another individual other than the employee is available to care for such family member, if the place of care for such family member is closed or the direct care provider is unavailable due to COVID–19; or

(8) is obtaining immunization related to COVID–19 or to recover from any injury, disability, illness, or condition related to such immunization.

(c) LIMITATIONS.—

(1) PERIOD OF AVAILABILITY.—Paid leave under this section may only be provided to and used by a covered employee during the period beginning on the date of enactment of this Act and ending on September 30, 2021.

(2) TOTAL HOURS; AMOUNT.—Paid leave under this section—

(A) shall be provided to a covered employee in an amount not to exceed 600 hours of paid leave for each full-time employee, and in the case of a part-time employee, employee on an uncommon tour of duty, or employee with a seasonal work schedule, in an amount not to exceed the proportional equivalent of 600 hours to the extent amounts in the Fund remain available for reimbursement;

(B) shall be paid at the same hourly rate as other leave payments; and

(C) may not be provided to a covered employee if the leave would result in payments greater than $2,800 in aggregate for any biweekly pay period for a full-time employee, or a proportionally equivalent biweekly limit for a part-time employee.

(3) RELATIONSHIP TO OTHER LEAVE.—Paid leave under this section—

(A) is in addition to any other leave provided to a covered employee; and

(B) may not be used by a covered employee concurrently with any other paid leave.

(4) CALCULATION OF RETIREMENT BENEFIT.—Any paid leave provided to a covered employee under this section shall reduce the total service used to calculate any Federal civilian retirement benefit.

(d) COVERED EMPLOYEE DEFINED.—In this section, the term "covered employee" means an employee of the Department of Veterans Affairs appointed under chapter 74 of title 38, United States Code.

TITLE IX—COMMITTEE ON FINANCE

Subtitle A—Crisis Support for Unemployed Workers

PART 1—EXTENSION OF CARES ACT UNEMPLOYMENT PROVISIONS

SEC. 9011. EXTENSION OF PANDEMIC UNEMPLOYMENT ASSISTANCE.

(a) IN GENERAL.—Section 2102(c) of the CARES Act (15 U.S.C. 9021(c)) is amended—

(1) in paragraph (1)—

(A) by striking "paragraphs (2) and (3)" and inserting "paragraph (2)"; and

(B) in subparagraph (A)(ii), by striking "March 14, 2021" and inserting "September 6, 2021"; and

(2) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).

(b) INCREASE IN NUMBER OF WEEKS.—Section 2102(c)(2) of such Act (15 U.S.C. 9021(c)(2)) is amended—

(1) by striking "50 weeks" and inserting "79 weeks"; and

(2) by striking "50-week period" and inserting "79-week period".

15 USC 9021 note.

(c) HOLD HARMLESS FOR PROPER ADMINISTRATION.—In the case of an individual who is eligible to receive pandemic unemployment assistance under section 2102 of the CARES Act (15 U.S.C. 9021) as of the day before the date of enactment of this Act and on the date of enactment of this Act becomes eligible for pandemic emergency unemployment compensation under section 2107 of the CARES Act (15 U.S.C. 9025) by reason of the amendments made by section 9016(b) of this title, any payment of pandemic unemployment assistance under such section 2102 made after the date of enactment of this Act to such individual during an appropriate period of time, as determined by the Secretary of Labor, that should have been made under such section 2107 shall not be considered to be an overpayment of assistance under such section 2102, except that an individual may not receive payment for assistance under section 2102 and a payment for assistance under section 2107 for the same week of unemployment.

15 USC 9021 note.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply as if included in the enactment of the CARES Act (Public Law 116–136), except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment ending on or before March 14, 2021.

SEC. 9012. EXTENSION OF EMERGENCY UNEMPLOYMENT RELIEF FOR GOVERNMENTAL ENTITIES AND NONPROFIT ORGANIZATIONS.

(a) IN GENERAL.—Section 903(i)(1)(D) of the Social Security Act (42 U.S.C. 1103(i)(1)(D)) is amended by striking "March 14, 2021" and inserting "September 6, 2021".

(b) INCREASE IN REIMBURSEMENT RATE.—Section 903(i)(1)(B) of such Act (42 U.S.C. 1103(i)(1)(B)) is amended—

(1) in the first sentence, by inserting "and except as otherwise provided in this subparagraph" after "as determined by the Secretary of Labor"; and

(2) by inserting after the first sentence the following: "With respect to the amounts of such compensation paid for weeks of unemployment beginning after March 31, 2021, and ending on or before September 6, 2021, the preceding sentence shall be applied by substituting '75 percent' for 'one-half'.". Time period. Applicability.

SEC. 9013. EXTENSION OF FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION.

(a) IN GENERAL.—Section 2104(e)(2) of the CARES Act (15 U.S.C. 9023(e)(2)) is amended by striking "March 14, 2021" and inserting "September 6, 2021".

(b) AMOUNT.—Section 2104(b)(3)(A)(ii) of such Act (15 U.S.C. 9023(b)(3)(A)(ii)) is amended by striking "March 14, 2021" and inserting "September 6, 2021".

SEC. 9014. EXTENSION OF FULL FEDERAL FUNDING OF THE FIRST WEEK OF COMPENSABLE REGULAR UNEMPLOYMENT FOR STATES WITH NO WAITING WEEK.

(a) IN GENERAL.—Section 2105(e)(2) of the CARES Act (15 U.S.C. 9024(e)(2)) is amended by striking "March 14, 2021" and inserting "September 6, 2021".

(b) FULL REIMBURSEMENT.—Paragraph (3) of section 2105(c) of such Act (15 U.S.C. 9024(c)) is repealed and such section shall be applied to weeks of unemployment to which an agreement under section 2105 of such Act applies as if such paragraph had not been enacted. In implementing the preceding sentence, a State may, if necessary, reenter the agreement with the Secretary under section 2105 of such Act, and retroactively pay for the first week of regular compensation without a waiting week consistent with State law (including a waiver of State law) and receive full reimbursement for weeks of unemployment that ended after December 31, 2020. Repeal. Applicability. 15 USC 9024 note.

SEC. 9015. EXTENSION OF EMERGENCY STATE STAFFING FLEXIBILITY. 26 USC 3304 note.

If a State modifies its unemployment compensation law and policies, subject to the succeeding sentence, with respect to personnel standards on a merit basis on an emergency temporary basis as needed to respond to the spread of COVID–19, such modifications shall be disregarded for the purposes of applying section 303 of the Social Security Act and section 3304 of the Internal Revenue Code of 1986 to such State law. Such modifications shall only apply through September 6, 2021, and shall be limited to engaging of temporary staff, rehiring of retirees or former employees on a non-competitive basis, and other temporary actions to quickly process applications and claims. Applicability.

SEC. 9016. EXTENSION OF PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(a) IN GENERAL.—Section 2107(g) of the CARES Act (15 U.S.C. 9025(g)) is amended to read as follows:

"(g) APPLICABILITY.—An agreement entered into under this section shall apply to weeks of unemployment— Time period.

"(1) beginning after the date on which such agreement is entered into; and

"(2) ending on or before September 6, 2021.".

(b) INCREASE IN NUMBER OF WEEKS.—Section 2107(b)(2) of such Act (15 U.S.C. 9025(b)(2)) is amended by striking "24" and inserting "53".

(c) COORDINATION OF PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION WITH EXTENDED COMPENSATION.—Section 2107(a)(5)(B) of such Act (15 U.S.C. 9025(a)(5)(B)) is amended by inserting "or for the week that includes the date of enactment of the American Rescue Plan Act of 2021 (without regard to the amendments made by subsections (a) and (b) of section 9016 of such Act)" after "2020)".

(d) SPECIAL RULE FOR EXTENDED COMPENSATION.—Section 2107(a)(8) of such Act (15 U.S.C. 9025(a)(8)) is amended by striking "April 12, 2021" and inserting "September 6, 2021".

15 USC 9025 note.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply as if included in the enactment of the CARES Act (Public Law 116–136), except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment ending on or before March 14, 2021.

SEC. 9017. EXTENSION OF TEMPORARY FINANCING OF SHORT-TIME COMPENSATION PAYMENTS IN STATES WITH PROGRAMS IN LAW.

Section 2108(b)(2) of the CARES Act (15 U.S.C. 9026(b)(2)) is amended by striking "March 14, 2021" and inserting "September 6, 2021".

SEC. 9018. EXTENSION OF TEMPORARY FINANCING OF SHORT-TIME COMPENSATION AGREEMENTS FOR STATES WITHOUT PROGRAMS IN LAW.

Section 2109(d)(2) of the CARES Act (15 U.S.C. 9027(d)(2)) is amended by striking "March 14, 2021" and inserting "September 6, 2021".

PART 2—EXTENSION OF FFCRA UNEMPLOYMENT PROVISIONS

SEC. 9021. EXTENSION OF TEMPORARY ASSISTANCE FOR STATES WITH ADVANCES.

Section 1202(b)(10)(A) of the Social Security Act (42 U.S.C. 1322(b)(10)(A)) is amended by striking "March 14, 2021" and inserting "September 6, 2021".

SEC. 9022. EXTENSION OF FULL FEDERAL FUNDING OF EXTENDED UNEMPLOYMENT COMPENSATION.

(a) IN GENERAL.—Section 4105 of the Families First Coronavirus Response Act (26 U.S.C. 3304 note) is amended by striking "March 14, 2021" each place it appears and inserting "September 6, 2021".

26 USC 3304 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply as if included in the enactment of the Families First Coronavirus Response Act (Public Law 116–127).

PART 3—DEPARTMENT OF LABOR FUNDING FOR TIMELY, ACCURATE, AND EQUITABLE PAYMENT

SEC. 9031. FUNDING FOR ADMINISTRATION.

In addition to amounts otherwise available, there is appropriated to the Employment and Training Administration of the Department of Labor for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $8,000,000, to remain available until expended, for necessary expenses to carry out Federal activities relating to the administration of unemployment compensation programs.

SEC. 9032. FUNDING FOR FRAUD PREVENTION, EQUITABLE ACCESS, AND TIMELY PAYMENT TO ELIGIBLE WORKERS.

Subtitle A of title II of division A of the CARES Act (Public Law 116–136) is amended by adding at the end the following:

"SEC. 2118. FUNDING FOR FRAUD PREVENTION, EQUITABLE ACCESS, AND TIMELY PAYMENT TO ELIGIBLE WORKERS. 15 USC 9034.

"(a) IN GENERAL.—In addition to amounts otherwise available, there is appropriated to the Secretary of Labor for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $2,000,000,000, to remain available until expended, to detect and prevent fraud, promote equitable access, and ensure the timely payment of benefits with respect to unemployment compensation programs, including programs extended under subtitle A of title IX of the American Rescue Plan Act of 2021.

"(b) USE OF FUNDS.—Amounts made available under subsection (a) may be used—

"(1) for Federal administrative costs related to the purposes described in subsection (a);

"(2) for systemwide infrastructure investment and development related to such purposes; and

"(3) to make grants to States or territories administering unemployment compensation programs described in subsection (a) (including territories administering the Pandemic Unemployment Assistance program under section 2102) for such purposes, including the establishment of procedures or the building of infrastructure to verify or validate identity, implement Federal guidance regarding fraud detection and prevention, and accelerate claims processing or process claims backlogs due to the pandemic.

"(c) RESTRICTIONS ON GRANTS TO STATES AND TERRITORIES.—As a condition of receiving a grant under subsection (b)(3), the Secretary may require that a State or territory receiving such a grant shall—

"(1) use such program integrity tools as the Secretary may specify; and

"(2) as directed by the Secretary, conduct user accessibility testing on any new system developed by the Secretary pursuant to subsection (b)(2).".

PART 4—OTHER PROVISIONS

SEC. 9041. EXTENSION OF LIMITATION ON EXCESS BUSINESS LOSSES OF NONCORPORATE TAXPAYERS.

26 USC 461 note.

(a) IN GENERAL.—Section 461(l)(1) of the Internal Revenue Code of 1986 is amended by striking "January 1, 2026" each place it appears and inserting "January 1, 2027".

26 USC 461 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2025.

SEC. 9042. SUSPENSION OF TAX ON PORTION OF UNEMPLOYMENT COMPENSATION.

26 USC 85.

(a) IN GENERAL.—Section 85 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(c) SPECIAL RULE FOR 2020.—

"(1) IN GENERAL.—In the case of any taxable year beginning in 2020, if the adjusted gross income of the taxpayer for such taxable year is less than $150,000, the gross income of such taxpayer shall not include so much of the unemployment compensation received by such taxpayer (or, in the case of a joint return, received by each spouse) as does not exceed $10,200.

"(2) APPLICATION.—For purposes of paragraph (1), the adjusted gross income of the taxpayer shall be determined—

"(A) after application of sections 86, 135, 137, 219, 221, 222, and 469, and

"(B) without regard to this section.".

(b) CONFORMING AMENDMENTS.—

(1) Section 74(d)(2)(B) of the Internal Revenue Code of 1986 is amended by inserting "85(c)," before "86".

(2) Section 86(b)(2)(A) of such Code is amended by inserting "85(c)," before "135".

(3) Section 135(c)(4)(A) of such Code is amended by inserting "85(c)," before "137".

(4) Section 137(b)(3)(A) of such Code is amended by inserting "85(c)" before "221".

(5) Section 219(g)(3)(A)(ii) of such Code is amended by inserting "85(c)," before "135".

(6) Section 221(b)(2)(C)(i) of such Code is amended by inserting "85(c)" before "911".

(7) Section 222(b)(2)(C)(i) of such Code, as in effect before date of enactment of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, is amended by inserting "85(c)" before "911".

(8) Section 469(i)(3)(E)(ii) of such Code is amended by striking "135 and 137" and inserting "85(c), 135, and 137".

26 USC 74 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2019.

Subtitle B—Emergency Assistance to Families Through Home Visiting Programs

SEC. 9101. EMERGENCY ASSISTANCE TO FAMILIES THROUGH HOME VISITING PROGRAMS.

Effective 1 day after the date of enactment of this Act, title V of the Social Security Act (42 U.S.C. 701–713) is amended by inserting after section 511 the following:

Effective date. 42 USC 711a note.

"SEC. 511A. EMERGENCY ASSISTANCE TO FAMILIES THROUGH HOME VISITING PROGRAMS.

42 USC 711a.

"(a) SUPPLEMENTAL APPROPRIATION.—In addition to amounts otherwise appropriated, out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Secretary $150,000,000, to remain available through September 30, 2022, to enable eligible entities to conduct programs in accordance with section 511 and subsection (c) of this section.

"(b) ELIGIBILITY FOR FUNDS.—To be eligible to receive funds made available by subsection (a) of this section, an entity shall—

"(1) as of the date of the enactment of this section, be conducting a program under section 511;

"(2) ensure the modification of grants, contracts, and other agreements, as applicable, executed under section 511 under which the program is conducted as are necessary to provide that, during the period that begins with the date of the enactment of this section and ends with the end of the 2nd succeeding fiscal year after the funds are awarded, the entity shall— Time period.

"(A) not reduce funding for, or staffing levels of, the program on account of reduced enrollment in the program; and

"(B) when using funds to provide emergency supplies to eligible families receiving grant services under section 511, ensure coordination with local diaper banks to the extent practicable; and

"(3) reaffirm that, in conducting the program, the entity will focus on priority populations (as defined in section 511(d)(4)).

"(c) USES OF FUNDS.—An entity to which funds are provided under this section shall use the funds—

"(1) to serve families with home visits or with virtual visits, that may be conducted by the use of electronic information and telecommunications technologies, in a service delivery model described in section 511(d)(3)(A);

"(2) to pay hazard pay or other additional staff costs associated with providing home visits or administration for programs funded under section 511; Payment.

"(3) to train home visitors employed by the entity in conducting a virtual home visit and in emergency preparedness and response planning for families served, and may include training on how to safely conduct intimate partner violence screenings, and training on safety and planning for families served to support the family outcome improvements listed in section 511(d)(2)(B);

"(4) for the acquisition by families served by programs under section 511 of such technological means as are needed to conduct and support a virtual home visit;

"(5) to provide emergency supplies (such as diapers and diapering supplies including diaper wipes and diaper cream, necessary to ensure that a child using a diaper is properly cleaned and protected from diaper rash, formula, food, water, hand soap and hand sanitizer) to an eligible family (as defined in section 511(k)(2));

Coordination.

"(6) to coordinate with and provide reimbursement for supplies to diaper banks when using such entities to provide emergency supplies specified in paragraph (5); or

"(7) to provide prepaid grocery cards to an eligible family (as defined in section 511(k)(2)) participating in the maternal, infant, and early childhood home visiting program under section 511 for the purpose of enabling the family to meet the emergency needs of the family.".

Subtitle C—Emergency Assistance to Children and Families

SEC. 9201. PANDEMIC EMERGENCY ASSISTANCE.

Section 403 of the Social Security Act (42 U.S.C. 603) is amended by adding at the end the following:

"(c) PANDEMIC EMERGENCY ASSISTANCE.—

"(1) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury of the United States not otherwise appropriated, $1,000,000,000, to remain available until expended, to carry out this subsection.

"(2) RESERVATION OF FUNDS FOR TECHNICAL ASSISTANCE.—Of the amount specified in paragraph (1), the Secretary shall reserve $2,000,000 for administrative expenses and the provision of technical assistance to States and Indian tribes with respect to the use of funds provided under this subsection.

"(3) ALLOTMENTS.—

"(A) 50 STATES AND THE DISTRICT OF COLUMBIA.—

"(i) TOTAL AMOUNT TO BE ALLOTTED.—The Secretary shall allot a total of 92.5 percent of the amount specified in paragraph (1) that is not reserved under paragraph (2) among the States that are not a territory and that are operating a program funded under this part, in accordance with clause (ii) of this subparagraph.

"(ii) ALLOTMENT FORMULA.—The Secretary shall allot to each such State the sum of the following percentages of the total amount described in clause (i):

Determination.

"(I) 50 percent, multiplied by—

"(aa) the population of children in the State, determined on the basis of the most recent population estimates as determined by the Bureau of the Census; divided by

"(bb) the total population of children in the States that are not territories, as so determined; plus

Reports.

"(II) 50 percent, multiplied by—

"(aa) the total amount expended by the State for basic assistance, non-recurrent short

term benefits, and emergency assistance in fiscal year 2019, as reported by the State under section 411; divided by

"(bb) the total amount expended by the States that are not territories for basic assistance, non-recurrent short term benefits, and emergency assistance in fiscal year 2019, as so reported by the States.

"(B) TERRITORIES AND INDIAN TRIBES.—The Secretary shall allot among the territories and Indian tribes otherwise eligible for a grant under this part such portions of 7.5 percent of the amount specified in paragraph (1) that are not reserved under paragraph (2) as the Secretary deems appropriate based on the needs of the territory or Indian tribe involved.

"(C) EXPENDITURE COMMITMENT REQUIREMENT.—To receive the full amount of funding payable under this subsection, a State or Indian tribe shall inform the Secretary as to whether it intends to use all of its allotment under this paragraph and provide that information— Notification. Deadlines.

"(i) in the case of a State that is not a territory, within 45 days after the date of the enactment of this subsection; or

"(ii) in the case of a territory or an Indian tribe, within 90 days after such date of enactment.

"(4) GRANTS.—

"(A) IN GENERAL.—The Secretary shall provide funds to each State and Indian tribe to which an amount is allotted under paragraph (3), from the amount so allotted.

"(B) TREATMENT OF UNUSED FUNDS.—

"(i) REALLOTMENT.—The Secretary shall reallot in accordance with paragraph (3) all funds provided to any State or Indian tribe under this subsection that are unused, among the other States and Indian tribes eligible for funds under this subsection. For purposes of paragraph (3), the Secretary shall treat the funds as if included in the amount specified in paragraph (1).

"(ii) PROVISION.—The Secretary shall provide funds to each such other State or Indian tribe in an amount equal to the amount so reallotted.

"(5) RECIPIENT OF FUNDS PROVIDED FOR TERRITORIES.—In the case of a territory not operating a program funded under this part, the Secretary shall provide the funds required to be provided to the territory under this subsection, to the agency that administers the bulk of local human services programs in the territory.

"(6) USE OF FUNDS.—

"(A) IN GENERAL.—A State or Indian tribe to which funds are provided under this subsection may use the funds only for non-recurrent short term benefits, whether in the form of cash or in other forms.

"(B) LIMITATION ON USE FOR ADMINISTRATIVE EXPENSES.—A State to which funds are provided under this subsection shall not expend more than 15 percent of the funds for administrative purposes.

"(C) NONSUPPLANTATION.—Funds provided under this subsection shall be used to supplement and not supplant other Federal, State, or tribal funds for services and activities that promote the purposes of this part.

"(D) EXPENDITURE DEADLINE.—

"(i) IN GENERAL.—Except as provided in clause (ii), a State or Indian tribe to which funds are provided under this subsection shall expend the funds not later than the end of fiscal year 2022.

"(ii) EXCEPTION FOR REALLOTTED FUNDS.—A State or Indian tribe to which funds are provided under paragraph (4)(B) shall expend the funds within 12 months after receipt.

"(7) SUSPENSION OF TERRITORY SPENDING CAP.—Section 1108 shall not apply with respect to any funds provided under this subsection.

"(8) DEFINITIONS.—In this subsection:

"(A) APPLICABLE PERIOD.—The term 'applicable period' means the period that begins with April 1, 2021, and ends with September 30, 2022.

"(B) NON-RECURRENT SHORT TERM BENEFITS.—The term 'non-recurrent short term benefits' has the meaning given the term in OMB approved Form ACF–196R, published on July 31, 2014.

"(C) STATE.—The term 'State' means the 50 States of the United States, the District of Columbia, and the territories.

"(D) TERRITORY.—The term 'territory' means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.".

Subtitle D—Elder Justice and Support Guarantee

SEC. 9301. ADDITIONAL FUNDING FOR AGING AND DISABILITY SERVICES PROGRAMS.

Subtitle A of title XX of the Social Security Act (42 U.S.C. 1397–1397h) is amended by adding at the end the following:

42 USC 1397i.

"SEC. 2010. ADDITIONAL FUNDING FOR AGING AND DISABILITY SERVICES PROGRAMS.

"(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $276,000,000, to remain available until expended, to carry out the programs described in subtitle B.

"(b) USE OF FUNDS.—Of the amounts made available by subsection (a)—

"(1) $88,000,000 shall be made available to carry out the programs described in subtitle B in fiscal year 2021, of which not less than an amount equal to $100,0000,000 minus the amount previously provided in fiscal year 2021 to carry out section 2042(b) shall be made available to carry out such section; and

"(2) $188,000,000 shall be made available to carry out the programs described in subtitle B in fiscal year 2022, of which not less than $100,000,000 shall be for activities described in section 2042(b).".

Subtitle E—Support to Skilled Nursing Facilities in Response to COVID–19

SEC. 9401. PROVIDING FOR INFECTION CONTROL SUPPORT TO SKILLED NURSING FACILITIES THROUGH CONTRACTS WITH QUALITY IMPROVEMENT ORGANIZATIONS.

Section 1862(g) of the Social Security Act (42 U.S.C. 1395y(g)) is amended—

(1) by striking "The Secretary" and inserting "(1) The Secretary"; and

(2) by adding at the end the following new paragraph:

"(2) In addition to any funds otherwise available, there are appropriated to the Secretary, out of any monies in the Treasury not otherwise obligated, $200,000,000, to remain available until expended, for purposes of requiring multiple organizations described in paragraph (1) to provide to skilled nursing facilities (as defined in section 1819(a)), infection control and vaccination uptake support relating to the prevention or mitigation of COVID–19, as determined appropriate by the Secretary.". Determination.

SEC. 9402. FUNDING FOR STRIKE TEAMS FOR RESIDENT AND EMPLOYEE SAFETY IN SKILLED NURSING FACILITIES.

Section 1819 of the Social Security Act (42 U.S.C. 1395i–3) is amended by adding at the end the following new subsection:

"(k) FUNDING FOR STRIKE TEAMS.—In addition to amounts otherwise available, there is appropriated to the Secretary, out of any monies in the Treasury not otherwise appropriated, $250,000,000, to remain available until expended, for purposes of allocating such amount among the States (including the District of Columbia and each territory of the United States) for such a State to establish and implement a strike team that will be deployed to a skilled nursing facility in the State with diagnosed or suspected cases of COVID–19 among residents or staff for the purposes of assisting with clinical care, infection control, or staffing during the emergency period described in section 1135(g)(1)(B) and the 1-year period immediately following the end of such emergency period.". Time period.

Subtitle F—Preserving Health Benefits for Workers

SEC. 9501. PRESERVING HEALTH BENEFITS FOR WORKERS.

(a) PREMIUM ASSISTANCE FOR COBRA CONTINUATION COVERAGE FOR INDIVIDUALS AND THEIR FAMILIES.— 26 USC 4980B note.

(1) PROVISION OF PREMIUM ASSISTANCE.—

(A) REDUCTION OF PREMIUMS PAYABLE.—In the case of any premium for a period of coverage during the period beginning on the first day of the first month beginning after the date of the enactment of this Act, and ending Time period.

on September 30, 2021, for COBRA continuation coverage with respect to any assistance eligible individual described in paragraph (3), such individual shall be treated for purposes of any COBRA continuation provision as having paid in full the amount of such premium.

(B) PLAN ENROLLMENT OPTION.—

Applicability. Deadline.

(i) IN GENERAL.—Solely for purposes of this subsection, the COBRA continuation provisions shall be applied such that any assistance eligible individual who is enrolled in a group health plan offered by a plan sponsor may, not later than 90 days after the date of notice of the plan enrollment option described in this subparagraph, elect to enroll in coverage under a plan offered by such plan sponsor that is different than coverage under the plan in which such individual was enrolled at the time, in the case of any assistance eligible individual described in paragraph (3), the qualifying event specified in section 603(2) of the Employee Retirement Income Security Act of 1974, section 4980B(f)(3)(B) of the Internal Revenue Code of 1986, or section 2203(2) of the Public Health Service Act, except for the voluntary termination of such individual's employment by such individual, occurred, and such coverage shall be treated as COBRA continuation coverage for purposes of the applicable COBRA continuation coverage provision.

(ii) REQUIREMENTS.—Any assistance eligible individual may elect to enroll in different coverage as described in clause (i) only if—

Determination.

(I) the employer involved has made a determination that such employer will permit such assistance eligible individual to enroll in different coverage as provided under this subparagraph;

(II) the premium for such different coverage does not exceed the premium for coverage in which such individual was enrolled at the time such qualifying event occurred;

(III) the different coverage in which the individual elects to enroll is coverage that is also offered to similarly situated active employees of the employer at the time at which such election is made; and

(IV) the different coverage in which the individual elects to enroll is not—

(aa) coverage that provides only excepted benefits as defined in section 9832(c) of the Internal Revenue Code of 1986, section 733(c) of the Employee Retirement Income Security Act of 1974, and section 2791(c) of the Public Health Service Act;

(bb) a qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of the Internal Revenue Code of 1986); or

(cc) a flexible spending arrangement (as defined in section 106(c)(2) of the Internal Revenue Code of 1986).

(2) LIMITATION OF PERIOD OF PREMIUM ASSISTANCE.—

(A) ELIGIBILITY FOR ADDITIONAL COVERAGE.—Paragraph (1)(A) shall not apply with respect to any assistance eligible individual described in paragraph (3) for months of coverage beginning on or after the earlier of—

(i) the first date that such individual is eligible for coverage under any other group health plan (other than coverage consisting of only excepted benefits (as defined in section 9832(c) of the Internal Revenue Code of 1986, section 733(c) of the Employee Retirement Income Security Act of 1974, and section 2791(c) of the Public Health Service Act), coverage under a flexible spending arrangement (as defined in section 106(c)(2) of the Internal Revenue Code of 1986), coverage under a qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of the Internal Revenue Code of 1986)), or eligible for benefits under the Medicare program under title XVIII of the Social Security Act; or

(ii) the earlier of—

(I) the date following the expiration of the maximum period of continuation coverage required under the applicable COBRA continuation coverage provision; or

(II) the date following the expiration of the period of continuation coverage allowed under paragraph (4)(B)(ii).

(B) NOTIFICATION REQUIREMENT.—Any assistance eligible individual shall notify the group health plan with respect to which paragraph (1)(A) applies if such paragraph ceases to apply by reason of clause (i) of subparagraph (A) (as applicable). Such notice shall be provided to the group health plan in such time and manner as may be specified by the Secretary of Labor.

(3) ASSISTANCE ELIGIBLE INDIVIDUAL.—For purposes of this section, the term "assistance eligible individual" means, with respect to a period of coverage during the period beginning on the first day of the first month beginning after the date of the enactment of this Act, and ending on September 30, 2021, any individual that is a qualified beneficiary who— Definition. Time period.

(A) is eligible for COBRA continuation coverage by reason of a qualifying event specified in section 603(2) of the Employee Retirement Income Security Act of 1974, section 4980B(f)(3)(B) of the Internal Revenue Code of 1986, or section 2203(2) of the Public Health Service Act, except for the voluntary termination of such individual's employment by such individual; and

(B) elects such coverage.

(4) EXTENSION OF ELECTION PERIOD AND EFFECT ON COVERAGE.—

(A) IN GENERAL.—For purposes of applying section 605(a) of the Employee Retirement Income Security Act of 1974, section 4980B(f)(5)(A) of the Internal Revenue Code of 1986, and section 2205(a) of the Public Health Service Act, in the case of—

(i) an individual who does not have an election of COBRA continuation coverage in effect on the first

day of the first month beginning after the date of the enactment of this Act but who would be an assistance eligible individual described in paragraph (3) if such election were so in effect; or

(ii) an individual who elected COBRA continuation coverage and discontinued from such coverage before the first day of the first month beginning after the date of the enactment of this Act,

such individual may elect the COBRA continuation coverage under the COBRA continuation coverage provisions containing such provisions during the period beginning on the first day of the first month beginning after the date of the enactment of this Act and ending 60 days after the date on which the notification required under paragraph (5)(C) is provided to such individual.

(B) COMMENCEMENT OF COBRA CONTINUATION COVERAGE.—Any COBRA continuation coverage elected by a qualified beneficiary during an extended election period under subparagraph (A)—

(i) shall commence (including for purposes of applying the treatment of premium payments under paragraph (1)(A) and any cost-sharing requirements for items and services under a group health plan) with the first period of coverage beginning on or after the first day of the first month beginning after the date of the enactment of this Act, and

(ii) shall not extend beyond the period of COBRA continuation coverage that would have been required under the applicable COBRA continuation coverage provision if the coverage had been elected as required under such provision or had not been discontinued.

(5) NOTICES TO INDIVIDUALS.—

(A) GENERAL NOTICE.—

(i) IN GENERAL.—In the case of notices provided under section 606(a)(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1166(4)), section 4980B(f)(6)(D) of the Internal Revenue Code of 1986, or section 2206(4) of the Public Health Service Act (42 U.S.C. 300bb–6(4)), with respect to individuals who, during the period described in paragraph (3), become entitled to elect COBRA continuation coverage, the requirements of such provisions shall not be treated as met unless such notices include an additional written notification to the recipient in clear and understandable language of—

(I) the availability of premium assistance with respect to such coverage under this subsection; and

(II) the option to enroll in different coverage if the employer permits assistance eligible individuals described in paragraph (3) to elect enrollment in different coverage (as described in paragraph (1)(B)).

Consultations.
Regulations.

(ii) ALTERNATIVE NOTICE.—In the case of COBRA continuation coverage to which the notice provision under such sections does not apply, the Secretary of Labor, in consultation with the Secretary of the

Treasury and the Secretary of Health and Human Services, shall, in consultation with administrators of the group health plans (or other entities) that provide or administer the COBRA continuation coverage involved, provide rules requiring the provision of such notice.

(iii) FORM.—The requirement of the additional notification under this subparagraph may be met by amendment of existing notice forms or by inclusion of a separate document with the notice otherwise required.

(B) SPECIFIC REQUIREMENTS.—Each additional notification under subparagraph (A) shall include—

(i) the forms necessary for establishing eligibility for premium assistance under this subsection;

(ii) the name, address, and telephone number necessary to contact the plan administrator and any other person maintaining relevant information in connection with such premium assistance;

(iii) a description of the extended election period provided for in paragraph (4)(A);

(iv) a description of the obligation of the qualified beneficiary under paragraph (2)(B) and the penalty provided under section 6720C of the Internal Revenue Code of 1986 for failure to carry out the obligation;

(v) a description, displayed in a prominent manner, of the qualified beneficiary's right to a subsidized premium and any conditions on entitlement to the subsidized premium; and

(vi) a description of the option of the qualified beneficiary to enroll in different coverage if the employer permits such beneficiary to elect to enroll in such different coverage under paragraph (1)(B).

(C) NOTICE IN CONNECTION WITH EXTENDED ELECTION PERIODS.—In the case of any assistance eligible individual described in paragraph (3) (or any individual described in paragraph (4)(A)) who became entitled to elect COBRA continuation coverage before the first day of the first month beginning after the date of the enactment of this Act, the administrator of the applicable group health plan (or other entity) shall provide (within 60 days after such first day of such first month) for the additional notification required to be provided under subparagraph (A) and failure to provide such notice shall be treated as a failure to meet the notice requirements under the applicable COBRA continuation provision. Deadline.

(D) MODEL NOTICES.—Not later than 30 days after the date of enactment of this Act, with respect to any assistance eligible individual described in paragraph (3), the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall prescribe models for the additional notification required under this paragraph. Deadline. Consultation.

(6) NOTICE OF EXPIRATION OF PERIOD OF PREMIUM ASSISTANCE.—

(A) IN GENERAL.—With respect to any assistance eligible individual, subject to subparagraph (B), the requirements of section 606(a)(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1166(4)), section 4980B(f)(6)(D) of the Internal Revenue Code of 1986, or section 2206(4) of the Public Health Service Act (42 U.S.C. 300bb–6(4)), shall not be treated as met unless the plan administrator of the individual, during the period specified under subparagraph (C), provides to such individual a written notice in clear and understandable language—

(i) that the premium assistance for such individual will expire soon and the prominent identification of the date of such expiration; and

(ii) that such individual may be eligible for coverage without any premium assistance through—

(I) COBRA continuation coverage; or

(II) coverage under a group health plan.

Waiver.

(B) EXCEPTION.—The requirement for the group health plan administrator to provide the written notice under subparagraph (A) shall be waived if the premium assistance for such individual expires pursuant to clause (i) of paragraph (2)(A).

(C) PERIOD SPECIFIED.—For purposes of subparagraph (A), the period specified in this subparagraph is, with respect to the date of expiration of premium assistance for any assistance eligible individual pursuant to a limitation requiring a notice under this paragraph, the period beginning on the day that is 45 days before the date of such expiration and ending on the day that is 15 days before the date of such expiration.

Deadline.
Consultation.

(D) MODEL NOTICES.—Not later than 45 days after the date of enactment of this Act, with respect to any assistance eligible individual, the Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall prescribe models for the notification required under this paragraph.

(7) REGULATIONS.—The Secretary of the Treasury and the Secretary of Labor may jointly prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this subsection, including the prevention of fraud and abuse under this subsection, except that the Secretary of Labor and the Secretary of Health and Human Services may prescribe such regulations (including interim final regulations) or other guidance as may be necessary or appropriate to carry out the provisions of paragraphs (5), (6), and (8).

(8) OUTREACH.—

Consultation.

(A) IN GENERAL.—The Secretary of Labor, in consultation with the Secretary of the Treasury and the Secretary of Health and Human Services, shall provide outreach consisting of public education and enrollment assistance relating to premium assistance provided under this subsection. Such outreach shall target employers, group health plan administrators, public assistance programs, States, insurers, and other entities as determined appropriate by such Secretaries. Such outreach shall include an initial focus on those individuals electing continuation coverage

who are referred to in paragraph (5)(C). Information on such premium assistance, including enrollment, shall also be made available on websites of the Departments of Labor, Treasury, and Health and Human Services. Web postings.

(B) ENROLLMENT UNDER MEDICARE.—The Secretary of Health and Human Services shall provide outreach consisting of public education. Such outreach shall target individuals who lose health insurance coverage. Such outreach shall include information regarding enrollment for Medicare benefits for purposes of preventing mistaken delays of such enrollment by such individuals, including lifetime penalties for failure of timely enrollment.

(9) DEFINITIONS.—For purposes of this section:

(A) ADMINISTRATOR.—The term "administrator" has the meaning given such term in section 3(16)(A) of the Employee Retirement Income Security Act of 1974, and includes a COBRA administrator.

(B) COBRA CONTINUATION COVERAGE.—The term "COBRA continuation coverage" means continuation coverage provided pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (other than under section 609), title XXII of the Public Health Service Act, or section 4980B of the Internal Revenue Code of 1986 (other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines), or under a State program that provides comparable continuation coverage. Such term does not include coverage under a health flexible spending arrangement under a cafeteria plan within the meaning of section 125 of the Internal Revenue Code of 1986.

(C) COBRA CONTINUATION PROVISION.—The term "COBRA continuation provision" means the provisions of law described in subparagraph (B).

(D) COVERED EMPLOYEE.—The term "covered employee" has the meaning given such term in section 607(2) of the Employee Retirement Income Security Act of 1974.

(E) QUALIFIED BENEFICIARY.—The term "qualified beneficiary" has the meaning given such term in section 607(3) of the Employee Retirement Income Security Act of 1974.

(F) GROUP HEALTH PLAN.—The term "group health plan" has the meaning given such term in section 607(1) of the Employee Retirement Income Security Act of 1974.

(G) STATE.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(H) PERIOD OF COVERAGE.—Any reference in this subsection to a period of coverage shall be treated as a reference to a monthly or shorter period of coverage with respect to which premiums are charged with respect to such coverage.

(I) PLAN SPONSOR.—The term "plan sponsor" has the meaning given such term in section 3(16)(B) of the Employee Retirement Income Security Act of 1974.

(J) PREMIUM.—The term "premium" includes, with respect to COBRA continuation coverage, any administrative fee.

(10) IMPLEMENTATION FUNDING.—In addition to amounts otherwise made available, out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary of Labor for fiscal year 2021, $10,000,000, to remain available until expended, for the Employee Benefits Security Administration to carry out the provisions of this subtitle.

(b) COBRA PREMIUM ASSISTANCE.—

(1) ALLOWANCE OF CREDIT.—

(A) IN GENERAL.—Subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

26 USC 6432.

"SEC. 6432. CONTINUATION COVERAGE PREMIUM ASSISTANCE.

"(a) IN GENERAL.—The person to whom premiums are payable for continuation coverage under section 9501(a)(1) of the American Rescue Plan Act of 2021 shall be allowed as a credit against the tax imposed by section 3111(b), or so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), for each calendar quarter an amount equal to the premiums not paid by assistance eligible individuals for such coverage by reason of such section 9501(a)(1) with respect to such calendar quarter.

"(b) PERSON TO WHOM PREMIUMS ARE PAYABLE.—For purposes of subsection (a), except as otherwise provided by the Secretary, the person to whom premiums are payable under such continuation coverage shall be treated as being—

"(1) in the case of any group health plan which is a multiemployer plan (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974), the plan,

"(2) in the case of any group health plan not described in paragraph (1)—

"(A) which is subject to the COBRA continuation provisions contained in—

"(i) the Internal Revenue Code of 1986,

"(ii) the Employee Retirement Income Security Act of 1974, or

"(iii) the Public Health Service Act, or

"(B) under which some or all of the coverage is not provided by insurance,

the employer maintaining the plan, and

"(3) in the case of any group health plan not described in paragraph (1) or (2), the insurer providing the coverage under the group health plan.

"(c) LIMITATIONS AND REFUNDABILITY.—

"(1) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(b), or so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), for such calendar quarter (reduced by any credits allowed against such taxes under sections 3131, 3132, and 3134) on the wages paid with respect to the employment of all employees of the employer.

"(2) REFUNDABILITY OF EXCESS CREDIT.—

"(A) CREDIT IS REFUNDABLE.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (1) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b).

"(B) CREDIT MAY BE ADVANCED.—In anticipation of the credit, including the refundable portion under subparagraph (A), the credit may be advanced, according to forms and instructions provided by the Secretary, up to an amount calculated under subsection (a) through the end of the most recent payroll period in the quarter.

"(C) TREATMENT OF DEPOSITS.—The Secretary shall waive any penalty under section 6656 for any failure to make a deposit of the tax imposed by section 3111(b), or so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), if the Secretary determines that such failure was due to the anticipation of the credit allowed under this section. Waivers. Determinations.

"(D) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any amounts due to an employer under this paragraph shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

"(3) OVERSTATEMENTS.—Any overstatement of the credit to which a person is entitled under this section (and any amount paid by the Secretary as a result of such overstatement) shall be treated as an underpayment by such person of the taxes described in paragraph (1) and may be assessed and collected by the Secretary in the same manner as such taxes.

"(d) GOVERNMENTAL ENTITIES.—For purposes of this section, the term 'person' includes the government of any State or political subdivision thereof, any Indian tribal government (as defined in section 139E(c)(1)), any agency or instrumentality of any of the foregoing, and any agency or instrumentality of the Government of the United States that is described in section 501(c)(1) and exempt from taxation under section 501(a). Definition.

"(e) DENIAL OF DOUBLE BENEFIT.—For purposes of chapter 1, the gross income of any person allowed a credit under this section shall be increased for the taxable year which includes the last day of any calendar quarter with respect to which such credit is allowed by the amount of such credit. No credit shall be allowed under this section with respect to any amount which is taken into account as qualified wages under section 2301 of the CARES Act or section 3134 of this title or as qualified health plan expenses under section 7001(d) or 7003(d) of the Families First Coronavirus Response Act or section 3131 or 3132 of this title.

"(f) EXTENSION OF LIMITATION ON ASSESSMENT.—Notwithstanding section 6501, the limitation on the time period for the assessment of any amount attributable to a credit claimed under this section shall not expire before the date that is 5 years after the later of—

"(1) the date on which the original return which includes the calendar quarter with respect to which such credit is determined is filed, or

"(2) the date on which such return is treated as filed under section 6501(b)(2).

"(g) REGULATIONS.—The Secretary shall issue such regulations, or other guidance, forms, instructions, and publications, as may be necessary or appropriate to carry out this section, including—

"(1) the requirement to report information or the establishment of other methods for verifying the correct amounts of reimbursements under this section,

"(2) the application of this section to group health plans that are multiemployer plans (as defined in section 3(37) of the Employee Retirement Income Security Act of 1974),

"(3) to allow the advance payment of the credit determined under subsection (a), subject to the limitations provided in this section, based on such information as the Secretary shall require,

"(4) to provide for the reconciliation of such advance payment with the amount of the credit at the time of filing the return of tax for the applicable quarter or taxable year, and

"(5) allowing the credit to third party payors (including professional employer organizations, certified professional employer organizations, or agents under section 3504).".

(B) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

26 USC 6411 prec.

"Sec. 6432. Continuation coverage premium assistance.".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to premiums to which subsection (a)(1)(A) applies and wages paid on or after April 1, 2021.

Applicability. 26 USC 6432 note.

(D) SPECIAL RULE IN CASE OF EMPLOYEE PAYMENT THAT IS NOT REQUIRED UNDER THIS SECTION.—

26 USC 4980B note.

Reimbursement.

(i) IN GENERAL.—In the case of an assistance eligible individual who pays, with respect any period of coverage to which subsection (a)(1)(A) applies, any amount of the premium for such coverage that the individual would have (but for this Act) been required to pay, the person to whom such payment is payable shall reimburse such individual for the amount of such premium paid.

(ii) CREDIT OF REIMBURSEMENT.—A person to which clause (i) applies shall be allowed a credit in the manner provided under section 6432 of the Internal Revenue Code of 1986 for any payment made to the employee under such clause.

Deadline.

(iii) PAYMENT OF CREDITS.—Any person to which clause (i) applies shall make the payment required under such clause to the individual not later than 60 days after the date on which such individual made the premium payment.

(2) PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR PREMIUM ASSISTANCE.—

(A) IN GENERAL.—Part I of subchapter B of chapter 68 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 6720C. PENALTY FOR FAILURE TO NOTIFY HEALTH PLAN OF CESSATION OF ELIGIBILITY FOR CONTINUATION COVERAGE PREMIUM ASSISTANCE. 26 USC 6720C.

"(a) IN GENERAL.—Except in the case of a failure described in subsection (b) or (c), any person required to notify a group health plan under section 9501(a)(2)(B) of the American Rescue Plan Act of 2021 who fails to make such a notification at such time and in such manner as the Secretary of Labor may require shall pay a penalty of $250 for each such failure.

"(b) INTENTIONAL FAILURE.—In the case of any such failure that is fraudulent, such person shall pay a penalty equal to the greater of—

"(1) $250, or

"(2) 110 percent of the premium assistance provided under section 9501(a)(1)(A) of the American Rescue Plan Act of 2021 after termination of eligibility under such section.

"(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.".

(B) CLERICAL AMENDMENT.—The table of sections of part I of subchapter B of chapter 68 of such Code is amended by adding at the end the following new item: 26 USC 6671 prec.

"Sec. 6720C. Penalty for failure to notify health plan of cessation of eligibility for continuation coverage premium assistance.".

(3) COORDINATION WITH HCTC.—

(A) IN GENERAL.—Section 35(g)(9) of the Internal Revenue Code of 1986 is amended to read as follows: 26 USC 35.

"(9) CONTINUATION COVERAGE PREMIUM ASSISTANCE.—In the case of an assistance eligible individual who receives premium assistance for continuation coverage under section 9501(a)(1) of the American Rescue Plan Act of 2021 for any month during the taxable year, such individual shall not be treated as an eligible individual, a certified individual, or a qualifying family member for purposes of this section or section 7527 with respect to such month.".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to taxable years ending after the date of the enactment of this Act. 26 USC 35 note.

(4) EXCLUSION OF CONTINUATION COVERAGE PREMIUM ASSISTANCE FROM GROSS INCOME.—

(A) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139H the following new section:

"SEC. 139I. CONTINUATION COVERAGE PREMIUM ASSISTANCE. 26 USC 139I.

"In the case of an assistance eligible individual (as defined in subsection (a)(3) of section 9501 of the American Rescue Plan Act of 2021), gross income does not include any premium assistance provided under subsection (a)(1) of such section.".

(B) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139H the following new item: 26 USC 101 prec.

"Sec. 139I. Continuation coverage premium assistance.".

26 USC 139I note.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to taxable years ending after the date of the enactment of this Act.

Subtitle G—Promoting Economic Security

PART 1—2021 RECOVERY REBATES TO INDIVIDUALS

SEC. 9601. 2021 RECOVERY REBATES TO INDIVIDUALS.

(a) IN GENERAL.—Subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by inserting after section 6428A the following new section:

26 USC 6428B.

"SEC. 6428B. 2021 RECOVERY REBATES TO INDIVIDUALS.

Effective date.

"(a) IN GENERAL.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by subtitle A for the first taxable year beginning in 2021 an amount equal to the 2021 rebate amount determined for such taxable year.

"(b) 2021 REBATE AMOUNT.—For purposes of this section, the term '2021 rebate amount' means, with respect to any taxpayer for any taxable year, the sum of—

"(1) $1,400 ($2,800 in the case of a joint return), plus

"(2) $1,400 multiplied by the number of dependents of the taxpayer for such taxable year.

Definition.

"(c) ELIGIBLE INDIVIDUAL.—For purposes of this section, the term 'eligible individual' means any individual other than—

"(1) any nonresident alien individual,

"(2) any individual who is a dependent of another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, and

"(3) an estate or trust.

"(d) LIMITATION BASED ON ADJUSTED GROSS INCOME.—

"(1) IN GENERAL.—The amount of the credit allowed by subsection (a) (determined without regard to this subsection and subsection (f)) shall be reduced (but not below zero) by the amount which bears the same ratio to such credit (as so determined) as—

"(A) the excess of—

"(i) the taxpayer's adjusted gross income for such taxable year, over

"(ii) $75,000, bears to

"(B) $5,000.

Applicability.

"(2) SPECIAL RULES.—

"(A) JOINT RETURN OR SURVIVING SPOUSE.—In the case of a joint return or a surviving spouse (as defined in section 2(a)), paragraph (1) shall be applied by substituting '$150,000' for '$75,000' and '$10,000' for '$5,000'.

"(B) HEAD OF HOUSEHOLD.—In the case of a head of household (as defined in section 2(b)), paragraph (1) shall be applied by substituting '$112,500' for '$75,000' and '$7,500' for '$5,000'.

"(e) DEFINITIONS AND SPECIAL RULES.—

"(1) DEPENDENT DEFINED.—For purposes of this section, the term 'dependent' has the meaning given such term by section 152.

"(2) IDENTIFICATION NUMBER REQUIREMENT.—

"(A) IN GENERAL.—In the case of a return other than a joint return, the $1,400 amount in subsection (b)(1) shall be treated as being zero unless the taxpayer includes the valid identification number of the taxpayer on the return of tax for the taxable year.

"(B) JOINT RETURNS.—In the case of a joint return, the $2,800 amount in subsection (b)(1) shall be treated as being—

"(i) $1,400 if the valid identification number of only 1 spouse is included on the return of tax for the taxable year, and

"(ii) zero if the valid identification number of neither spouse is so included.

"(C) DEPENDENTS.—A dependent shall not be taken into account under subsection (b)(2) unless the valid identification number of such dependent is included on the return of tax for the taxable year.

"(D) VALID IDENTIFICATION NUMBER.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'valid identification number' means a social security number issued to an individual by the Social Security Administration on or before the due date for filing the return for the taxable year.

"(ii) ADOPTION TAXPAYER IDENTIFICATION NUMBER.—For purposes of subparagraph (C), in the case of a dependent who is adopted or placed for adoption, the term 'valid identification number' shall include the adoption taxpayer identification number of such dependent.

"(E) SPECIAL RULE FOR MEMBERS OF THE ARMED FORCES.—Subparagraph (B) shall not apply in the case where at least 1 spouse was a member of the Armed Forces of the United States at any time during the taxable year and the valid identification number of at least 1 spouse is included on the return of tax for the taxable year.

"(F) COORDINATION WITH CERTAIN ADVANCE PAYMENTS.—In the case of any payment determined pursuant to subsection (g)(6), a valid identification number shall be treated for purposes of this paragraph as included on the taxpayer's return of tax if such valid identification number is available to the Secretary as described in such subsection.

"(G) MATHEMATICAL OR CLERICAL ERROR AUTHORITY.—Any omission of a correct valid identification number required under this paragraph shall be treated as a mathematical or clerical error for purposes of applying section 6213(g)(2) to such omission.

"(3) CREDIT TREATED AS REFUNDABLE.—The credit allowed by subsection (a) shall be treated as allowed by subpart C of part IV of subchapter A of chapter 1.

"(f) COORDINATION WITH ADVANCE REFUNDS OF CREDIT.—

"(1) REDUCTION OF REFUNDABLE CREDIT.—The amount of the credit which would (but for this paragraph) be allowable under subsection (a) shall be reduced (but not below zero) by the aggregate refunds and credits made or allowed to the

taxpayer (or, except as otherwise provided by the Secretary, any dependent of the taxpayer) under subsection (g). Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

"(2) JOINT RETURNS.—Except as otherwise provided by the Secretary, in the case of a refund or credit made or allowed under subsection (g) with respect to a joint return, half of such refund or credit shall be treated as having been made or allowed to each individual filing such return.

"(g) ADVANCE REFUNDS AND CREDITS.—

"(1) IN GENERAL.—Subject to paragraphs (5) and (6), each individual who was an eligible individual for such individual's first taxable year beginning in 2019 shall be treated as having made a payment against the tax imposed by chapter 1 for such taxable year in an amount equal to the advance refund amount for such taxable year.

"(2) ADVANCE REFUND AMOUNT.—

"(A) IN GENERAL.—For purposes of paragraph (1), the advance refund amount is the amount that would have been allowed as a credit under this section for such taxable year if this section (other than subsection (f) and this subsection) had applied to such taxable year.

Determination. Termination date.

"(B) TREATMENT OF DECEASED INDIVIDUALS.—For purposes of determining the advance refund amount with respect to such taxable year—

"(i) any individual who was deceased before January 1, 2021, shall be treated for purposes of applying subsection (e)(2) in the same manner as if the valid identification number of such person was not included on the return of tax for such taxable year (except that subparagraph (E) thereof shall not apply),

"(ii) notwithstanding clause (i), in the case of a joint return with respect to which only 1 spouse is deceased before January 1, 2021, such deceased spouse was a member of the Armed Forces of the United States at any time during the taxable year, and the valid identification number of such deceased spouse is included on the return of tax for the taxable year, the valid identification number of 1 (and only 1) spouse shall be treated as included on the return of tax for the taxable year for purposes of applying subsection (e)(2)(B) with respect to such joint return, and

"(iii) no amount shall be determined under subsection (e)(2) with respect to any dependent of the taxpayer if the taxpayer (both spouses in the case of a joint return) was deceased before January 1, 2021.

"(3) TIMING AND MANNER OF PAYMENTS.—The Secretary shall, subject to the provisions of this title and consistent with rules similar to the rules of subparagraphs (B) and (C) of section 6428A(f)(3), refund or credit any overpayment attributable to this subsection as rapidly as possible, consistent with a rapid effort to make payments attributable to such overpayments electronically if appropriate. No refund or credit shall be made or allowed under this subsection after December 31, 2021.

Effective date.

"(4) NO INTEREST.—No interest shall be allowed on any overpayment attributable to this subsection.

"(5) APPLICATION TO INDIVIDUALS WHO HAVE FILED A RETURN OF TAX FOR 2020.—

"(A) APPLICATION TO 2020 RETURNS FILED AT TIME OF INITIAL DETERMINATION.—If, at the time of any determination made pursuant to paragraph (3), the individual referred to in paragraph (1) has filed a return of tax for the individual's first taxable year beginning in 2020, paragraph (1) shall be applied with respect to such individual by substituting '2020' for '2019'.

"(B) ADDITIONAL PAYMENT.— Definitions.

"(i) IN GENERAL.—In the case of any individual who files, before the additional payment determination date, a return of tax for such individual's first taxable year beginning in 2020, the Secretary shall make a payment (in addition to any payment made under paragraph (1)) to such individual equal to the excess (if any) of—

"(I) the amount which would be determined under paragraph (1) (after the application of subparagraph (A)) by applying paragraph (1) as of the additional payment determination date, over

"(II) the amount of any payment made with respect to such individual under paragraph (1).

"(ii) ADDITIONAL PAYMENT DETERMINATION DATE.—The term 'additional payment determination date' means the earlier of—

"(I) the date which is 90 days after the 2020 calendar year filing deadline, or

"(II) September 1, 2021.

"(iii) 2020 CALENDAR YEAR FILING DEADLINE.—The term '2020 calendar year filing deadline' means the date specified in section 6072(a) with respect to returns for calendar year 2020. Such date shall be determined after taking into account any period disregarded under section 7508A if such disregard applies to substantially all returns for calendar year 2020 to which section 6072(a) applies. Determination.

"(6) APPLICATION TO CERTAIN INDIVIDUALS WHO HAVE NOT FILED A RETURN OF TAX FOR 2019 OR 2020 AT TIME OF DETERMINATION.—In the case of any individual who, at the time of any determination made pursuant to paragraph (3), has filed a tax return for neither the year described in paragraph (1) nor for the year described in paragraph (5)(A), the Secretary shall, consistent with rules similar to the rules of section 6428A(f)(5)(H)(i), apply paragraph (1) on the basis of information available to the Secretary and shall, on the basis of such information, determine the advance refund amount with respect to such individual without regard to subsection (d) unless the Secretary has reason to know that such amount would otherwise be reduced by reason of such subsection.

"(7) SPECIAL RULE RELATED TO TIME OF FILING RETURN.—Solely for purposes of this subsection, a return of tax shall not be treated as filed until such return has been processed by the Internal Revenue Service.

"(8) RESTRICTION ON USE OF CERTAIN PREVIOUSLY ISSUED PREPAID DEBIT CARDS.—Payments made by the Secretary to individuals under this section shall not be in the form of an increase in the balance of any previously issued prepaid debit card if, as of the time of the issuance of such card, such card was issued solely for purposes of making payments under section 6428 or 6428A.

"(h) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including—

Determination.

"(1) regulations or other guidance providing taxpayers the opportunity to provide the Secretary information sufficient to allow the Secretary to make payments to such taxpayers under subsection (g) (including the determination of the amount of such payment) if such information is not otherwise available to the Secretary, and

"(2) regulations or other guidance to ensure to the maximum extent administratively practicable that, in determining the amount of any credit under subsection (a) and any credit or refund under subsection (g), an individual is not taken into account more than once, including by different taxpayers and including by reason of a change in joint return status or dependent status between the taxable year for which an advance refund amount is determined and the taxable year for which a credit under subsection (a) is determined.

"(i) OUTREACH.—The Secretary shall carry out a robust and comprehensive outreach program to ensure that all taxpayers described in subsection (h)(1) learn of their eligibility for the advance refunds and credits under subsection (g); are advised of the opportunity to receive such advance refunds and credits as provided under subsection (h)(1); and are provided assistance in applying for such advance refunds and credits.".

26 USC 6428B note.

(b) TREATMENT OF CERTAIN POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary of the Treasury shall pay to each possession of the United States which has a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the amendments made by this section. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

Determination.

Estimates.

(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the amendments made by this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to its residents.

Plan.

(3) INCLUSION OF ADMINISTRATIVE EXPENSES.—The Secretary of the Treasury shall pay to each possession of the United States to which the Secretary makes a payment under paragraph (1) or (2) an amount equal to the lesser of—

(A) the increase (if any) of the administrative expenses of such possession—

(i) in the case of a possession described in paragraph (1), by reason of the amendments made by this section, and

(ii) in the case of a possession described in paragraph (2), by reason of carrying out the plan described in such paragraph, or

(B) $500,000 ($10,000,000 in the case of Puerto Rico). Puerto Rico. Determination.

The amount described in subparagraph (A) shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

(4) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No credit shall be allowed against United States income taxes under section 6428B of the Internal Revenue Code of 1986 (as added by this section), nor shall any credit or refund be made or allowed under subsection (g) of such section, to any person—

(A) to whom a credit is allowed against taxes imposed by the possession by reason of the amendments made by this section, or

(B) who is eligible for a payment under a plan described in paragraph (2).

(5) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term "mirror code tax system" means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States. Definition. Determination.

(6) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(c) ADMINISTRATIVE PROVISIONS.—

(1) DEFINITION OF DEFICIENCY.—Section 6211(b)(4)(A) of the Internal Revenue Code of 1986 is amended by striking "6428, and 6428A" and inserting "6428, 6428A, and 6428B". 26 USC 6211.

(2) EXCEPTION FROM REDUCTION OR OFFSET.—Any refund payable by reason of section 6428B(g) of the Internal Revenue Code of 1986 (as added by this section), or any such refund payable by reason of subsection (b) of this section, shall not be— 26 USC 6428B note.

(A) subject to reduction or offset pursuant to subsection (c), (d), (e), or (f) of section 6402 of the Internal Revenue Code of 1986 or any similar authority permitting offset, or

(B) reduced or offset by other assessed Federal taxes that would otherwise be subject to levy or collection.

(3) CONFORMING AMENDMENTS.—

(A) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting "6428B," after "6428A,".

(B) The table of sections for subchapter B of chapter 65 of the Internal Revenue Code of 1986 is amended by 26 USC 6411 prec.

inserting after the item relating to section 6428A the following new item:

"Sec. 6428B. 2021 recovery rebates to individuals.".

(d) APPROPRIATIONS.—Immediately upon the enactment of this Act, in addition to amounts otherwise available, there are appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated:

(1) $1,464,500,000 to remain available until September 30, 2023 for necessary expenses for the Internal Revenue Service for the administration of the advance payments, the provision of taxpayer assistance, and the furtherance of integrated, modernized, and secure Internal Revenue Service systems, of which up to $20,000,000 is available for premium pay for services related to the development of information technology as determined by the Commissioner of the Internal Revenue occurring between January 1, 2020 and December 31, 2022, and all of which shall supplement and not supplant any other appropriations that may be available for this purpose.

(2) $7,000,000 to remain available until September 30, 2022, for necessary expenses for the Bureau of the Fiscal Service to carry out this section (and the amendments made by this section), which shall supplement and not supplant any other appropriations that may be available for this purpose, and

(3) $8,000,000 to remain available until September 30, 2023, for the Treasury Inspector General for Tax Administration for the purposes of overseeing activities related to the administration of this section (and the amendments made by this section), which shall supplement and not supplant any other appropriations that may be available for this purpose.

PART 2—CHILD TAX CREDIT

SEC. 9611. CHILD TAX CREDIT IMPROVEMENTS FOR 2021.

26 USC 24.

(a) IN GENERAL.—Section 24 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(i) SPECIAL RULES FOR 2021.—In the case of any taxable year beginning after December 31, 2020, and before January 1, 2022—

Puerto Rico.

"(1) REFUNDABLE CREDIT.—If the taxpayer (in the case of a joint return, either spouse) has a principal place of abode in the United States (determined as provided in section 32) for more than one-half of the taxable year or is a bona fide resident of Puerto Rico (within the meaning of section 937(a)) for such taxable year—

"(A) subsection (d) shall not apply, and

"(B) so much of the credit determined under subsection (a) (after application of subparagraph (A)) as does not exceed the amount of such credit which would be so determined without regard to subsection (h)(4) shall be allowed under subpart C (and not allowed under this subpart).

"(2) 17-YEAR-OLDS ELIGIBLE FOR TREATMENT AS QUALIFYING CHILDREN.—This section shall be applied—

"(A) by substituting 'age 18' for 'age 17' in subsection (c)(1), and

"(B) by substituting 'described in subsection (c) (determined after the application of subsection (i)(2)(A))' for 'described in subsection (c)' in subsection (h)(4)(A).

"(3) CREDIT AMOUNT.—Subsection (h)(2) shall not apply and subsection (a) shall be applied by substituting '$3,000 ($3,600 in the case of a qualifying child who has not attained age 6 as of the close of the calendar year in which the taxable year of the taxpayer begins)' for '$1,000'.

"(4) REDUCTION OF INCREASED CREDIT AMOUNT BASED ON MODIFIED ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—The amount of the credit allowable under subsection (a) (determined without regard to subsection (b)) shall be reduced by $50 for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income (as defined in subsection (b)) exceeds the applicable threshold amount.

"(B) APPLICABLE THRESHOLD AMOUNT.—For purposes of this paragraph, the term 'applicable threshold amount' means— Definition.

"(i) $150,000, in the case of a joint return or surviving spouse (as defined in section 2(a)) ,

"(ii) $112,500, in the case of a head of household (as defined in section 2(b)), and

"(iii) $75,000, in any other case.

"(C) LIMITATION ON REDUCTION.— Definitions. Determinations.

"(i) IN GENERAL.—The amount of the reduction under subparagraph (A) shall not exceed the lesser of—

"(I) the applicable credit increase amount, or

"(II) 5 percent of the applicable phaseout threshold range.

"(ii) APPLICABLE CREDIT INCREASE AMOUNT.—For purposes of this subparagraph, the term 'applicable credit increase amount' means the excess (if any) of—

"(I) the amount of the credit allowable under this section for the taxable year determined without regard to this paragraph and subsection (b), over

"(II) the amount of such credit as so determined and without regard to paragraph (3).

"(iii) APPLICABLE PHASEOUT THRESHOLD RANGE.—For purposes of this subparagraph, the term 'applicable phaseout threshold range' means the excess of—

"(I) the threshold amount applicable to the taxpayer under subsection (b) (determined after the application of subsection (h)(3)), over

"(II) the applicable threshold amount applicable to the taxpayer under this paragraph.

"(D) COORDINATION WITH LIMITATION ON OVERALL CREDIT.—Subsection (b) shall be applied by substituting 'the credit allowable under subsection (a) (determined after the application of subsection (i)(4)(A)' for 'the credit allowable under subsection (a)'.". Applicability. Determination.

(b) ADVANCE PAYMENT OF CREDIT.—

(1) IN GENERAL.—Chapter 77 of such Code is amended by inserting after section 7527 the following new section:

26 USC 7527A.

"SEC. 7527A. ADVANCE PAYMENT OF CHILD TAX CREDIT.

Determination.

"(a) IN GENERAL.—The Secretary shall establish a program for making periodic payments to taxpayers which, in the aggregate during any calendar year, equal the annual advance amount determined with respect to such taxpayer for such calendar year. Except as provided in subsection (b)(3)(B), the periodic payments made to any taxpayer for any calendar year shall be in equal amounts.

"(b) ANNUAL ADVANCE AMOUNT.—For purposes of this section—

Definition.
Estimate.
Determinations.

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'annual advance amount' means, with respect to any taxpayer for any calendar year, the amount (if any) which is estimated by the Secretary as being equal to 50 percent of the amount which would be treated as allowed under subpart C of part IV of subchapter A of chapter 1 by reason of section 24(i)(1) for the taxpayer's taxable year beginning in such calendar year if—

"(A) the status of the taxpayer as a taxpayer described in section 24(i)(1) is determined with respect to the reference taxable year,

"(B) the taxpayer's modified adjusted gross income for such taxable year is equal to the taxpayer's modified adjusted gross income for the reference taxable year,

"(C) the only children of such taxpayer for such taxable year are qualifying children properly claimed on the taxpayer's return of tax for the reference taxable year, and

"(D) the ages of such children (and the status of such children as qualifying children) are determined for such taxable year by taking into account the passage of time since the reference taxable year.

Definition.

"(2) REFERENCE TAXABLE YEAR.—Except as provided in paragraph (3)(A), the term 'reference taxable year' means, with respect to any taxpayer for any calendar year, the taxpayer's taxable year beginning in the preceding calendar year or, in the case of taxpayer who did not file a return of tax for such taxable year, the taxpayer's taxable year beginning in the second preceding calendar year.

"(3) MODIFICATIONS DURING CALENDAR YEAR.—

"(A) IN GENERAL.—The Secretary may modify, during any calendar year, the annual advance amount with respect to any taxpayer for such calendar year to take into account—

"(i) a return of tax filed by such taxpayer during such calendar year (and the taxable year to which such return relates may be taken into account as the reference taxable year), and

"(ii) any other information provided by the taxpayer to the Secretary which allows the Secretary to determine payments under subsection (a) which, in the aggregate during any taxable year of the taxpayer, more closely total the Secretary's estimate of the amount treated as allowed under subpart C of part IV of subchapter A of chapter 1 by reason of section 24(i)(1) for such taxable year of such taxpayer.

"(B) ADJUSTMENT TO REFLECT EXCESS OR DEFICIT IN PRIOR PAYMENTS.—In the case of any modification of the annual advance amount under subparagraph (A), the Secretary may adjust the amount of any periodic payment

made after the date of such modification to properly take into account the amount by which any periodic payment made before such date was greater than or less than the amount that such payment would have been on the basis of the annual advance amount as so modified.

"(4) DETERMINATION OF STATUS.—If information contained in the taxpayer's return of tax for the reference taxable year does not establish the status of the taxpayer as being described in section 24(i)(1), the Secretary shall, for purposes of paragraph (1)(A), determine such status based on information known to the Secretary.

"(5) TREATMENT OF CERTAIN DEATHS.—A child shall not be taken into account in determining the annual advance amount under paragraph (1) if the death of such child is known to the Secretary as of the beginning of the calendar year for which the estimate under such paragraph is made. Determination.

"(c) ON-LINE INFORMATION PORTAL.—The Secretary shall establish an on-line portal which allows taxpayers to—

"(1) elect not to receive payments under this section, and

"(2) provide information to the Secretary which would be relevant to a modification under subsection (b)(3)(B) of the annual advance amount, including information regarding—

"(A) a change in the number of the taxpayer's qualifying children, including by reason of the birth of a child,

"(B) a change in the taxpayer's marital status,

"(C) a significant change in the taxpayer's income, and

"(D) any other factor which the Secretary may provide.

"(d) NOTICE OF PAYMENTS.—Not later than January 31 of the calendar year following any calendar year during which the Secretary makes one or more payments to any taxpayer under this section, the Secretary shall provide such taxpayer with a written notice which includes the taxpayer's taxpayer identity (as defined in section 6103(b)(6)), the aggregate amount of such payments made to such taxpayer during such calendar year, and such other information as the Secretary determines appropriate. Deadlines.

"(e) ADMINISTRATIVE PROVISIONS.—

"(1) APPLICATION OF ELECTRONIC FUNDS PAYMENT REQUIREMENT.—The payments made by the Secretary under subsection (a) shall be made by electronic funds transfer to the same extent and in the same manner as if such payments were Federal payments not made under this title.

"(2) APPLICATION OF CERTAIN RULES.—Rules similar to the rules of subparagraphs (B) and (C) of section 6428A(f)(3) shall apply for purposes of this section.

"(3) EXCEPTION FROM REDUCTION OR OFFSET.—Any payment made to any individual under this section shall not be—

"(A) subject to reduction or offset pursuant to subsection (c), (d), (e), or (f) of section 6402 or any similar authority permitting offset, or

"(B) reduced or offset by other assessed Federal taxes that would otherwise be subject to levy or collection.

"(4) APPLICATION OF ADVANCE PAYMENTS IN THE POSSESSIONS OF THE UNITED STATES.—

"(A) IN GENERAL.—The advance payment amount determined under this section shall be determined— Determination.

Puerto Rico.

"(i) by applying section 24(i)(1) without regard to the phrase 'or is a bona fide resident of Puerto Rico (within the meaning of section 937(a))', and

"(ii) without regard to section 24(k)(3)(C)(ii)(I).

"(B) MIRROR CODE POSSESSIONS.—In the case of any possession of the United States with a mirror code tax system (as defined in section 24(k)), this section shall not be treated as part of the income tax laws of the United States for purposes of determining the income tax law of such possession unless such possession elects to have this section be so treated.

"(C) ADMINISTRATIVE EXPENSES OF ADVANCE PAYMENTS.—

Plan.

"(i) MIRROR CODE POSSESSIONS.—In the case of any possession described in subparagraph (B) which makes the election described in such subparagraph, the amount otherwise paid by the Secretary to such possession under section 24(k)(1)(A) with respect to taxable years beginning in 2021 shall be increased by $300,000 if such possession has a plan, which has been approved by the Secretary, for making advance payments consistent with such election.

"(ii) AMERICAN SAMOA.—The amount otherwise paid by the Secretary to American Samoa under subparagraph (A) of section 24(k)(3) with respect to taxable years beginning in 2021 shall be increased by $300,000 if the plan described in subparagraph (B) of such section includes a program, which has been approved by the Secretary, for making advance payments under rules similar to the rules of this section.

"(iii) TIMING OF PAYMENT.—The Secretary may pay, upon the request of the possession of the United States to which the payment is to be made, the amount of the increase determined under clause (i) or (ii) immediately upon approval of the plan referred to in such clause, respectively.

Time periods.

"(f) APPLICATION.—No payments shall be made under the program established under subsection (a) with respect to—

"(1) any period before July 1, 2021, or

"(2) any period after December 31, 2021.

Determination.

"(g) REGULATIONS.—The Secretary shall issue such regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of this section and subsections (i)(1) and (j) of section 24, including regulations or other guidance which provides for the application of such provisions where the filing status of the taxpayer for a taxable year is different from the status used for determining the annual advance amount.".

(2) RECONCILIATION OF CREDIT AND ADVANCE CREDIT.—Section 24 of such Code, as amended by the preceding provision of this Act, is amended by adding at the end the following new subsection:

26 USC 24.

"(j) RECONCILIATION OF CREDIT AND ADVANCE CREDIT.—

"(1) IN GENERAL.—The amount of the credit allowed under this section to any taxpayer for any taxable year shall be reduced (but not below zero) by the aggregate amount of payments made under section 7527A to such taxpayer during such

taxable year. Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

"(2) EXCESS ADVANCE PAYMENTS.—

"(A) IN GENERAL.—If the aggregate amount of payments under section 7527A to the taxpayer during the taxable year exceeds the amount of the credit allowed under this section to such taxpayer for such taxable year (determined without regard to paragraph (1)), the tax imposed by this chapter for such taxable year shall be increased by the amount of such excess. Any failure to so increase the tax shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

"(B) SAFE HARBOR BASED ON MODIFIED ADJUSTED GROSS INCOME.— Definitions.

"(i) IN GENERAL.—In the case of a taxpayer whose modified adjusted gross income (as defined in subsection (b)) for the taxable year does not exceed 200 percent of the applicable income threshold, the amount of the increase determined under subparagraph (A) with respect to such taxpayer for such taxable year shall be reduced (but not below zero) by the safe harbor amount.

"(ii) PHASE OUT OF SAFE HARBOR AMOUNT.—In the case of a taxpayer whose modified adjusted gross income (as defined in subsection (b)) for the taxable year exceeds the applicable income threshold, the safe harbor amount otherwise in effect under clause (i) shall be reduced by the amount which bears the same ratio to such amount as such excess bears to the applicable income threshold.

"(iii) APPLICABLE INCOME THRESHOLD.—For purposes of this subparagraph, the term 'applicable income threshold' means—

"(I) $60,000 in the case of a joint return or surviving spouse (as defined in section 2(a)),

"(II) $50,000 in the case of a head of household, and

"(III) $40,000 in any other case.

"(iv) SAFE HARBOR AMOUNT.—For purposes of this subparagraph, the term 'safe harbor amount' means, with respect to any taxable year, the product of—

"(I) $2,000, multiplied by

"(II) the excess (if any) of the number of qualified children taken into account in determining the annual advance amount with respect to the taxpayer under section 7527A with respect to months beginning in such taxable year, over the number of qualified children taken into account in determining the credit allowed under this section for such taxable year.". Determinations.

(3) COORDINATION WITH WAGE WITHHOLDING.—Section 3402(f)(1)(C) of such Code is amended by striking "section 24(a)" and inserting "section 24 (determined after application of subsection (j) thereof)". 26 USC 3402.

(4) CONFORMING AMENDMENTS.—

26 USC 26.

(A) Section 26(b)(2) of such Code is amended by striking "and" at the end of subparagraph (X), by striking the period at the end of subparagraph (Y) and inserting ", and", and by adding at the end the following new subparagraph:

"(Z) section 24(j)(2) (relating to excess advance payments).".

(B) Section 6211(b)(4)(A) of such Code, as amended by the preceding provisions of this subtitle, is amended—

(i) by striking "24(d)" and inserting "24 by reason of subsections (d) and (i)(1) thereof", and

(ii) by striking "and 6428B" and inserting "6428B, and 7527A".

(C) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended—

(i) by inserting "24," before "25A", and

(ii) by striking " or 6431" and inserting "6431, or 7527A".

26 USC 7501 prec.

(D) The table of sections for chapter 77 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 7527 the following new item:

"Sec. 7527A. Advance payment of child tax credit.".

(5) APPROPRIATIONS TO CARRY OUT ADVANCE PAYMENTS.—Immediately upon the enactment of this Act, in addition to amounts otherwise available, there are appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated:

(A) $397,200,000 to remain available until September 30, 2022, for necessary expenses for the Internal Revenue Service to carry out this section (and the amendments made by this section), which shall supplement and not supplant any other appropriations that may be available for this purpose, and

(B) $16,200,000 to remain available until September 30, 2022, for necessary expenses for the Bureau of the Fiscal Service to carry out this section (and the amendments made by this section), which shall supplement and not supplant any other appropriations that may be available for this purpose.

(c) EFFECTIVE DATE.—

26 USC 24 note.

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020.

26 USC 7527A note.

(2) ESTABLISHMENT OF ADVANCE PAYMENT PROGRAM.—The Secretary of the Treasury (or the Secretary's designee) shall establish the program described in section 7527A of the Internal Revenue Code of 1986 as soon as practicable after the date of the enactment of this Act, except that the Secretary shall ensure that the timing of the establishment of such program does not interfere with carrying out section 6428B(g) as rapidly as possible.

SEC. 9612. APPLICATION OF CHILD TAX CREDIT IN POSSESSIONS.

26 USC 24.

(a) IN GENERAL.—Section 24 of the Internal Revenue Code of 1986, as amended by the preceding provisions of this Act, is amended by adding at the end the following new subsection:

"(k) APPLICATION OF CREDIT IN POSSESSIONS.—

"(1) MIRROR CODE POSSESSIONS.—

"(A) IN GENERAL.—The Secretary shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of this section (determined without regard to this subsection) with respect to taxable years beginning after 2020. Such amounts shall be determined by the Secretary based on information provided by the government of the respective possession.

"(B) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No credit shall be allowed under this section for any taxable year to any individual to whom a credit is allowable against taxes imposed by a possession of the United States with a mirror code tax system by reason of the application of this section in such possession for such taxable year.

"(C) MIRROR CODE TAX SYSTEM.—For purposes of this paragraph, the term 'mirror code tax system' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States. Definition.

"(2) PUERTO RICO.—

"(A) APPLICATION TO TAXABLE YEARS IN 2021.—

"(i) For application of refundable credit to residents of Puerto Rico, see subsection (i)(1).

"(ii) For nonapplication of advance payment to residents of Puerto Rico, see section 7527A(e)(4)(A).

"(B) APPLICATION TO TAXABLE YEARS AFTER 2021.—In the case of any bona fide resident of Puerto Rico (within the meaning of section 937(a)) for any taxable year beginning after December 31, 2021—

"(i) the credit determined under this section shall be allowable to such resident, and

"(ii) subsection (d)(1)(B)(ii) shall be applied without regard to the phrase 'in the case of a taxpayer with 3 or more qualifying children'.

"(3) AMERICAN SAMOA.—

"(A) IN GENERAL.—The Secretary shall pay to American Samoa amounts estimated by the Secretary as being equal to the aggregate benefits that would have been provided to residents of American Samoa by reason of the application of this section for taxable years beginning after 2020 if the provisions of this section had been in effect in American Samoa (applied as if American Samoa were the United States and without regard to the application of this section to bona fide residents of Puerto Rico under subsection (i)(1)). Estimates.

"(B) DISTRIBUTION REQUIREMENT.—Subparagraph (A) shall not apply unless American Samoa has a plan, which has been approved by the Secretary, under which American Samoa will promptly distribute such payments to its residents. Plan.

"(C) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—

"(i) IN GENERAL.—In the case of a taxable year with respect to which a plan is approved under subparagraph (B), this section (other than this subsection) shall not apply to any individual eligible for a distribution under such plan.

Effective dates.

"(ii) APPLICATION OF SECTION IN EVENT OF ABSENCE OF APPROVED PLAN.—In the case of a taxable year with respect to which a plan is not approved under subparagraph (B)—

"(I) if such taxable year begins in 2021, subsection (i)(1) shall be applied by substituting 'bona fide resident of Puerto Rico or American Samoa' for 'bona fide resident of Puerto Rico', and

"(II) if such taxable year begins after December 31, 2021, rules similar to the rules of paragraph (2)(B) shall apply with respect to bona fide residents of American Samoa (within the meaning of section 937(a)).

"(4) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.".

26 USC 24 note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020.

PART 3—EARNED INCOME TAX CREDIT

SEC. 9621. STRENGTHENING THE EARNED INCOME TAX CREDIT FOR INDIVIDUALS WITH NO QUALIFYING CHILDREN.

26 USC 32.

(a) SPECIAL RULES FOR 2021.—Section 32 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(n) SPECIAL RULES FOR INDIVIDUALS WITHOUT QUALIFYING CHILDREN.—In the case of any taxable year beginning after December 31, 2020, and before January 1, 2022—

Definitions.
Applicability.

"(1) DECREASE IN MINIMUM AGE FOR CREDIT.—

"(A) IN GENERAL.—Subsection (c)(1)(A)(ii)(II) shall be applied by substituting 'the applicable minimum age' for 'age 25'.

"(B) APPLICABLE MINIMUM AGE.—For purposes of this paragraph, the term 'applicable minimum age' means—

"(i) except as otherwise provided in this subparagraph, age 19,

"(ii) in the case of a specified student (other than a qualified former foster youth or a qualified homeless youth), age 24, and

"(iii) in the case of a qualified former foster youth or a qualified homeless youth, age 18.

"(C) SPECIFIED STUDENT.—For purposes of this paragraph, the term 'specified student' means, with respect to any taxable year, an individual who is an eligible student (as defined in section 25A(b)(3)) during at least 5 calendar months during the taxable year.

"(D) QUALIFIED FORMER FOSTER YOUTH.—For purposes of this paragraph, the term 'qualified former foster youth' means an individual who—

"(i) on or after the date that such individual attained age 14, was in foster care provided under the supervision or administration of an entity administering (or eligible to administer) a plan under part B or part E of title IV of the Social Security Act (without regard to whether Federal assistance was provided with respect to such child under such part E), and Effective date.

"(ii) provides (in such manner as the Secretary may provide) consent for entities which administer a plan under part B or part E of title IV of the Social Security Act to disclose to the Secretary information related to the status of such individual as a qualified former foster youth.

"(E) QUALIFIED HOMELESS YOUTH.—For purposes of this paragraph, the term 'qualified homeless youth' means, with respect to any taxable year, an individual who certifies, in a manner as provided by the Secretary, that such individual is either an unaccompanied youth who is a homeless child or youth, or is unaccompanied, at risk of homelessness, and self-supporting. Certification.

"(2) ELIMINATION OF MAXIMUM AGE FOR CREDIT.—Subsection (c)(1)(A)(ii)(II) shall be applied without regard to the phrase 'but not attained age 65'.

"(3) INCREASE IN CREDIT AND PHASEOUT PERCENTAGES.—The table contained in subsection (b)(1) shall be applied by substituting '15.3' for '7.65' each place it appears therein.

"(4) INCREASE IN EARNED INCOME AND PHASEOUT AMOUNTS.—

"(A) IN GENERAL.—The table contained in subsection (b)(2)(A) shall be applied—

"(i) by substituting '$9,820' for '$4,220', and

"(ii) by substituting '$11,610' for '$5,280'.

"(B) COORDINATION WITH INFLATION ADJUSTMENT.—Subsection (j) shall not apply to any dollar amount specified in this paragraph.".

(b) INFORMATION RETURN MATCHING.—As soon as practicable, the Secretary of the Treasury (or the Secretary's delegate) shall develop and implement procedures to use information returns under section 6050S (relating to returns relating to higher education tuition and related expenses) to check the status of individuals as specified students for purposes of section 32(n)(1)(B)(ii) of the Internal Revenue Code of 1986 (as added by this section). Procedures. 26 USC 32 note.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2020. 26 USC 32 note.

SEC. 9622. TAXPAYER ELIGIBLE FOR CHILDLESS EARNED INCOME CREDIT IN CASE OF QUALIFYING CHILDREN WHO FAIL TO MEET CERTAIN IDENTIFICATION REQUIREMENTS.

(a) IN GENERAL.—Section 32(c)(1) of the Internal Revenue Code of 1986 is amended by striking subparagraph (F). 26 USC 32.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2020. 26 USC 32 note.

SEC. 9623. CREDIT ALLOWED IN CASE OF CERTAIN SEPARATED SPOUSES.

(a) IN GENERAL.—Section 32(d) of the Internal Revenue Code of 1986 is amended— 26 USC 32.

(1) by striking "MARRIED INDIVIDUALS.—In the case of" and inserting the following: "MARRIED INDIVIDUALS.—

"(1) IN GENERAL.—In the case of", and

(2) by adding at the end the following new paragraph:

"(2) DETERMINATION OF MARITAL STATUS.—For purposes of this section—

"(A) IN GENERAL.—Except as provided in subparagraph (B), marital status shall be determined under section 7703(a).

Time periods.

"(B) SPECIAL RULE FOR SEPARATED SPOUSE.—An individual shall not be treated as married if such individual—

"(i) is married (as determined under section 7703(a)) and does not file a joint return for the taxable year,

"(ii) resides with a qualifying child of the individual for more than one-half of such taxable year, and

"(iii)(I) during the last 6 months of such taxable year, does not have the same principal place of abode as the individual's spouse, or

"(II) has a decree, instrument, or agreement (other than a decree of divorce) described in section 121(d)(3)(C) with respect to the individual's spouse and is not a member of the same household with the individual's spouse by the end of the taxable year.".

(b) CONFORMING AMENDMENTS.—

26 USC 32.

(1) Section 32(c)(1)(A) of such Code is amended by striking the last sentence.

(2) Section 32(c)(1)(E)(ii) of such Code is amended by striking "(within the meaning of section 7703)".

(3) Section 32(d)(1) of such Code, as amended by subsection (a), is amended by striking "(within the meaning of section 7703)".

26 USC 32 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020.

SEC. 9624. MODIFICATION OF DISQUALIFIED INVESTMENT INCOME TEST.

(a) IN GENERAL.—Section 32(i) of the Internal Revenue Code of 1986 is amended by striking "$2,200" and inserting "$10,000".

26 USC 32.

(b) INFLATION ADJUSTMENT.—Section 32(j)(1) of such Code is amended—

(1) in the matter preceding subparagraph (A), by inserting "(2021 in the case of the dollar amount in subsection (i)(1))" after "2015",

(2) in subparagraph (B)(i)—

(A) by striking "subsections (b)(2)(A) and (i)(1)" and inserting "subsection (b)(2)(A)", and

(B) by striking "and" at the end,

(3) by striking the period at the end of subparagraph (B)(ii) and inserting ", and", and

(4) by inserting after subparagraph (B)(ii) the following new clause:

"(iii) in the case of the $10,000 amount in subsection (i)(1), 'calendar year 2020' for 'calendar year 2016'.".

26 USC 32 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020.

SEC. 9625. APPLICATION OF EARNED INCOME TAX CREDIT IN POSSESSIONS OF THE UNITED STATES.

(a) IN GENERAL.—Chapter 77 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 7530. APPLICATION OF EARNED INCOME TAX CREDIT TO POSSESSIONS OF THE UNITED STATES. 26 USC 7530.

"(a) PUERTO RICO.—

"(1) IN GENERAL.—With respect to calendar year 2021 and each calendar year thereafter, the Secretary shall, except as otherwise provided in this subsection, make payments to Puerto Rico equal to—

"(A) the specified matching amount for such calendar year, plus

"(B) in the case of calendar years 2021 through 2025, the lesser of—

"(i) the expenditures made by Puerto Rico during such calendar year for education efforts with respect to individual taxpayers and tax return preparers relating to the earned income tax credit, or

"(ii) $1,000,000.

"(2) REQUIREMENT TO REFORM EARNED INCOME TAX CREDIT.—The Secretary shall not make any payments under paragraph (1) with respect to any calendar year unless Puerto Rico has in effect an earned income tax credit for taxable years beginning in or with such calendar year which (relative to the earned income tax credit which was in effect for taxable years beginning in or with calendar year 2019) increases the percentage of earned income which is allowed as a credit for each group of individuals with respect to which such percentage is separately stated or determined in a manner designed to substantially increase workforce participation.

"(3) SPECIFIED MATCHING AMOUNT.—For purposes of this subsection— Definitions.

"(A) IN GENERAL.—The term 'specified matching amount' means, with respect to any calendar year, the lesser of—

"(i) the excess (if any) of—

"(I) the cost to Puerto Rico of the earned income tax credit for taxable years beginning in or with such calendar year, over

"(II) the base amount for such calendar year, or

"(ii) the product of 3, multiplied by the base amount for such calendar year.

"(B) BASE AMOUNT.—

"(i) BASE AMOUNT FOR 2021.—In the case of calendar year 2021, the term 'base amount' means the greater of—

"(I) the cost to Puerto Rico of the earned income tax credit for taxable years beginning in or with calendar year 2019 (rounded to the nearest multiple of $1,000,000), or

"(II) $200,000,000.

"(ii) INFLATION ADJUSTMENT.—In the case of any calendar year after 2021, the term 'base amount' means Determination.

the dollar amount determined under clause (i) increased by an amount equal to—

"(I) such dollar amount, multiplied by—

"(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2020' for 'calendar year 2016' in subparagraph (A)(ii) thereof.

Any amount determined under this clause shall be rounded to the nearest multiple of $1,000,000.

"(4) RULES RELATED TO PAYMENTS.—

"(A) TIMING OF PAYMENTS.—The Secretary shall make payments under paragraph (1) for any calendar year—

Determination.

"(i) after receipt of such information as the Secretary may require to determine such payments, and

"(ii) except as provided in clause (i), within a reasonable period of time before the due date for individual income tax returns (as determined under the laws of Puerto Rico) for taxable years which began on the first day of such calendar year.

Requirements.

"(B) INFORMATION.—The Secretary may require the reporting of such information as the Secretary may require to carry out this subsection.

"(C) DETERMINATION OF COST OF EARNED INCOME TAX CREDIT.—For purposes of this subsection, the cost to Puerto Rico of the earned income tax credit shall be determined by the Secretary on the basis of the laws of Puerto Rico and shall include reductions in revenues received by Puerto Rico by reason of such credit and refunds attributable to such credit, but shall not include any administrative costs with respect to such credit.

"(b) POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—

Time periods.
Territories.

"(1) IN GENERAL.—With respect to calendar year 2021 and each calendar year thereafter, the Secretary shall, except as otherwise provided in this subsection, make payments to the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands equal to—

"(A) the cost to such possession of the earned income tax credit for taxable years beginning in or with such calendar year, plus

"(B) in the case of calendar years 2021 through 2025, the lesser of—

"(i) the expenditures made by such possession during such calendar year for education efforts with respect to individual taxpayers and tax return preparers relating to such earned income tax credit, or

"(ii) $50,000.

"(2) APPLICATION OF CERTAIN RULES.—Rules similar to the rules of subparagraphs (A), (B), and (C) of subsection (a)(4) shall apply for purposes of this subsection.

"(c) AMERICAN SAMOA.—

"(1) IN GENERAL.—With respect to calendar year 2021 and each calendar year thereafter, the Secretary shall, except as otherwise provided in this subsection, make payments to American Samoa equal to—

"(A) the lesser of—

"(i) the cost to American Samoa of the earned income tax credit for taxable years beginning in or with such calendar year, or

"(ii) $16,000,000, plus

"(B) in the case of calendar years 2021 through 2025, the lesser of—

"(i) the expenditures made by American Samoa during such calendar year for education efforts with respect to individual taxpayers and tax return preparers relating to such earned income tax credit, or

"(ii) $50,000.

"(2) REQUIREMENT TO ENACT AND MAINTAIN AN EARNED INCOME TAX CREDIT.—The Secretary shall not make any payments under paragraph (1) with respect to any calendar year unless American Samoa has in effect an earned income tax credit for taxable years beginning in or with such calendar year which allows a refundable tax credit to individuals on the basis of the taxpayer's earned income which is designed to substantially increase workforce participation.

"(3) INFLATION ADJUSTMENT.—In the case of any calendar year after 2021, the $16,000,000 amount in paragraph (1)(A)(ii) shall be increased by an amount equal to— Determinations.

"(A) such dollar amount, multiplied by—

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2020' for 'calendar year 2016' in subparagraph (A)(ii) thereof.

Any increase determined under this clause shall be rounded to the nearest multiple of $100,000.

"(4) APPLICATION OF CERTAIN RULES.—Rules similar to the rules of subparagraphs (A), (B), and (C) of subsection (a)(4) shall apply for purposes of this subsection.

"(d) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item: 26 USC 7501 prec.

"Sec. 7530. Application of earned income tax credit to possessions of the United States.".

SEC. 9626. TEMPORARY SPECIAL RULE FOR DETERMINING EARNED INCOME FOR PURPOSES OF EARNED INCOME TAX CREDIT. 26 USC 32 note.

(a) IN GENERAL.—If the earned income of the taxpayer for the taxpayer's first taxable year beginning in 2021 is less than the earned income of the taxpayer for the taxpayer's first taxable year beginning in 2019, the credit allowed under section 32 of the Internal Revenue Code of 1986 may, at the election of the taxpayer, be determined by substituting— Determination.

(1) such earned income for the taxpayer's first taxable year beginning in 2019, for

(2) such earned income for the taxpayer's first taxable year beginning in 2021.

(b) EARNED INCOME.—

Definition.

(1) IN GENERAL.—For purposes of this section, the term "earned income" has the meaning given such term under section 32(c) of the Internal Revenue Code of 1986.

(2) APPLICATION TO JOINT RETURNS.—For purposes of subsection (a), in the case of a joint return, the earned income of the taxpayer for the first taxable year beginning in 2019 shall be the sum of the earned income of each spouse for such taxable year.

(c) SPECIAL RULES.—

(1) ERRORS TREATED AS MATHEMATICAL ERRORS.—For purposes of section 6213 of the Internal Revenue Code of 1986, an incorrect use on a return of earned income pursuant to subsection (a) shall be treated as a mathematical or clerical error.

Applicability.

(2) NO EFFECT ON DETERMINATION OF GROSS INCOME, ETC.—Except as otherwise provided in this subsection, the Internal Revenue Code of 1986 shall be applied without regard to any substitution under subsection (a).

(d) TREATMENT OF CERTAIN POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary of the Treasury shall pay to each possession of the United States which has a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of the provisions of this section (other than this subsection) with respect to section 32 of the Internal Revenue Code of 1986. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

Determination.

Estimates.

(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the provisions of this section (other than this subsection) with respect to section 32 of the Internal Revenue Code of 1986 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to its residents.

Plan.

Definition.
Determination.

(3) MIRROR CODE TAX SYSTEM.—For purposes of this section, the term "mirror code tax system" means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(4) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

PART 4—DEPENDENT CARE ASSISTANCE

SEC. 9631. REFUNDABILITY AND ENHANCEMENT OF CHILD AND DEPENDENT CARE TAX CREDIT.

(a) IN GENERAL.—Section 21 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection: 26 USC 21.

"(g) SPECIAL RULES FOR 2021.—In the case of any taxable year beginning after December 31, 2020, and before January 1, 2022— Applicability.

"(1) CREDIT MADE REFUNDABLE.—If the taxpayer (in the case of a joint return, either spouse) has a principal place of abode in the United States (determined as provided in section 32) for more than one-half of the taxable year, the credit allowed under subsection (a) shall be treated as a credit allowed under subpart C (and not allowed under this subpart).

"(2) INCREASE IN DOLLAR LIMIT ON AMOUNT CREDITABLE.—Subsection (c) shall be applied—

"(A) by substituting '$8,000' for '$3,000' in paragraph (1) thereof, and

"(B) by substituting '$16,000' for '$6,000' in paragraph (2) thereof.

"(3) INCREASE IN APPLICABLE PERCENTAGE.—Subsection (a)(2) shall be applied—

"(A) by substituting '50 percent' for '35 percent', and

"(B) by substituting '$125,000' for '$15,000'.

"(4) APPLICATION OF PHASEOUT TO HIGH INCOME INDIVIDUALS.—

"(A) IN GENERAL.—Subsection (a)(2) shall be applied by substituting 'the phaseout percentage' for '20 percent'.

"(B) PHASEOUT PERCENTAGE.—The term 'phaseout percentage' means 20 percent reduced (but not below zero) by 1 percentage point for each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $400,000.". Definition.

(b) APPLICATION OF CREDIT IN POSSESSIONS.—Section 21 of such Code, as amended by subsection (a), is amended by adding at the end the following new subsection:

"(h) APPLICATION OF CREDIT IN POSSESSIONS.—

"(1) PAYMENT TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of this section (determined without regard to this subsection) with respect to taxable years beginning in or with 2021. Such amounts shall be determined by the Secretary based on information provided by the government of the respective possession.

"(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of this section with respect to taxable years beginning in or with 2021 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been Estimates. Plan.

approved by the Secretary, under which such possession will promptly distribute such payments to its residents.

"(3) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—In the case of any taxable year beginning in or with 2021, no credit shall be allowed under this section to any individual—

"(A) to whom a credit is allowable against taxes imposed by a possession with a mirror code tax system by reason of this section, or

"(B) who is eligible for a payment under a plan described in paragraph (2).

Definition.

"(4) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term 'mirror code tax system' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

"(5) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.".

(c) CONFORMING AMENDMENTS.—

26 USC 6211.

(1) Section 6211(b)(4)(A) of such Code, as amended by the preceding provisions of this Act, is amended by inserting "21 by reason of subsection (g) thereof," before "24".

(2) Section 1324(b)(2) of title 31, United States Code (as amended by the preceding provisions of this title), is amended by inserting "21," before "24".

26 USC 21 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020.

SEC. 9632. INCREASE IN EXCLUSION FOR EMPLOYER-PROVIDED DEPENDENT CARE ASSISTANCE.

26 USC 129.

(a) IN GENERAL.—Section 129(a)(2) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(D) SPECIAL RULE FOR 2021.—In the case of any taxable year beginning after December 31, 2020, and before January 1, 2022, subparagraph (A) shall be applied by substituting '$10,500 (half such dollar amount' for '$5,000 ($2,500'.".

26 USC 129 note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2020.

26 USC 129 note.

(c) RETROACTIVE PLAN AMENDMENTS.—A plan that otherwise satisfies all applicable requirements of sections 125 and 129 of the Internal Revenue Code of 1986 (including any rules or regulations thereunder) shall not fail to be treated as a cafeteria plan or dependent care assistance program merely because such plan is amended pursuant to a provision under this section and such amendment is retroactive, if—

Deadline.

(1) such amendment is adopted no later than the last day of the plan year in which the amendment is effective, and

Time period.

(2) the plan is operated consistent with the terms of such amendment during the period beginning on the effective date

of the amendment and ending on the date the amendment is adopted.

PART 5—CREDITS FOR PAID SICK AND FAMILY LEAVE

SEC. 9641. PAYROLL CREDITS.

(a) IN GENERAL.—Chapter 21 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subchapter: 26 USC 3131 prec.

"Subchapter D—Credits

"SEC. 3131. CREDIT FOR PAID SICK LEAVE. 26 USC 3131.

"(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 100 percent of the qualified sick leave wages paid by such employer with respect to such calendar quarter.

"(b) LIMITATIONS AND REFUNDABILITY.—

"(1) WAGES TAKEN INTO ACCOUNT.—The amount of qualified sick leave wages taken into account under subsection (a), plus any increases under subsection (e), with respect to any individual shall not exceed $200 ($511 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act, applied with the modification described in subsection (c)(2)(A)(i)) for any day (or portion thereof) for which the individual is paid qualified sick leave wages.

"(2) OVERALL LIMITATION ON NUMBER OF DAYS TAKEN INTO ACCOUNT.—The aggregate number of days taken into account under paragraph (1) for any calendar quarter shall not exceed the excess (if any) of—

"(A) 10, over

"(B) the aggregate number of days so taken into account during preceding calendar quarters in such calendar year (other than the first quarter of calendar year 2021).

"(3) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the applicable employment taxes for such calendar quarter on the wages paid with respect to the employment of all employees of the employer.

"(4) REFUNDABILITY OF EXCESS CREDIT.—

"(A) CREDIT IS REFUNDABLE.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (3) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b).

"(B) ADVANCING CREDIT.—In anticipation of the credit, including the refundable portion under subparagraph (A), the credit shall be advanced, according to forms and instructions provided by the Secretary, up to an amount

calculated under subsection (a), subject to the limits under paragraph (1) and (2), all calculated through the end of the most recent payroll period in the quarter.

"(c) QUALIFIED SICK LEAVE WAGES.—For purposes of this section—

Definition. Effective date.

"(1) IN GENERAL.—The term 'qualified sick leave wages' means wages paid by an employer which would be required to be paid by reason of the Emergency Paid Sick Leave Act as if such Act applied after March 31, 2021.

Determination.

"(2) RULES OF APPLICATION.—For purposes of determining whether wages are qualified sick leave wages under paragraph (1)—

"(A) IN GENERAL.—The Emergency Paid Sick Leave Act shall be applied—

"(i) by inserting ', the employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID–19 and such employee has been exposed to COVID–19 or the employee's employer has requested such test or diagnosis, or the employee is obtaining immunization related to COVID–19 or recovering from any injury, disability, illness, or condition related to such immunization' after 'medical diagnosis' in section 5102(a)(3) thereof, and

"(ii) by applying section 5102(b)(1) of such Act separately with respect to each calendar year after 2020 (and, in the case of calendar year 2021, without regard to the first quarter thereof).

"(B) LEAVE MUST MEET REQUIREMENTS.—If an employer fails to comply with any requirement of such Act (determined without regard to section 5109 thereof) with respect to paid sick time (as defined in section 5110 of such Act), amounts paid by such employer with respect to such paid sick time shall not be taken into account as qualified sick leave wages. For purposes of the preceding sentence, an employer which takes an action described in section 5104 of such Act shall be treated as failing to meet a requirement of such Act.

"(d) ALLOWANCE OF CREDIT FOR CERTAIN HEALTH PLAN EXPENSES.—

"(1) IN GENERAL.—The amount of the credit allowed under subsection (a) shall be increased by so much of the employer's qualified health plan expenses as are properly allocable to the qualified sick leave wages for which such credit is so allowed.

Definition.

"(2) QUALIFIED HEALTH PLAN EXPENSES.—For purposes of this subsection, the term 'qualified health plan expenses' means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1)), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a).

"(3) ALLOCATION RULES.—For purposes of this section, qualified health plan expenses shall be allocated to qualified sick leave wages in such manner as the Secretary may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata

on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

"(e) ALLOWANCE OF CREDIT FOR AMOUNTS PAID UNDER CERTAIN COLLECTIVELY BARGAINED AGREEMENTS.— Definitions.

"(1) IN GENERAL.—The amount of the credit allowed under subsection (a) shall be increased by the sum of—

"(A) so much of the employer's collectively bargained defined benefit pension plan contributions as are properly allocable to the qualified sick leave wages for which such credit is so allowed, plus

"(B) so much of the employer's collectively bargained apprenticeship program contributions as are properly allocable to the qualified sick leave wages for which such credit is so allowed.

"(2) COLLECTIVELY BARGAINED DEFINED BENEFIT PENSION PLAN CONTRIBUTIONS.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'collectively bargained defined benefit pension plan contributions' means, with respect to any calendar quarter, contributions which—

"(i) are paid or incurred by an employer during the calendar quarter on behalf of its employees to a defined benefit plan (as defined in section 414(j)), which meets the requirements of section 401(a),

"(ii) are made based on a pension contribution rate, and

"(iii) are required to be made pursuant to the terms of a collective bargaining agreement in effect with respect to such calendar quarter.

"(B) PENSION CONTRIBUTION RATE.—The term 'pension contribution rate' means the contribution rate that the employer is obligated to pay on behalf of its employees under the terms of a collective bargaining agreement for benefits under a defined benefit plan under such agreement, as such rate is applied to contribution base units (as defined by section 4001(a)(11) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301(a)(11)).

"(C) ALLOCATION RULES.—The amount of collectively bargained defined benefit pension plan contributions allocated to qualified sick leave wages for any calendar quarter shall be the product of—

"(i) the pension contribution rate (expressed as an hourly rate), and

"(ii) the number of hours for which qualified sick leave wages were provided to employees covered under the collective bargaining agreement described in subparagraph (A)(iii) during the calendar quarter.

"(3) COLLECTIVELY BARGAINED APPRENTICESHIP PROGRAM CONTRIBUTIONS.—For purposes of this section—

"(A) IN GENERAL.—The term 'collectively bargained apprenticeship program contributions' means, with respect to any calendar quarter, contributions which—

"(i) are paid or incurred by an employer on behalf of its employees with respect to the calendar quarter to a registered apprenticeship program,

"(ii) are made based on an apprenticeship program contribution rate, and

"(iii) are required to be made pursuant to the terms of a collective bargaining agreement that is in effect with respect to such calendar quarter.

"(B) REGISTERED APPRENTICESHIP PROGRAM.—The term 'registered apprenticeship program' means an apprenticeship registered under the Act of August 16, 1937 (commonly known as the 'National Apprenticeship Act'; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) that meets the standards of subpart A of part 29 and part 30 of title 29, Code of Federal Regulations.

"(C) APPRENTICESHIP PROGRAM CONTRIBUTION RATE.—The term 'apprenticeship program contribution rate' means the contribution rate that the employer is obligated to pay on behalf of its employees under the terms of a collective bargaining agreement for benefits under a registered apprenticeship program under such agreement, as such rate is applied to contribution base units (as defined by section 4001(a)(11) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301(a)(11)).

"(D) ALLOCATION RULES.—The amount of collectively bargained apprenticeship program contributions allocated to qualified sick leave wages for any calendar quarter shall be the product of—

"(i) the apprenticeship program contribution rate (expressed as an hourly rate), and

"(ii) the number of hours for which qualified sick leave wages were provided to employees covered under the collective bargaining agreement described in subparagraph (A)(iii) during the calendar quarter.

"(f) DEFINITIONS AND SPECIAL RULES.—

"(1) APPLICABLE EMPLOYMENT TAXES.—For purposes of this section, the term 'applicable employment taxes' means the following:

"(A) The taxes imposed under section 3111(b).

"(B) So much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b).

"(2) WAGES.—For purposes of this section, the term 'wages' means wages (as defined in section 3121(a), determined without regard to paragraphs (1) through (22) of section 3121(b)) and compensation (as defined in section 3231(e), determined without regard to the sentence in paragraph (1) thereof which begins 'Such term does not include remuneration').

"(3) DENIAL OF DOUBLE BENEFIT.—For purposes of chapter 1, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under sections 45A, 45P, 45S, 51, 3132, and 3134. In the case of any credit allowed under section 2301 of the CARES Act or section 41 with respect to wages taken into account under this section, the credit allowed under this section shall be reduced by the portion of the credit allowed under such section 2301 or section 41 which is attributable to such wages.

"(4) ELECTION TO NOT TAKE CERTAIN WAGES INTO ACCOUNT.—This section shall not apply to so much of the qualified sick leave wages paid by an eligible employer as such employer elects (at such time and in such manner as the Secretary may prescribe) to not take into account for purposes of this section.

"(5) CERTAIN GOVERNMENTAL EMPLOYERS.—No credit shall be allowed under this section to the Government of the United States or to any agency or instrumentality thereof. The preceding sentence shall not apply to any organization described in section 501(c)(1) and exempt from tax under section 501(a).

"(6) EXTENSION OF LIMITATION ON ASSESSMENT.—Notwithstanding section 6501, the limitation on the time period for the assessment of any amount attributable to a credit claimed under this section shall not expire before the date that is 5 years after the later of—

"(A) the date on which the original return which includes the calendar quarter with respect to which such credit is determined is filed, or

"(B) the date on which such return is treated as filed under section 6501(b)(2).

"(7) COORDINATION WITH CERTAIN PROGRAMS.—

"(A) IN GENERAL.—This section shall not apply to so much of the qualified sick leave wages paid by an eligible employer as are taken into account as payroll costs in connection with—

"(i) a covered loan under section 7(a)(37) or 7A of the Small Business Act,

"(ii) a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, or

"(iii) a restaurant revitalization grant under section 5003 of the American Rescue Plan Act of 2021.

"(B) APPLICATION WHERE PPP LOANS NOT FORGIVEN.—The Secretary shall issue guidance providing that payroll costs paid during the covered period shall not fail to be treated as qualified sick leave wages under this section by reason of subparagraph (A)(i) to the extent that—

"(i) a covered loan of the taxpayer under section 7(a)(37) of the Small Business Act is not forgiven by reason of a decision under section 7(a)(37)(J) of such Act, or

"(ii) a covered loan of the taxpayer under section 7A of the Small Business Act is not forgiven by reason of a decision under section 7A(g) of such Act.

Terms used in the preceding sentence which are also used in section 7A(g) or 7(a)(37)(J) of the Small Business Act shall, when applied in connection with either such section, have the same meaning as when used in such section, respectively.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

"(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

"(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

"(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

"(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a),

"(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid sick time required to be provided under the Emergency Paid Sick Leave Act,

"(6) regulations or other guidance to permit the advancement of the credit determined under subsection (a), and

"(7) regulations or other guidance with respect to the allocation, reporting, and substantiation of collectively bargained defined benefit pension plan contributions and collectively bargained apprenticeship program contributions.

Time period.

"(h) APPLICATION OF SECTION.—This section shall apply only to wages paid with respect to the period beginning on April 1, 2021, and ending on September 30, 2021.

Waiver. Determination.

"(i) TREATMENT OF DEPOSITS.—The Secretary shall waive any penalty under section 6656 for any failure to make a deposit of applicable employment taxes if the Secretary determines that such failure was due to the anticipation of the credit allowed under this section.

"(j) NON-DISCRIMINATION REQUIREMENT.—No credit shall be allowed under this section to any employer for any calendar quarter if such employer, with respect to the availability of the provision of qualified sick leave wages to which this section otherwise applies for such calendar quarter, discriminates in favor of highly compensated employees (within the meaning of section 414(q)), full-time employees, or employees on the basis of employment tenure with such employer.

26 USC 3132.

"SEC. 3132. PAYROLL CREDIT FOR PAID FAMILY LEAVE.

"(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 100 percent of the qualified family leave wages paid by such employer with respect to such calendar quarter.

"(b) LIMITATIONS AND REFUNDABILITY.—

"(1) WAGES TAKEN INTO ACCOUNT.—The amount of qualified family leave wages taken into account under subsection (a), plus any increases under subsection (e), with respect to any individual shall not exceed—

"(A) for any day (or portion thereof) for which the individual is paid qualified family leave wages, $200, and

"(B) in the aggregate with respect to all calendar quarters, $12,000.

"(2) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the applicable employment taxes for such calendar quarter (reduced by any credits allowed under section 3131) on the wages paid with respect to the employment of all employees of the employer.

"(3) REFUNDABILITY OF EXCESS CREDIT.—

"(A) CREDIT IS REFUNDABLE.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b).

"(B) ADVANCING CREDIT.—In anticipation of the credit, including the refundable portion under subparagraph (A), the credit shall be advanced, according to forms and instructions provided by the Secretary, up to an amount calculated under subsection (a), subject to the limits under paragraph (1) and (2), all calculated through the end of the most recent payroll period in the quarter.

"(c) QUALIFIED FAMILY LEAVE WAGES.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified family leave wages' means wages paid by an employer which would be required to be paid by reason of the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act) as if such Act (and amendments made by such Act) applied after March 31, 2021. Definition. Effective date.

"(2) RULES OF APPLICATION.— Determinations.

"(A) IN GENERAL.—For purposes of determining whether wages are qualified family leave wages under paragraph (1)—

"(i) section 110(a)(2)(A) of the Family and Medical Leave Act of 1993 shall be applied by inserting 'or any reason for leave described in section 5102(a) of the Families First Coronavirus Response Act, or the employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID–19 and such employee has been exposed to COVID–19 or the employee's employer has requested such test or diagnosis, or the employee is obtaining immunization related to COVID–19 or recovering from any injury, disability, illness, or condition related to such immunization' after 'public health emergency', and

"(ii) section 110(b) of such Act shall be applied—

"(I) without regard to paragraph (1) thereof,

"(II) by striking 'after taking leave after such section for 10 days' in paragraph (2)(A) thereof, and

"(III) by substituting '$12,000' for '$10,000' in paragraph (2)(B)(ii) thereof.

"(B) LEAVE MUST MEET REQUIREMENTS.—For purposes of determining whether wages would be required to be paid under paragraph (1), if an employer fails to comply with any requirement of the Family and Medical Leave Act of 1993 or the Emergency Family and Medical Leave Expansion Act (determined without regard to any time limitation under section 102(a)(1)(F) of the Family and Medical Leave Act of 1994) with respect to any leave provided for a qualifying need related to a public health emergency (as defined in section 110 of such Act, applied as described in subparagraph (A)(i)), amounts paid by such employer with respect to such leave shall not be taken into account as qualified family leave wages. For purposes of the preceding sentence, an employer which takes an action described in section 105 of the Family and Medical

Leave Act of 1993 shall be treated as failing to meet a requirement of such Act.

"(d) ALLOWANCE OF CREDIT FOR CERTAIN HEALTH PLAN EXPENSES.—

"(1) IN GENERAL.—The amount of the credit allowed under subsection (a) shall be increased by so much of the employer's qualified health plan expenses as are properly allocable to the qualified family leave wages for which such credit is so allowed.

Definition.

"(2) QUALIFIED HEALTH PLAN EXPENSES.—For purposes of this subsection, the term 'qualified health plan expenses' means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1)), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a).

"(3) ALLOCATION RULES.—For purposes of this section, qualified health plan expenses shall be allocated to qualified family leave wages in such manner as the Secretary may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

"(e) ALLOWANCE OF CREDIT FOR AMOUNTS PAID UNDER CERTAIN COLLECTIVELY BARGAINED AGREEMENTS.—

"(1) IN GENERAL.—The amount of the credit allowed under subsection (a) shall be increased by so much of the sum of—

"(A) so much of the employer's collectively bargained defined benefit pension plan contributions as are properly allocable to the qualified family leave wages for which such credit is so allowed, plus

"(B) so much of the employer's collectively bargained apprenticeship program contributions as are properly allocable to the qualified family leave wages for which such credit is so allowed.

"(2) COLLECTIVELY BARGAINED DEFINED BENEFIT PENSION PLAN CONTRIBUTIONS.—For purposes of this subsection—

Definition.

"(A) IN GENERAL.—The term 'collectively bargained defined benefit pension plan contributions' has the meaning given such term under section 3131(e)(2).

"(B) ALLOCATION RULES.—The amount of collectively bargained defined benefit pension plan contributions allocated to qualified family leave wages for any calendar quarter shall be the product of—

"(i) the pension contribution rate (as defined in section 3131(e)(2)), expressed as an hourly rate, and

"(ii) the number of hours for which qualified family leave wages were provided to employees covered under the collective bargaining agreement described in section 3131(e)(2)(A)(iii) during the calendar quarter.

"(3) COLLECTIVELY BARGAINED APPRENTICESHIP PROGRAM CONTRIBUTIONS.—For purposes of this section—

Definition.

"(A) IN GENERAL.—The term 'collectively bargained apprenticeship program contributions' has the meaning given such term under section 3131(e)(3).

"(B) ALLOCATION RULES.—For purposes of this section, the amount of collectively bargained apprenticeship program contributions allocated to qualified family leave wages for any calendar quarter shall be the product of—

"(i) the apprenticeship contribution rate (as defined in section 3131(e)(3)), expressed as an hourly rate, and

"(ii) the number of hours for which qualified family leave wages were provided to employees covered under the collective bargaining agreement described in section 3131(e)(3)(A)(iii) during the calendar quarter.

"(f) DEFINITIONS AND SPECIAL RULES.—

"(1) APPLICABLE EMPLOYMENT TAXES.—For purposes of this section, the term 'applicable employment taxes' means the following:

"(A) The taxes imposed under section 3111(b).

"(B) So much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b).

"(2) WAGES.—For purposes of this section, the term 'wages' means wages (as defined in section 3121(a), determined without regard to paragraphs (1) through (22) of section 3121(b)) and compensation (as defined in section 3231(e), determined without regard to the sentence in paragraph (1) thereof which begins 'Such term does not include remuneration').

"(3) DENIAL OF DOUBLE BENEFIT.—For purposes of chapter 1, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under sections 45A, 45P, 45S, 51, 3131, and 3134. In the case of any credit allowed under section 2301 of the CARES Act or section 41 with respect to wages taken into account under this section, the credit allowed under this section shall be reduced by the portion of the credit allowed under such section 2301 or section 41 which is attributable to such wages. Determination.

"(4) ELECTION TO NOT TAKE CERTAIN WAGES INTO ACCOUNT.—This section shall not apply to so much of the qualified family leave wages paid by an eligible employer as such employer elects (at such time and in such manner as the Secretary may prescribe) to not take into account for purposes of this section.

"(5) CERTAIN GOVERNMENTAL EMPLOYERS.—No credit shall be allowed under this section to the Government of the United States or to any agency or instrumentality thereof. The preceding sentence shall not apply to any organization described in section 501(c)(1) and exempt from tax under section 501(a).

"(6) EXTENSION OF LIMITATION ON ASSESSMENT.—Notwithstanding section 6501, the limitation on the time period for the assessment of any amount attributable to a credit claimed under this section shall not expire before the date that is 5 years after the later of— Time period.

"(A) the date on which the original return which includes the calendar quarter with respect to which such credit is determined is filed, or

"(B) the date on which such return is treated as filed under section 6501(b)(2).

"(7) COORDINATION WITH CERTAIN PROGRAMS.—

"(A) IN GENERAL.—This section shall not apply to so much of the qualified family leave wages paid by an eligible employer as are taken into account as payroll costs in connection with—

"(i) a covered loan under section 7(a)(37) or 7A of the Small Business Act,

"(ii) a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, or

"(iii) a restaurant revitalization grant under section 5003 of the American Rescue Plan Act of 2021.

"(B) APPLICATION WHERE PPP LOANS NOT FORGIVEN.—The Secretary shall issue guidance providing that payroll costs paid during the covered period shall not fail to be treated as qualified family leave wages under this section by reason of subparagraph (A)(i) to the extent that—

"(i) a covered loan of the taxpayer under section 7(a)(37) of the Small Business Act is not forgiven by reason of a decision under section 7(a)(37)(J) of such Act, or

"(ii) a covered loan of the taxpayer under section 7A of the Small Business Act is not forgiven by reason of a decision under section 7A(g) of such Act.

Terms used in the preceding sentence which are also used in section 7A(g) or 7(a)(37)(J) of the Small Business Act shall, when applied in connection with either such section, have the same meaning as when used in such section, respectively.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

"(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

"(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

"(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

"(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a),

"(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid leave required to be provided under the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act),

"(6) regulations or other guidance to permit the advancement of the credit determined under subsection (a), and

"(7) regulations or other guidance with respect to the allocation, reporting, and substantiation of collectively bargained

defined benefit pension plan contributions and collectively bargained apprenticeship program contributions.

"(h) APPLICATION OF SECTION.—This section shall apply only to wages paid with respect to the period beginning on April 1, 2021, and ending on September 30, 2021. Time period.

"(i) TREATMENT OF DEPOSITS.—The Secretary shall waive any penalty under section 6656 for any failure to make a deposit of applicable employment taxes if the Secretary determines that such failure was due to the anticipation of the credit allowed under this section. Waiver. Determination.

"(j) NON-DISCRIMINATION REQUIREMENT.—No credit shall be allowed under this section to any employer for any calendar quarter if such employer, with respect to the availability of the provision of qualified family leave wages to which this section otherwise applies for such calendar quarter, discriminates in favor of highly compensated employees (within the meaning of section 414(q)), full-time employees, or employees on the basis of employment tenure with such employer.

"SEC. 3133. SPECIAL RULE RELATED TO TAX ON EMPLOYERS. 26 USC 3133.

"(a) IN GENERAL.—The credit allowed by section 3131 and the credit allowed by section 3132 shall each be increased by the amount of the taxes imposed by subsections (a) and (b) of section 3111 and section 3221(a) on qualified sick leave wages, or qualified family leave wages, for which credit is allowed under such section 3131 or 3132 (respectively).

"(b) DENIAL OF DOUBLE BENEFIT.—For denial of double benefit with respect to the credit increase under subsection (a), see sections 3131(f)(3) and 3132(f)(3).".

(b) REFUNDS.—Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting "3131, 3132," before "6428".

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 21 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item: 26 USC 3101 prec.

"SUBCHAPTER D—CREDITS".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid with respect to calendar quarters beginning after March 31, 2021. 26 USC 3131 note.

SEC. 9642. CREDIT FOR SICK LEAVE FOR CERTAIN SELF-EMPLOYED INDIVIDUALS. 26 USC 1401 note.

(a) IN GENERAL.—In the case of an eligible self-employed individual, there shall be allowed as a credit against the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for any taxable year an amount equal to the qualified sick leave equivalent amount with respect to the individual.

(b) ELIGIBLE SELF-EMPLOYED INDIVIDUAL.—For purposes of this section—

(1) IN GENERAL.—The term "eligible self-employed individual" means an individual who— Definition.

(A) regularly carries on any trade or business within the meaning of section 1402 of the Internal Revenue Code of 1986, and

(B) would be entitled to receive paid leave during the taxable year pursuant to the Emergency Paid Sick Leave Act if—

(i) the individual were an employee of an employer (other than himself or herself), and

Effective date.

(ii) such Act applied after March 31, 2021.

Determination.

(2) RULES OF APPLICATION.—For purposes of paragraph (1)(B), in determining whether an individual would be entitled to receive paid leave under the Emergency Paid Sick Leave Act, such Act shall be applied—

(A) by inserting ", the employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID–19 and such employee has been exposed to COVID–19 or is unable to work pending the results of such test or diagnosis, or the employee is obtaining immunization related to COVID–19 or recovering from any injury, disability, illness, or condition related to such immunization" after "medical diagnosis" in section 5102(a)(3) of such Act, and

(B) by applying section 5102(b)(1) of such Act separately with respect to each taxable year.

Definitions.

(c) QUALIFIED SICK LEAVE EQUIVALENT AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term "qualified sick leave equivalent amount" means, with respect to any eligible self-employed individual, an amount equal to—

(A) the number of days during the taxable year (but not more than 10) that the individual is unable to perform services in any trade or business referred to in section 1402 of the Internal Revenue Code of 1986 for a reason with respect to which such individual would be entitled to receive sick leave as described in subsection (b), multiplied by

(B) the lesser of—

(i) $200 ($511 in the case of any day of paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act, applied with the modification described in subsection (b)(2)(A)) of this section, or

(ii) 67 percent (100 percent in the case of any day of paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act) of the average daily self-employment income of the individual for the taxable year.

(2) AVERAGE DAILY SELF-EMPLOYMENT INCOME.—For purposes of this subsection, the term "average daily self-employment income" means an amount equal to—

(A) the net earnings from self-employment of the individual for the taxable year, divided by

(B) 260.

Applicability.

(3) ELECTION TO USE PRIOR YEAR NET EARNINGS FROM SELF-EMPLOYMENT INCOME.—In the case of an individual who elects (at such time and in such manner as the Secretary may provide) the application of this paragraph, paragraph (2)(A) shall be applied by substituting "the prior taxable year" for "the taxable year".

(4) ELECTION TO NOT TAKE DAYS INTO ACCOUNT.—Any day shall not be taken into account under paragraph (1)(A) if the eligible self-employed individual elects (at such time and in

such manner as the Secretary may prescribe) to not take such day into account for purposes of such paragraph.

(d) CREDIT REFUNDABLE.—

(1) IN GENERAL.—The credit determined under this section shall be treated as a credit allowed to the taxpayer under subpart C of part IV of subchapter A of chapter 1 of such Code.

(2) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any refund due from the credit determined under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(e) SPECIAL RULES.—

(1) DOCUMENTATION.—No credit shall be allowed under this section unless the individual maintains such documentation as the Secretary may prescribe to establish such individual as an eligible self-employed individual.

(2) DENIAL OF DOUBLE BENEFIT.—In the case of an individual who receives wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) or compensation (as defined in section 3231(e) of such Code) paid by an employer which are required to be paid by reason of the Emergency Paid Sick Leave Act, the qualified sick leave equivalent amount otherwise determined under subsection (c) of this section shall be reduced (but not below zero) to the extent that the sum of the amount described in such subsection and in section 3131(b)(1) of such Code exceeds $2,000 ($5,110 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act).

(f) APPLICATION OF SECTION.—Only days occurring during the period beginning on April 1, 2021, and ending on September 30, 2021, may be taken into account under subsection (c)(1)(A). Time period.

(g) APPLICATION OF CREDIT IN CERTAIN POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary shall pay to each possession of the United States which has a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of the provisions of this section. Such amounts shall be determined by the Secretary based on information provided by the government of the respective possession. Determination.

(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the provisions of this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary, under which such possession will promptly distribute such payments to its residents. Estimates. Plan.

(3) MIRROR CODE TAX SYSTEM.—For purposes of this section, the term "mirror code tax system" means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents Definition. Determination.

of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(4) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(h) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to effectuate the purposes of this section, and

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section.

26 USC 1401 note.

SEC. 9643. CREDIT FOR FAMILY LEAVE FOR CERTAIN SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—In the case of an eligible self-employed individual, there shall be allowed as a credit against the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for any taxable year an amount equal to 100 percent of the qualified family leave equivalent amount with respect to the individual.

(b) ELIGIBLE SELF-EMPLOYED INDIVIDUAL.—For purposes of this section—

Definitions.

(1) IN GENERAL.—The term "eligible self-employed individual" means an individual who—

(A) regularly carries on any trade or business within the meaning of section 1402 of the Internal Revenue Code of 1986, and

(B) would be entitled to receive paid leave during the taxable year pursuant to the Emergency Family and Medical Leave Expansion Act if—

(i) the individual were an employee of an employer (other than himself or herself),

Effective date.

(ii) section 102(a)(1)(F) of the Family and Medical Leave Act of 1993 applied after March 31, 2021.

(2) RULES OF APPLICATION.—For purposes of paragraph (1)(B), in determining whether an individual would be entitled to receive paid leave under the Emergency Family and Medical Leave Act—

(A) section 110(a)(2)(A) of the Family and Medical Leave Act of 1993 shall be applied by inserting "or any reason for leave described in section 5102(a) of the Families First Coronavirus Response Act, or the employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID–19 and such employee has been exposed to COVID–19 or is unable to work pending the results of such test or diagnosis, or the employee is obtaining immunization related to COVID–19 or recovering from any injury, disability, illness, or condition related to such immunization" after "public health emergency", and

(B) section 110(b) of such Act shall be applied—

(i) without regard to paragraph (1) thereof, and

(ii) by striking "after taking leave after such section for 10 days" in paragraph (2)(A) thereof.

(c) QUALIFIED FAMILY LEAVE EQUIVALENT AMOUNT.—For purposes of this section— Definitions.

(1) IN GENERAL.—The term "qualified family leave equivalent amount" means, with respect to any eligible self-employed individual, an amount equal to the product of—

(A) the number of days (not to exceed 60) during the taxable year that the individual is unable to perform services in any trade or business referred to in section 1402 of the Internal Revenue Code of 1986 for a reason with respect to which such individual would be entitled to receive paid leave as described in subsection (b) of this section, multiplied by Time period.

(B) the lesser of—

(i) 67 percent of the average daily self-employment income of the individual for the taxable year, or

(ii) $200.

(2) AVERAGE DAILY SELF-EMPLOYMENT INCOME.—For purposes of this subsection, the term "average daily self-employment income" means an amount equal to—

(A) the net earnings from self-employment income of the individual for the taxable year, divided by

(B) 260.

(3) ELECTION TO USE PRIOR YEAR NET EARNINGS FROM SELF-EMPLOYMENT INCOME.—In the case of an individual who elects (at such time and in such manner as the Secretary may provide) the application of this paragraph, paragraph (2)(A) shall be applied by substituting "the prior taxable year" for "the taxable year". Applicability.

(4) COORDINATION WITH CREDIT FOR SICK LEAVE.—Any day taken into account in determining the qualified sick leave equivalent amount with respect to any eligible-self employed individual under section 9642 shall not be take into account in determining the qualified family leave equivalent amount with respect to such individual under this section. Determination.

(d) CREDIT REFUNDABLE.—

(1) IN GENERAL.—The credit determined under this section shall be treated as a credit allowed to the taxpayer under subpart C of part IV of subchapter A of chapter 1 of such Code.

(2) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any refund due from the credit determined under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(e) SPECIAL RULES.—

(1) DOCUMENTATION.—No credit shall be allowed under this section unless the individual maintains such documentation as the Secretary may prescribe to establish such individual as an eligible self-employed individual.

(2) DENIAL OF DOUBLE BENEFIT.—In the case of an individual who receives wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) or compensation (as defined in section 3231(e) of such Code) paid by an employer which are required to be paid by reason of the Emergency Family and Medical Leave Expansion Act, the qualified family leave equivalent amount otherwise described in subsection (c) of this section shall be reduced (but not below zero) to the extent

that the sum of the amount described in such subsection and in section 3132(b)(1) of such Code exceeds $12,000.

(3) REFERENCES TO EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT.—Any reference in this section to the Emergency Family and Medical Leave Expansion Act shall be treated as including a reference to the amendments made by such Act.

Time period.

(f) APPLICATION OF SECTION.—Only days occurring during the period beginning on April 1, 2021 and ending on September 30, 2021, may be taken into account under subsection (c)(1)(A).

(g) APPLICATION OF CREDIT IN CERTAIN POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary shall pay to each possession of the United States which has a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of the provisions of this section. Such amounts shall be determined by the Secretary based on information provided by the government of the respective possession.

Determination.

Estimates.

(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the provisions of this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary, under which such possession will promptly distribute such payments to its residents.

Plan.

Definition.
Determination.

(3) MIRROR CODE TAX SYSTEM.—For purposes of this section, the term "mirror code tax system" means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(4) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(h) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of this section, and

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section.

PART 6—EMPLOYEE RETENTION CREDIT

SEC. 9651. EXTENSION OF EMPLOYEE RETENTION CREDIT.

(a) IN GENERAL.—Subchapter D of chapter 21 of subtitle C of the Internal Revenue Code of 1986, as added by section 9641, is amended by adding at the end the following:

"SEC. 3134. EMPLOYEE RETENTION CREDIT FOR EMPLOYERS SUBJECT TO CLOSURE DUE TO COVID–19.

Time periods.
26 USC 3134.

"(a) IN GENERAL.—In the case of an eligible employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 70 percent of the qualified wages with respect to each employee of such employer for such calendar quarter.

"(b) LIMITATIONS AND REFUNDABILITY.—

"(1) IN GENERAL.—

"(A) WAGES TAKEN INTO ACCOUNT.—The amount of qualified wages with respect to any employee which may be taken into account under subsection (a) by the eligible employer for any calendar quarter shall not exceed $10,000.

"(B) RECOVERY STARTUP BUSINESSES.—In the case of an eligible employer which is a recovery startup business (as defined in subsection (c)(5)), the amount of the credit allowed under subsection (a) (after application of subparagraph (A)) for any calendar quarter shall not exceed $50,000.

"(2) CREDIT LIMITED TO EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the applicable employment taxes (reduced by any credits allowed under sections 3131 and 3132) on the wages paid with respect to the employment of all the employees of the eligible employer for such calendar quarter.

"(3) REFUNDABILITY OF EXCESS CREDIT.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b).

"(c) DEFINITIONS.—For purposes of this section—

"(1) APPLICABLE EMPLOYMENT TAXES.—The term 'applicable employment taxes' means the following:

"(A) The taxes imposed under section 3111(b).

"(B) So much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b).

"(2) ELIGIBLE EMPLOYER.—

"(A) IN GENERAL.—The term 'eligible employer' means any employer—

"(i) which was carrying on a trade or business during the calendar quarter for which the credit is determined under subsection (a), and

"(ii) with respect to any calendar quarter, for which—

"(I) the operation of the trade or business described in clause (i) is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019 (COVID–19),

"(II) the gross receipts (within the meaning of section 448(c)) of such employer for such calendar quarter are less than 80 percent of the gross receipts of such employer for the same calendar quarter in calendar year 2019, or

"(III) the employer is a recovery startup business (as defined in paragraph (5)).

With respect to any employer for any calendar quarter, if such employer was not in existence as of the beginning of the same calendar quarter in calendar year 2019, clause (ii)(II) shall be applied by substituting '2020' for '2019'.

Applicability.

"(B) ELECTION TO USE ALTERNATIVE QUARTER.—At the election of the employer—

"(i) subparagraph (A)(ii)(II) shall be applied—

"(I) by substituting 'for the immediately preceding calendar quarter' for 'for such calendar quarter', and

"(II) by substituting 'the corresponding calendar quarter in calendar year 2019' for 'the same calendar quarter in calendar year 2019', and

"(ii) the last sentence of subparagraph (A) shall be applied by substituting 'the corresponding calendar quarter in calendar year 2019' for 'the same calendar quarter in calendar year 2019'.

An election under this subparagraph shall be made at such time and in such manner as the Secretary shall prescribe.

"(C) TAX-EXEMPT ORGANIZATIONS.—In the case of an organization which is described in section 501(c) and exempt from tax under section 501(a)—

Applicability.

"(i) clauses (i) and (ii)(I) of subparagraph (A) shall apply to all operations of such organization, and

"(ii) any reference in this section to gross receipts shall be treated as a reference to gross receipts within the meaning of section 6033.

"(3) QUALIFIED WAGES.—

"(A) IN GENERAL.—The term 'qualified wages' means—

"(i) in the case of an eligible employer for which the average number of full-time employees (within the meaning of section 4980H) employed by such eligible employer during 2019 was greater than 500, wages paid by such eligible employer with respect to which an employee is not providing services due to circumstances described in subclause (I) or (II) of paragraph (2)(A)(ii), or

"(ii) in the case of an eligible employer for which the average number of full-time employees (within the meaning of section 4980H) employed by such eligible employer during 2019 was not greater than 500—

"(I) with respect to an eligible employer described in subclause (I) of paragraph (2)(A)(ii), wages paid by such eligible employer with respect to an employee during any period described in such clause, or

"(II) with respect to an eligible employer described in subclause (II) of such paragraph, wages paid by such eligible employer with respect to an employee during such quarter.

Applicability.

"(B) SPECIAL RULE FOR EMPLOYERS NOT IN EXISTENCE IN 2019.—In the case of any employer that was not in

existence in 2019, subparagraph (A) shall be applied by substituting '2020' for '2019' each place it appears.

"(C) SEVERELY FINANCIALLY DISTRESSED EMPLOYERS.—

"(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), in the case of a severely financially distressed employer, the term 'qualified wages' means wages paid by such employer with respect to an employee during any calendar quarter.

"(ii) DEFINITION.—The term 'severely financially distressed employer' means an eligible employer as defined in paragraph (2), determined by substituting 'less than 10 percent' for 'less than 80 percent' in subparagraph (A)(ii)(II) thereof.

"(D) EXCEPTION.—The term 'qualified wages' shall not include any wages taken into account under sections 41, 45A, 45P, 45S, 51, 1396, 3131, and 3132.

"(4) WAGES.—

"(A) IN GENERAL.—The term 'wages' means wages (as defined in section 3121(a)) and compensation (as defined in section 3231(e)). For purposes of the preceding sentence, in the case of any organization or entity described in subsection (f)(2), wages as defined in section 3121(a) shall be determined without regard to paragraphs (5), (6), (7), (10), and (13) of section 3121(b) (except with respect to services performed in a penal institution by an inmate thereof). Determination.

"(B) ALLOWANCE FOR CERTAIN HEALTH PLAN EXPENSES.—

"(i) IN GENERAL.—Such term shall include amounts paid by the eligible employer to provide and maintain a group health plan (as defined in section 5000(b)(1)), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a).

"(ii) ALLOCATION RULES.—For purposes of this section, amounts treated as wages under clause (i) shall be treated as paid with respect to any employee (and with respect to any period) to the extent that such amounts are properly allocable to such employee (and to such period) in such manner as the Secretary may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among periods of coverage.

"(5) RECOVERY STARTUP BUSINESS.—The term 'recovery startup business' means any employer—

"(A) which began carrying on any trade or business after February 15, 2020, Effective date.

"(B) for which the average annual gross receipts of such employer (as determined under rules similar to the rules under section 448(c)(3)) for the 3-taxable-year period ending with the taxable year which precedes the calendar quarter for which the credit is determined under subsection (a) does not exceed $1,000,000, and Determination. Time period.

"(C) which, with respect to such calendar quarter, is not described in subclause (I) or (II) of paragraph (2)(A)(ii).

"(6) OTHER TERMS.—Any term used in this section which is also used in this chapter or chapter 22 shall have the same meaning as when used in such chapter.

"(d) AGGREGATION RULE.—All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (o) of section 414, shall be treated as one employer for purposes of this section.

"(e) CERTAIN RULES TO APPLY.—For purposes of this section, rules similar to the rules of sections 51(i)(1) and 280C(a) shall apply.

"(f) CERTAIN GOVERNMENTAL EMPLOYERS.—

"(1) IN GENERAL.—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

"(2) EXCEPTION.—Paragraph (1) shall not apply to—

"(A) any organization described in section 501(c)(1) and exempt from tax under section 501(a), or

"(B) any entity described in paragraph (1) if—

"(i) such entity is a college or university, or

"(ii) the principal purpose or function of such entity is providing medical or hospital care.

In the case of any entity described in subparagraph (B), such entity shall be treated as satisfying the requirements of subsection (c)(2)(A)(i).

"(g) ELECTION TO NOT TAKE CERTAIN WAGES INTO ACCOUNT.—This section shall not apply to so much of the qualified wages paid by an eligible employer as such employer elects (at such time and in such manner as the Secretary may prescribe) to not take into account for purposes of this section.

"(h) COORDINATION WITH CERTAIN PROGRAMS.—

"(1) IN GENERAL.—This section shall not apply to so much of the qualified wages paid by an eligible employer as are taken into account as payroll costs in connection with—

"(A) a covered loan under section 7(a)(37) or 7A of the Small Business Act,

"(B) a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, or

"(C) a restaurant revitalization grant under section 5003 of the American Rescue Plan Act of 2021.

"(2) APPLICATION WHERE PPP LOANS NOT FORGIVEN.—The Secretary shall issue guidance providing that payroll costs paid during the covered period shall not fail to be treated as qualified wages under this section by reason of paragraph (1) to the extent that—

"(A) a covered loan of the taxpayer under section 7(a)(37) of the Small Business Act is not forgiven by reason of a decision under section 7(a)(37)(J) of such Act, or

"(B) a covered loan of the taxpayer under section 7A of the Small Business Act is not forgiven by reason of a decision under section 7A(g) of such Act.

Terms used in the preceding sentence which are also used in section 7A(g) or 7(a)(37)(J) of the Small Business Act shall, when applied in connection with either such section, have the same meaning as when used in such section, respectively.

"(i) THIRD PARTY PAYORS.—Any credit allowed under this section shall be treated as a credit described in section 3511(d)(2).

"(j) ADVANCE PAYMENTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no advance payment of the credit under subsection (a) shall be allowed.

"(2) ADVANCE PAYMENTS TO SMALL EMPLOYERS.—

"(A) IN GENERAL.—Under rules provided by the Secretary, an eligible employer for which the average number of full-time employees (within the meaning of section 4980H) employed by such eligible employer during 2019 was not greater than 500 may elect for any calendar quarter to receive an advance payment of the credit under subsection (a) for such quarter in an amount not to exceed 70 percent of the average quarterly wages paid by the employer in calendar year 2019.

"(B) SPECIAL RULE FOR SEASONAL EMPLOYERS.—In the case of any employer who employs seasonal workers (as defined in section 45R(d)(5)(B)), the employer may elect to apply subparagraph (A) by substituting 'the wages for the calendar quarter in 2019 which corresponds to the calendar quarter to which the election relates' for 'the average quarterly wages paid by the employer in calendar year 2019'.

"(C) SPECIAL RULE FOR EMPLOYERS NOT IN EXISTENCE IN 2019.—In the case of any employer that was not in existence in 2019, subparagraphs (A) and (B) shall each be applied by substituting '2020' for '2019' each place it appears. Applicability.

"(3) RECONCILIATION OF CREDIT WITH ADVANCE PAYMENTS.—

"(A) IN GENERAL.—The amount of credit which would (but for this subsection) be allowed under this section shall be reduced (but not below zero) by the aggregate payment allowed to the taxpayer under paragraph (2). Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

"(B) EXCESS ADVANCE PAYMENTS.—If the advance payments to a taxpayer under paragraph (2) for a calendar quarter exceed the credit allowed by this section (determined without regard to subparagraph (A)), the tax imposed under section 3111(b) or so much of the tax imposed under section 3221(a) as is attributable to the rate in effect under section 3111(b) (whichever is applicable) for the calendar quarter shall be increased by the amount of such excess.

"(k) TREATMENT OF DEPOSITS.—The Secretary shall waive any penalty under section 6656 for any failure to make a deposit of any applicable employment taxes if the Secretary determines that such failure was due to the reasonable anticipation of the credit allowed under this section. Waiver. Determination.

"(l) EXTENSION OF LIMITATION ON ASSESSMENT.—Notwithstanding section 6501, the limitation on the time period for the assessment of any amount attributable to a credit claimed under this section shall not expire before the date that is 5 years after the later of— Time period.

"(1) the date on which the original return which includes the calendar quarter with respect to which such credit is determined is filed, or

"(2) the date on which such return is treated as filed under section 6501(b)(2).

"(m) REGULATIONS AND GUIDANCE.—The Secretary shall issue such forms, instructions, regulations, and other guidance as are necessary—

"(1) to allow the advance payment of the credit under subsection (a) as provided in subsection (j)(2), subject to the limitations provided in this section, based on such information as the Secretary shall require,

"(2) with respect to the application of the credit under subsection (a) to third party payors (including professional employer organizations, certified professional employer organizations, or agents under section 3504), including regulations or guidance allowing such payors to submit documentation necessary to substantiate the eligible employer status of employers that use such payors, and

"(3) to prevent the avoidance of the purposes of the limitations under this section, including through the leaseback of employees.

Any forms, instructions, regulations, or other guidance described in paragraph (2) shall require the customer to be responsible for the accounting of the credit and for any liability for improperly claimed credits and shall require the certified professional employer organization or other third party payor to accurately report such tax credits based on the information provided by the customer.

Time period.

"(n) APPLICATION.—This section shall only apply to wages paid after June 30, 2021, and before January 1, 2022.".

(b) REFUNDS.—Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting "3134," before "6428".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter D of chapter 21 of subtitle C of the Internal Revenue Code of 1986 is amended by adding at the end the following:

26 USC 3131 prec.

"Sec. 3134. Employee retention credit for employers subject to closure due to COVID–19.".

Applicability. 26 USC 3134 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar quarters beginning after June 30, 2021.

PART 7—PREMIUM TAX CREDIT

SEC. 9661. IMPROVING AFFORDABILITY BY EXPANDING PREMIUM ASSISTANCE FOR CONSUMERS.

26 USC 36B.

(a) IN GENERAL.—Section 36B(b)(3)(A) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

"(iii) TEMPORARY PERCENTAGES FOR 2021 AND 2022.—In the case of a taxable year beginning in 2021 or 2022—

"(I) clause (ii) shall not apply for purposes of adjusting premium percentages under this subparagraph, and

Applicability.

"(II) the following table shall be applied in lieu of the table contained in clause (i):

"In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 150.0 percent	0.0	0.0
150.0 percent up to 200.0 percent	0.0	2.0
200.0 percent up to 250.0 percent	2.0	4.0
250.0 percent up to 300.0 percent	4.0	6.0
300.0 percent up to 400.0 percent	6.0	8.5
400.0 percent and higher	8.5	8.5".

(b) CONFORMING AMENDMENT.—Section 36B(c)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph: 26 USC 36B.

"(E) TEMPORARY RULE FOR 2021 AND 2022.—In the case of a taxable year beginning in 2021 or 2022, subparagraph (A) shall be applied without regard to 'but does not exceed 400 percent'.". Applicability.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020. 26 USC 36B note.

SEC. 9662. TEMPORARY MODIFICATION OF LIMITATIONS ON RECONCILIATION OF TAX CREDITS FOR COVERAGE UNDER A QUALIFIED HEALTH PLAN WITH ADVANCE PAYMENTS OF SUCH CREDIT.

(a) IN GENERAL.—Section 36B(f)(2)(B) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

"(iii) TEMPORARY MODIFICATION OF LIMITATION ON INCREASE.—In the case of any taxable year beginning in 2020, for any taxpayer who files for such taxable year an income tax return reconciling any advance payment of the credit under this section, the Secretary shall treat subparagraph (A) as not applying.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2019. 26 USC 36B note.

SEC. 9663. APPLICATION OF PREMIUM TAX CREDIT IN CASE OF INDIVIDUALS RECEIVING UNEMPLOYMENT COMPENSATION DURING 2021.

(a) IN GENERAL.—Section 36B of the Internal Revenue Code of 1986 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) SPECIAL RULE FOR INDIVIDUALS WHO RECEIVE UNEMPLOYMENT COMPENSATION DURING 2021.—

"(1) IN GENERAL.—For purposes of this section, in the case of a taxpayer who has received, or has been approved to receive, unemployment compensation for any week beginning during 2021, for the taxable year in which such week begins—

"(A) such taxpayer shall be treated as an applicable taxpayer, and

"(B) there shall not be taken into account any household income of the taxpayer in excess of 133 percent of the poverty line for a family of the size involved.

Definition.

"(2) UNEMPLOYMENT COMPENSATION.—For purposes of this subsection, the term 'unemployment compensation' has the meaning given such term in section 85(b).

"(3) EVIDENCE OF UNEMPLOYMENT COMPENSATION.—For purposes of this subsection, a taxpayer shall not be treated as having received (or been approved to receive) unemployment compensation for any week unless such taxpayer provides self-attestation of, and such documentation as the Secretary shall prescribe which demonstrates, such receipt or approval.

"(4) CLARIFICATION OF RULES REMAINING APPLICABLE.—

"(A) JOINT RETURN REQUIREMENT.—Paragraph (1)(A) shall not affect the application of subsection (c)(1)(C).

"(B) HOUSEHOLD INCOME AND AFFORDABILLITY.—Paragraph (1)(B) shall not apply to any determination of household income for purposes of paragraph (2)(C)(i)(II) or (4)(C)(ii) of subsection (c)".

26 USC 36B note.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2020.

PART 8—MISCELLANEOUS PROVISIONS

SEC. 9671. REPEAL OF ELECTION TO ALLOCATE INTEREST, ETC. ON WORLDWIDE BASIS.

26 USC 864.

(a) IN GENERAL.—Section 864 of the Internal Revenue Code of 1986 is amended by striking subsection (f).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2020.

15 USC 9009b note.

SEC. 9672. TAX TREATMENT OF TARGETED EIDL ADVANCES.

For purposes of the Internal Revenue Code of 1986—

(1) amounts received from the Administrator of the Small Business Administration in the form of a targeted EIDL advance under section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116–260) shall not be included in the gross income of the person that receives such amounts,

(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

(3) in the case of a partnership or S corporation that receives such amounts—

(A) any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986, and

Regulations. Determinations.

(B) the Secretary of the Treasury (or the Secretary's delegate) shall prescribe rules for determining a partner's distributive share of any amount described in subparagraph (A) for purposes of section 705 of the Internal Revenue Code of 1986.

15 USC 9009c note.

SEC. 9673. TAX TREATMENT OF RESTAURANT REVITALIZATION GRANTS.

For purposes of the Internal Revenue Code of 1986—

(1) amounts received from the Administrator of the Small Business Administration in the form of a restaurant revitalization grant under section 5003 shall not be included in the gross income of the person that receives such amounts,

(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

(3) in the case of a partnership or S corporation that receives such amounts—

(A) except as otherwise provided by the Secretary of the Treasury (or the Secretary's delegate), any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986, and

(B) the Secretary of the Treasury (or the Secretary's delegate) shall prescribe rules for determining a partner's distributive share of any amount described in subparagraph (A) for purposes of section 705 of the Internal Revenue Code of 1986.

Regulations. Determinations.

SEC. 9674. MODIFICATION OF EXCEPTIONS FOR REPORTING OF THIRD PARTY NETWORK TRANSACTIONS.

(a) IN GENERAL.—Section 6050W(e) of the Internal Revenue Code of 1986 is amended to read as follows:

26 USC 6050W.

"(e) DE MINIMIS EXCEPTION FOR THIRD PARTY SETTLEMENT ORGANIZATIONS.—A third party settlement organization shall not be required to report any information under subsection (a) with respect to third party network transactions of any participating payee if the amount which would otherwise be reported under subsection (a)(2) with respect to such transactions does not exceed $600.".

(b) CLARIFICATION THAT REPORTING IS NOT REQUIRED ON TRANSACTIONS WHICH ARE NOT FOR GOODS OR SERVICES.—Section 6050W(c)(3) of such Code is amended by inserting "described in subsection (d)(3)(A)(iii)" after "any transaction".

(c) EFFECTIVE DATE.—

Applicability. 26 USC 6050W note.

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to returns for calendar years beginning after December 31, 2021.

(2) CLARIFICATION.—The amendment made by subsection (b) shall apply to transactions after the date of the enactment of this Act.

SEC. 9675. MODIFICATION OF TREATMENT OF STUDENT LOAN FORGIVENESS.

(a) IN GENERAL.—Section 108(f) of the Internal Revenue Code of 1986 is amended by striking paragraph (5) and inserting the following:

"(5) SPECIAL RULE FOR DISCHARGES IN 2021 THROUGH 2025.—Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) after December 31, 2020, and before January 1, 2026, of—

"(A) any loan provided expressly for postsecondary educational expenses, regardless of whether provided through the educational institution or directly to the borrower, if such loan was made, insured, or guaranteed by—

"(i) the United States, or an instrumentality or agency thereof,

"(ii) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof, or

"(iii) an eligible educational institution (as defined in section 25A),

"(B) any private education loan (as defined in section 140(a)(7) of the Truth in Lending Act),

"(C) any loan made by any educational organization described in section 170(b)(1)(A)(ii) if such loan is made—

"(i) pursuant to an agreement with any entity described in subparagraph (A) or any private education lender (as defined in section 140(a) of the Truth in Lending Act) under which the funds from which the loan was made were provided to such educational organization, or

"(ii) pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a), or

"(D) any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (C)(ii).

The preceding sentence shall not apply to the discharge of a loan made by an organization described in subparagraph (C) or made by a private education lender (as defined in section 140(a)(7) of the Truth in Lending Act) if the discharge is on account of services performed for either such organization or for such private education lender.".

26 USC 108.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to discharges of loans after December 31, 2020.

Subtitle H—Pensions

26 USC 432 note.

SEC. 9701. TEMPORARY DELAY OF DESIGNATION OF MULTIEMPLOYER PLANS AS IN ENDANGERED, CRITICAL, OR CRITICAL AND DECLINING STATUS.

(a) IN GENERAL.—Notwithstanding the actuarial certification under section 305(b)(3) of the Employee Retirement Income Security Act of 1974 and section 432(b)(3) of the Internal Revenue Code of 1986, if a plan sponsor of a multiemployer plan elects the application of this section, then, for purposes of section 305 of such Act and section 432 of such Code—

Time period.

(1) the status of the plan for its first plan year beginning during the period beginning on March 1, 2020, and ending on February 28, 2021, or the next succeeding plan year (as designated by the plan sponsor in such election), shall be the

same as the status of such plan under such sections for the plan year preceding such designated plan year, and

(2) in the case of a plan which was in endangered or critical status for the plan year preceding the designated plan year described in paragraph (1), the plan shall not be required to update its plan or schedules under section 305(c)(6) of such Act and section 432(c)(6) of such Code, or section 305(e)(3)(B) of such Act and section 432(e)(3)(B) of such Code, whichever is applicable, until the plan year following the designated plan year described in paragraph (1).

(b) EXCEPTION FOR PLANS BECOMING CRITICAL DURING ELECTION.—If—

(1) an election was made under subsection (a) with respect to a multiemployer plan, and

(2) such plan has, without regard to such election, been certified by the plan actuary under section 305(b)(3) of the Employee Retirement Income Security Act of 1974 and section 432(b)(3) of the Internal Revenue Code of 1986 to be in critical status for the designated plan year described in subsection (a)(1), then such plan shall be treated as a plan in critical status for such plan year for purposes of applying section 4971(g)(1)(A) of such Code, section 302(b)(3) of such Act (without regard to the second sentence thereof), and section 412(b)(3) of such Code (without regard to the second sentence thereof). Certification. Applicability.

(c) ELECTION AND NOTICE.—

(1) ELECTION.—An election under subsection (a)—

(A) shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate may prescribe and, once made, may be revoked only with the consent of the Secretary, and

(B) if made—

(i) before the date the annual certification is submitted to the Secretary or the Secretary's delegate under section 305(b)(3) of such Act and section 432(b)(3) of such Code, shall be included with such annual certification, and

(ii) after such date, shall be submitted to the Secretary or the Secretary's delegate not later than 30 days after the date of the election. Deadline.

(2) NOTICE TO PARTICIPANTS.—

(A) IN GENERAL.—Notwithstanding section 305(b)(3)(D) of the Employee Retirement Income Security Act of 1974 and section 432(b)(3)(D) of the Internal Revenue Code of 1986, if, by reason of an election made under subsection (a), the plan is in neither endangered nor critical status—

(i) the plan sponsor of a multiemployer plan shall not be required to provide notice under such sections, and

(ii) the plan sponsor shall provide to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor a notice of the election under subsection (a) and such other information as the Secretary of the Treasury (in consultation with the Secretary of Labor) may require— Consultation. Deadlines.

(I) if the election is made before the date the annual certification is submitted to the Secretary

or the Secretary's delegate under section 305(b)(3) of such Act and section 432(b)(3) of such Code, not later than 30 days after the date of the certification, and

(II) if the election is made after such date, not later than 30 days after the date of the election.

Certification.

(B) NOTICE OF ENDANGERED STATUS.—Notwithstanding section 305(b)(3)(D) of such Act and section 432(b)(3)(D) of such Code, if the plan is certified to be in critical status for any plan year but is in endangered status by reason of an election made under subsection (a), the notice provided under such sections shall be the notice which would have been provided if the plan had been certified to be in endangered status.

26 USC 432 note.

SEC. 9702. TEMPORARY EXTENSION OF THE FUNDING IMPROVEMENT AND REHABILITATION PERIODS FOR MULTIEMPLOYER PENSION PLANS IN CRITICAL AND ENDANGERED STATUS FOR 2020 OR 2021.

(a) IN GENERAL.—If the plan sponsor of a multiemployer plan which is in endangered or critical status for a plan year beginning in 2020 or 2021 (determined after application of section 9701) elects the application of this section, then, for purposes of section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986, the plan's funding improvement period or rehabilitation period, whichever is applicable, shall be extended by 5 years.

(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

Consultation.

(1) ELECTION.—An election under this section shall be made at such time, and in such manner and form, as (in consultation with the Secretary of Labor) the Secretary of the Treasury or the Secretary's delegate may prescribe.

(2) DEFINITIONS.—Any term which is used in this section which is also used in section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such sections.

Applicability.

(c) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2019.

SEC. 9703. ADJUSTMENTS TO FUNDING STANDARD ACCOUNT RULES.

(a) ADJUSTMENTS.—

(1) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 304(b)(8) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1084(b)) is amended by adding at the end the following new subparagraph:

Effective date.
Applicability.

"(F) RELIEF FOR 2020 AND 2021.—A multiemployer plan with respect to which the solvency test under subparagraph (C) is met as of February 29, 2020, may elect to apply this paragraph (without regard to whether such plan previously elected the application of this paragraph)—

"(i) by substituting 'February 29, 2020' for 'August 31, 2008' each place it appears in subparagraphs (A)(i), (B)(i)(I), and (B)(i)(II),

Determination.

"(ii) by inserting 'and other losses related to the virus SARS–CoV–2 or coronavirus disease 2019 (COVID–19) (including experience losses related to

reductions in contributions, reductions in employment, and deviations from anticipated retirement rates, as determined by the plan sponsor)' after 'net investment losses' in subparagraph (A)(i), and

"(iii) by substituting 'this subparagraph or subparagraph (A)' for 'this subparagraph and subparagraph (A) both' in subparagraph (B)(iii).

The preceding sentence shall not apply to a plan to which special financial assistance is granted under section 4262. For purposes of the application of this subparagraph, the Secretary of the Treasury shall rely on the plan sponsor's calculations of plan losses unless such calculations are clearly erroneous.".

(2) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 431(b)(8) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph: 26 USC 431.

"(F) RELIEF FOR 2020 AND 2021.—A multiemployer plan with respect to which the solvency test under subparagraph (C) is met as of February 29, 2020, may elect to apply this paragraph (without regard to whether such plan previously elected the application of this paragraph)— Effective date. Applicability.

"(i) by substituting 'February 29, 2020' for 'August 31, 2008' each place it appears in subparagraphs (A)(i), (B)(i)(I), and (B)(i)(II),

"(ii) by inserting 'and other losses related to the virus SARS–CoV–2 or coronavirus disease 2019 (COVID–19) (including experience losses related to reductions in contributions, reductions in employment, and deviations from anticipated retirement rates, as determined by the plan sponsor)' after 'net investment losses' in subparagraph (A)(i), and

"(iii) by substituting 'this subparagraph or subparagraph (A)' for 'this subparagraph and subparagraph (A) both' in subparagraph (B)(iii).

The preceding sentence shall not apply to a plan to which special financial assistance is granted under section 4262 of the Employee Retirement Income Security Act of 1974. For purposes of the application of this subparagraph, the Secretary shall rely on the plan sponsor's calculations of plan losses unless such calculations are clearly erroneous.".

(b) EFFECTIVE DATES.— Applicability. 26 USC 431 note.

(1) IN GENERAL.—The amendments made by this section shall take effect as of the first day of the first plan year ending on or after February 29, 2020, except that any election a plan makes pursuant to this section that affects the plan's funding standard account for the first plan year beginning after February 29, 2020, shall be disregarded for purposes of applying the provisions of section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986 to such plan year.

(2) RESTRICTIONS ON BENEFIT INCREASES.—Notwithstanding paragraph (1), the restrictions on plan amendments increasing benefits in sections 304(b)(8)(D) of such Act and 431(b)(8)(D) of such Code, as applied by the amendments made by this section, shall take effect on the date of enactment of this Act.

SEC. 9704. SPECIAL FINANCIAL ASSISTANCE PROGRAM FOR FINANCIALLY TROUBLED MULTIEMPLOYER PLANS.

(a) APPROPRIATION.—Section 4005 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1305) is amended by adding at the end the following:

"(i)(1) An eighth fund shall be established for special financial assistance to multiemployer pension plans, as provided under section 4262, and to pay for necessary administrative and operating expenses of the corporation relating to such assistance.

"(2) There is appropriated from the general fund such amounts as are necessary for the costs of providing financial assistance under section 4262 and necessary administrative and operating expenses of the corporation. The eighth fund established under this subsection shall be credited with amounts from time to time as the Secretary of the Treasury, in conjunction with the Director of the Pension Benefit Guaranty Corporation, determines appropriate, from the general fund of the Treasury, but in no case shall such transfers occur after September 30, 2030.".

Determination.
Termination date.

(b) FINANCIAL ASSISTANCE AUTHORITY.—The Employee Retirement Income Security Act of 1974 is amended by inserting after section 4261 of such Act (29 U.S.C. 1431) the following:

29 USC 1432.

"SEC. 4262. SPECIAL FINANCIAL ASSISTANCE BY THE CORPORATION.

"(a) SPECIAL FINANCIAL ASSISTANCE.—

"(1) IN GENERAL.—The corporation shall provide special financial assistance to an eligible multiemployer plan under this section, upon the application of a plan sponsor of such a plan for such assistance.

"(2) INAPPLICABILITY OF CERTAIN REPAYMENT OBLIGATION.—A plan receiving special financial assistance pursuant to this section shall not be subject to repayment obligations with respect to such special financial assistance.

"(b) ELIGIBLE MULTIEMPLOYER PLANS.—

Time period.

"(1) IN GENERAL.—For purposes of this section, a multiemployer plan is an eligible multiemployer plan if—

"(A) the plan is in critical and declining status (within the meaning of section 305(b)(6)) in any plan year beginning in 2020 through 2022;

"(B) a suspension of benefits has been approved with respect to the plan under section 305(e)(9) as of the date of the enactment of this section;

Certification.

"(C) in any plan year beginning in 2020 through 2022, the plan is certified by the plan actuary to be in critical status (within the meaning of section 305(b)(2)), has a modified funded percentage of less than 40 percent, and has a ratio of active to inactive participants which is less than 2 to 3; or

"(D) the plan became insolvent for purposes of section 418E of the Internal Revenue Code of 1986 after December 16, 2014, and has remained so insolvent and has not been terminated as of the date of enactment of this section.

Definition.

"(2) MODIFIED FUNDED PERCENTAGE.—For purposes of paragraph (1)(C), the term 'modified funded percentage' means the percentage equal to a fraction the numerator of which is current value of plan assets (as defined in section 3(26) of such Act) and the denominator of which is current liabilities (as defined

in section 431(c)(6)(D) of such Code and section 304(c)(6)(D) of such Act).

"(c) APPLICATIONS FOR SPECIAL FINANCIAL ASSISTANCE.—Within 120 days of the date of enactment of this section, the corporation shall issue regulations or guidance setting forth requirements for special financial assistance applications under this section. In such regulations or guidance, the corporation shall— Deadline. Regulations. Requirements.

"(1) limit the materials required for a special financial assistance application to the minimum necessary to make a determination on the application;

"(2) specify effective dates for transfers of special financial assistance following approval of an application, based on the effective date of the supporting actuarial analysis and the date on which the application is submitted; and

"(3) provide for an alternate application for special financial assistance under this section, which may be used by a plan that has been approved for a partition under section 4233 before the date of enactment of this section.

"(d) TEMPORARY PRIORITY CONSIDERATION OF APPLICATIONS.—

"(1) IN GENERAL.—The corporation may specify in regulations or guidance under subsection (c) that, during a period no longer than the first 2 years following the date of enactment of this section, applications may not be filed by an eligible multiemployer plan unless— Regulations. Time period.

"(A) the eligible multiemployer plan is insolvent or is likely to become insolvent within 5 years of the date of enactment of this section; Time period.

"(B) the corporation projects the eligible multiemployer plan to have a present value of financial assistance payments under section 4261 that exceeds $1,000,000,000 if the special financial assistance is not ordered;

"(C) the eligible multiemployer plan has implemented benefit suspensions under section 305(e)(9) as of the date of the enactment of this section; or

"(D) the corporation determines it appropriate based on other similar circumstances. Determination.

"(e) ACTUARIAL ASSUMPTIONS.— Determinations.

"(1) ELIGIBILITY.—For purposes of determining eligibility for special financial assistance, the corporation shall accept assumptions incorporated in a multiemployer plan's determination that it is in critical status or critical and declining status (within the meaning of section 305(b)) for certifications of plan status completed before January 1, 2021, unless such assumptions are clearly erroneous. For certifications of plan status completed after December 31, 2020, a plan shall determine whether it is in critical or critical and declining status for purposes of eligibility for special financial assistance by using the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions (excluding the plan's interest rate) are unreasonable. Termination date. Certifications. Effective date.

"(2) AMOUNT OF FINANCIAL ASSISTANCE.—In determining the amount of special financial assistance in its application, an eligible multiemployer plan shall— Termination date.

"(A) use the interest rate used by the plan in its most recently completed certification of plan status before

January 1, 2021, provided that such interest rate may not exceed the interest rate limit; and

"(B) for other assumptions, use the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions are unreasonable.

Time period.

"(3) INTEREST RATE LIMIT.—The interest rate limit for purposes of this subsection is the rate specified in section 303(h)(2)(C)(iii) (disregarding modifications made under clause (iv) of such section) for the month in which the application for special financial assistance is filed by the eligible multiemployer plan or the 3 preceding months, with such specified rate increased by 200 basis points.

Determinations. Disclosure.

"(4) CHANGES IN ASSUMPTIONS.—If a plan determines that use of one or more prior assumptions is unreasonable, the plan may propose in its application to change such assumptions, provided that the plan discloses such changes in its application and describes why such assumptions are no longer reasonable. The corporation shall accept such changed assumptions unless it determines the changes are unreasonable, individually or in the aggregate. The plan may not propose a change to the interest rate otherwise required under this subsection for eligibility or financial assistance amount.

"(f) APPLICATION DEADLINE.—Any application by a plan for special financial assistance under this section shall be submitted to the corporation (and, in the case of a plan to which section 432(k)(1)(D) of the Internal Revenue Code of 1986 applies, to the Secretary of the Treasury) no later than December 31, 2025, and any revised application for special financial assistance shall be submitted no later than December 31, 2026.

Notifications. Deadlines.

"(g) DETERMINATIONS ON APPLICATIONS.—A plan's application for special financial assistance under this section that is timely filed in accordance with the regulations or guidance issued under subsection (c) shall be deemed approved unless the corporation notifies the plan within 120 days of the filing of the application that the application is incomplete, any proposed change or assumption is unreasonable, or the plan is not eligible under this section. Such notice shall specify the reasons the plan is ineligible for special financial assistance, any proposed change or assumption is unreasonable, or information is needed to complete the application. If a plan is denied assistance under this subsection, the plan may submit a revised application under this section. Any revised application for special financial assistance submitted by a plan shall be deemed approved unless the corporation notifies the plan within 120 days of the filing of the revised application that the application is incomplete, any proposed change or assumption is unreasonable, or the plan is not eligible under this section. Special financial assistance issued by the corporation shall be effective on a date determined by the corporation, but no later than 1 year after a plan's special financial assistance application is approved by the corporation or deemed approved. The corporation shall not pay any special financial assistance after September 30, 2030.

Revisions.

Effective date. Determination. Deadline.

Termination date.

"(h) MANNER OF PAYMENT.—The payment made by the corporation to an eligible multiemployer plan under this section shall be made as a single, lump sum payment.

"(i) AMOUNT AND MANNER OF SPECIAL FINANCIAL ASSISTANCE.—

"(1) IN GENERAL.—Special financial assistance under this section shall be a transfer of funds in the amount necessary as demonstrated by the plan sponsor on the application for such special financial assistance, in accordance with the requirements described in subsection (j). Special financial assistance shall be paid to such plan as soon as practicable upon approval of the application by the corporation.

"(2) NO CAP.—Special financial assistance granted by the corporation under this section shall not be capped by the guarantee under 4022A.

"(j) DETERMINATION OF AMOUNT OF SPECIAL FINANCIAL ASSISTANCE.—

Time period.

"(1) IN GENERAL.—The amount of financial assistance provided to a multiemployer plan eligible for financial assistance under this section shall be such amount required for the plan to pay all benefits due during the period beginning on the date of payment of the special financial assistance payment under this section and ending on the last day of the plan year ending in 2051, with no reduction in a participant's or beneficiary's accrued benefit as of the date of enactment of this section, except to the extent of a reduction in accordance with section 305(e)(8) adopted prior to the plan's application for special financial assistance under this section, and taking into account the reinstatement of benefits required under subsection (k).

"(2) PROJECTIONS.—The funding projections for purposes of this section shall be performed on a deterministic basis.

Coordination.
Effective dates.

"(k) REINSTATEMENT OF SUSPENDED BENEFITS.—The Secretary, in coordination with the Secretary of the Treasury, shall ensure that an eligible multiemployer plan that receives special financial assistance under this section—

"(1) reinstates any benefits that were suspended under section 305(e)(9) or section 4245(a) in accordance with guidance issued by the Secretary of the Treasury pursuant to section 432(k)(1)(B) of the Internal Revenue Code of 1986, effective as of the first month in which the effective date for the special financial assistance occurs, for participants and beneficiaries as of such month; and

Determination.
Deadlines.

"(2) provides payments equal to the amount of benefits previously suspended under section 305(e)(9) or 4245(a) to any participants or beneficiaries in pay status as of the effective date of the special financial assistance, payable, as determined by the eligible multiemployer plan—

"(A) as a lump sum within 3 months of such effective date; or

Time period.

"(B) in equal monthly installments over a period of 5 years, commencing within 3 months of such effective date, with no adjustment for interest.

"(l) RESTRICTIONS ON THE USE OF SPECIAL FINANCIAL ASSISTANCE.—Special financial assistance received under this section and any earnings thereon may be used by an eligible multiemployer plan to make benefit payments and pay plan expenses. Special financial assistance and any earnings on such assistance shall be segregated from other plan assets. Special financial assistance shall be invested by plans in investment-grade bonds or other investments as permitted by the corporation.

"(m) CONDITIONS ON PLANS RECEIVING SPECIAL FINANCIAL ASSISTANCE.—

Consultation. Regulations.

"(1) IN GENERAL.—The corporation, in consultation with the Secretary of the Treasury, may impose, by regulation or other guidance, reasonable conditions on an eligible multiemployer plan that receives special financial assistance relating to increases in future accrual rates and any retroactive benefit improvements, allocation of plan assets, reductions in employer contribution rates, diversion of contributions to, and allocation of expenses to, other benefit plans, and withdrawal liability.

"(2) LIMITATION.—The corporation shall not impose conditions on an eligible multiemployer plan as a condition of, or following receipt of, special financial assistance under this section relating to—

"(A) any prospective reduction in plan benefits (including benefits that may be adjusted pursuant to section 305(e)(8));

"(B) plan governance, including selection of, removal of, and terms of contracts with, trustees, actuaries, investment managers, and other service providers; or

"(C) any funding rules relating to the plan receiving special financial assistance under this section.

Continuance.

"(3) PAYMENT OF PREMIUMS.—An eligible multiemployer plan receiving special financial assistance under this section shall continue to pay all premiums due under section 4007 for participants and beneficiaries in the plan.

"(4) ASSISTANCE NOT CONSIDERED FOR CERTAIN PURPOSES.—An eligible multiemployer plan that receives special financial assistance shall be deemed to be in critical status within the meaning of section 305(b)(2) until the last plan year ending in 2051.

"(5) INSOLVENT PLANS.—An eligible multiemployer plan receiving special financial assistance under this section that subsequently becomes insolvent will be subject to the current rules and guarantee for insolvent plans.

"(6) INELIGIBILITY FOR OTHER ASSISTANCE.—An eligible multiemployer plan that receives special financial assistance under this section is not eligible to apply for a new suspension of benefits under section 305(e)(9)(G).

Consultations.

"(n) COORDINATION WITH SECRETARY OF THE TREASURY.—In prescribing the application process for eligible multiemployer plans to receive special financial assistance under this section and reviewing applications of such plans, the corporation shall coordinate with the Secretary of the Treasury in the following manner:

Determinations.

"(1) In the case of a plan which has suspended benefits under section 305(e)(9)—

"(A) in determining whether to approve the application, the corporation shall consult with the Secretary of the Treasury regarding the plan's proposed method of reinstating benefits, as described in the plan's application and in accordance with guidance issued by the Secretary of the Treasury, and

"(B) the corporation shall consult with the Secretary of the Treasury regarding the amount of special financial assistance needed based on the projected funded status of the plan as of the last day of the plan year ending in 2051, whether the plan proposes to repay benefits over

5 years or as a lump sum, as required by subsection (k)(2), and any other relevant factors, as determined by the corporation in consultation with the Secretary of the Treasury, to ensure the amount of assistance is sufficient to meet such requirement and is sufficient to pay benefits as required in subsection (j)(1).

"(2) In the case of any plan which proposes in its application to change the assumptions used, as provided in subsection (e)(4), the corporation shall consult with the Secretary of the Treasury regarding such proposed change in assumptions.

Regulations. "(3) If the corporation specifies in regulations or guidance that temporary priority consideration is available for plans which are insolvent within the meaning of section 418E of the Internal Revenue Code of 1986 or likely to become so insolvent or for plans which have suspended benefits under section 305(e)(9), or that availability is otherwise based on the funded status of the plan under section 305, as permitted by subsection (d), the corporation shall consult with the Secretary of the Treasury regarding any granting of priority consideration to such plans.".

(c) PREMIUM RATE INCREASE.—Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended—

(1) in subparagraph (A)—

(A) in clause (vi)—

(i) by inserting ", and before January 1, 2031" after "December 31, 2014,"; and

(ii) by striking "or" at the end;

(B) in clause (vii)—

(i) by moving the margin 2 ems to the left; and

(ii) in subclause (II), by striking the period and inserting ", or"; and

(C) by adding at the end the following:

Effective date. "(viii) in the case of a multiemployer plan, for plan years beginning after December 31, 2030, $52 for each individual who is a participant in such plan during the applicable plan year."; and

(2) by adding at the end the following:

Effective date. "(N) For each plan year beginning in a calendar year after 2031, there shall be substituted for the dollar amount specified in clause (viii) of subparagraph (A) an amount equal to the greater of—

"(i) the product derived by multiplying such dollar amount by the ratio of—

"(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to

"(II) the national average wage index (as so defined) for 2029; and

"(ii) such dollar amount for plan years beginning in the preceding calendar year.

If the amount determined under this subparagraph is not a multiple of $1, such product shall be rounded to the nearest multiple of $1.".

(d) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

26 USC 432.

(1) IN GENERAL.—Section 432(a) of the Internal Revenue Code of 1986 is amended—

(A) by striking "and" at the end of paragraph (2)(B),

(B) by striking the period at the end of paragraph (3)(B) and inserting ", and", and

(C) by adding at the end the following new paragraph:

Requirements.
Applicability.

"(4) if the plan is an eligible multiemployer plan which is applying for or receiving special financial assistance under section 4262 of the Employee Retirement Income Security Act of 1974, the requirements of subsection (k) shall apply to the plan.".

(2) PLANS RECEIVING SPECIAL FINANCIAL ASSISTANCE TO BE IN CRITICAL STATUS.—Section 432(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

Time period.

"(7) PLANS RECEIVING SPECIAL FINANCIAL ASSISTANCE.—If an eligible multiemployer plan receiving special financial assistance under section 4262 of the Employee Retirement Income Security Act of 1974 meets the requirements of subsection (k)(2), notwithstanding the preceding paragraphs of this subsection, the plan shall be deemed to be in critical status for plan years beginning with the plan year in which the effective date for such assistance occurs and ending with the last plan year ending in 2051.".

(3) RULES RELATING TO ELIGIBLE MULTIEMPLOYER PLANS.—Section 432 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(k) RULES RELATING TO ELIGIBLE MULTIEMPLOYER PLANS.—

"(1) PLANS APPLYING FOR SPECIAL FINANCIAL ASSISTANCE.—In the case of an eligible multiemployer plan which applies for special financial assistance under section 4262 of such Act—

Requirements.

"(A) IN GENERAL.—Such application shall be submitted in accordance with the requirements of such section, including any guidance issued thereunder by the Pension Benefit Guaranty Corporation.

"(B) REINSTATEMENT OF SUSPENDED BENEFITS.—In the case of a plan for which a suspension of benefits has been approved under subsection (e)(9), the application shall describe the manner in which suspended benefits will be reinstated in accordance with paragraph (2)(A) and guidance issued by the Secretary if the plan receives special financial assistance.

"(C) AMOUNT OF FINANCIAL ASSISTANCE.—

Determination.
Termination date.

"(i) IN GENERAL.—In determining the amount of special financial assistance to be specified in its application, an eligible multiemployer plan shall—

"(I) use the interest rate used by the plan in its most recently completed certification of plan status before January 1, 2021, provided that such interest rate does not exceed the interest rate limit, and

"(II) for other assumptions, use the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions are unreasonable.

"(ii) INTEREST RATE LIMIT.—For purposes of clause (i), the interest rate limit is the rate specified in section 430(h)(2)(C)(iii) (disregarding modifications made under clause (iv) of such section) for the month in which the application for special financial assistance is filed by the eligible multiemployer plan or the 3 preceding months, with such specified rate increased by 200 basis points. Time period.

"(iii) CHANGES IN ASSUMPTIONS.—If a plan determines that use of one or more prior assumptions is unreasonable, the plan may propose in its application to change such assumptions, provided that the plan discloses such changes in its application and describes why such assumptions are no longer reasonable. The plan may not propose a change to the interest rate otherwise required under this subsection for eligibility or financial assistance amount. Determination. Disclosure.

"(D) PLANS APPLYING FOR PRIORITY CONSIDERATION.—In the case of a plan applying for special financial assistance under rules providing for temporary priority consideration, as provided in paragraph (4)(C), such plan's application shall be submitted to the Secretary in addition to the Pension Benefit Guaranty Corporation.

"(2) PLANS RECEIVING SPECIAL FINANCIAL ASSISTANCE.—In the case of an eligible multiemployer plan receiving special financial assistance under section 4262 of the Employee Retirement Income Security Act of 1974—

"(A) REINSTATEMENT OF SUSPENDED BENEFITS.—The plan shall— Effective dates.

"(i) reinstate any benefits that were suspended under subsection (e)(9) or section 4245(a) of the Employee Retirement Income Security Act of 1974, effective as of the first month in which the effective date for the special financial assistance occurs, for participants and beneficiaries as of such month, and

"(ii) provide payments equal to the amount of benefits previously suspended to any participants or beneficiaries in pay status as of the effective date of the special financial assistance, payable, as determined by the plan— Determination. Deadlines.

"(I) as a lump sum within 3 months of such effective date; or

"(II) in equal monthly installments over a period of 5 years, commencing within 3 months of such effective date, with no adjustment for interest. Time period.

"(B) RESTRICTIONS ON THE USE OF SPECIAL FINANCIAL ASSISTANCE.—Special financial assistance received by the plan may be used to make benefit payments and pay plan expenses. Such assistance shall be segregated from other plan assets, and shall be invested by the plan in investment-grade bonds or other investments as permitted by regulations or other guidance issued by the Pension Benefit Guaranty Corporation.

"(C) CONDITIONS ON PLANS RECEIVING SPECIAL FINANCIAL ASSISTANCE.—

Consultation.
Regulations.

"(i) IN GENERAL.—The Pension Benefit Guaranty Corporation, in consultation with the Secretary, may impose, by regulation or other guidance, reasonable conditions on an eligible multiemployer plan receiving special financial assistance relating to increases in future accrual rates and any retroactive benefit improvements, allocation of plan assets, reductions in employer contribution rates, diversion of contributions and allocation of expenses to other benefit plans, and withdrawal liability.

"(ii) LIMITATION.—The Pension Benefit Guaranty Corporation shall not impose conditions on an eligible multiemployer plan as a condition of, or following receipt of, special financial assistance relating to—

"(I) any prospective reduction in plan benefits (including benefits that may be adjusted pursuant to subsection (e)(8)),

"(II) plan governance, including selection of, removal of, and terms of contracts with, trustees, actuaries, investment managers, and other service providers, or

"(III) any funding rules relating to the plan.

"(D) ASSISTANCE DISREGARDED FOR CERTAIN PURPOSES.—

"(i) FUNDING STANDARDS.—Special financial assistance received by the plan shall not be taken into account for determining contributions required under section 431.

Applicability.

"(ii) INSOLVENT PLANS.—If the plan becomes insolvent within the meaning of section 418E after receiving special financial assistance, the plan shall be subject to all rules applicable to insolvent plans.

"(E) INELIGIBILITY FOR SUSPENSION OF BENEFITS.—The plan shall not be eligible to apply for a new suspension of benefits under subsection (e)(9)(G).

"(3) ELIGIBLE MULTIEMPLOYER PLAN.—

Time periods.

"(A) IN GENERAL.—For purposes of this section, a multiemployer plan is an eligible multiemployer plan if—

"(i) the plan is in critical and declining status in any plan year beginning in 2020 through 2022,

"(ii) a suspension of benefits has been approved with respect to the plan under subsection (e)(9) as of the date of the enactment of this subsection;

Certification.

"(iii) in any plan year beginning in 2020 through 2022, the plan is certified by the plan actuary to be in critical status, has a modified funded percentage of less than 40 percent, and has a ratio of active to inactive participants which is less than 2 to 3, or

Effective date.

"(iv) the plan became insolvent within the meaning of section 418E after December 16, 2014, and has remained so insolvent and has not been terminated as of the date of enactment of this subsection.

Definition.

"(B) MODIFIED FUNDED PERCENTAGE.—For purposes of subparagraph (A)(iii), the term 'modified funded percentage' means the percentage equal to a fraction the numerator of which is current value of plan assets (as defined in

section 3(26) of the Employee Retirement Income Security Act of 1974) and the denominator of which is current liabilities (as defined in section 431(c)(6)(D)).

"(4) COORDINATION WITH PENSION BENEFIT GUARANTY CORPORATION.—In prescribing the application process for eligible multiemployer plans to receive special financial assistance under section 4262 of the Employee Retirement Income Security Act of 1974 and reviewing applications of such plans, the Pension Benefit Guaranty Corporation shall coordinate with the Secretary in the following manner: Consultations.

"(A) In the case of a plan which has suspended benefits under subsection (e)(9)— Determinations.

"(i) in determining whether to approve the application, such corporation shall consult with the Secretary regarding the plan's proposed method of reinstating benefits, as described in the plan's application and in accordance with guidance issued by the Secretary, and

"(ii) such corporation shall consult with the Secretary regarding the amount of special financial assistance needed based on the projected funded status of the plan as of the last day of the plan year ending in 2051, whether the plan proposes to repay benefits over 5 years or as a lump sum, as required by paragraph (2)(A)(ii), and any other relevant factors, as determined by such corporation in consultation with the Secretary, to ensure the amount of assistance is sufficient to meet such requirement and is sufficient to pay benefits as required in section 4262(j)(1) of such Act. Time period.

"(B) In the case of any plan which proposes in its application to change the assumptions used, as provided in paragraph (1)(C)(iii), such corporation shall consult with the Secretary regarding such proposed change in assumptions.

"(C) If such corporation specifies in regulations or guidance that temporary priority consideration is available for plans which are insolvent within the meaning of section 418E or likely to become so insolvent or for plans which have suspended benefits under subsection (e)(9), or that availability is otherwise based on the funded status of the plan under this section, as permitted by section 4262(d) of such Act, such corporation shall consult with the Secretary regarding any granting of priority consideration to such plans.". Regulations.

SEC. 9705. EXTENDED AMORTIZATION FOR SINGLE EMPLOYER PLANS. Effective dates.

(a) 15-YEAR AMORTIZATION UNDER THE INTERNAL REVENUE CODE OF 1986.—Section 430(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph: 26 USC 430.

"(8) 15-YEAR AMORTIZATION.—With respect to plan years beginning after December 31, 2021 (or, at the election of the plan sponsor, plan years beginning after December 31, 2018, December 31, 2019, or December 31, 2020)—

"(A) the shortfall amortization bases for all plan years preceding the first plan year beginning after December 31, 2021 (or after whichever earlier date is elected pursuant

to this paragraph), and all shortfall amortization installments determined with respect to such bases, shall be reduced to zero, and

"(B) subparagraphs (A) and (B) of paragraph (2) shall each be applied by substituting '15-plan-year period' for '7-plan-year period'.".

(b) 15-YEAR AMORTIZATION UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 303(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(c)) is amended by adding at the end the following new paragraph:

29 USC 1083.

"(8) 15-YEAR AMORTIZATION.—With respect to plan years beginning after December 31, 2021 (or, at the election of the plan sponsor, plan years beginning after December 31, 2018, December 31, 2019, or December 31, 2020)—

"(A) the shortfall amortization bases for all plan years preceding the first plan year beginning after December 31, 2021 (or after whichever earlier date is elected pursuant to this paragraph), and all shortfall amortization installments determined with respect to such bases, shall be reduced to zero, and

"(B) subparagraphs (A) and (B) of paragraph (2) shall each be applied by substituting '15-plan-year period' for '7-plan-year period'.".

26 USC 430 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2018.

SEC. 9706. EXTENSION OF PENSION FUNDING STABILIZATION PERCENTAGES FOR SINGLE EMPLOYER PLANS.

(a) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—The table contained in subclause (II) of section 430(h)(2)(C)(iv) of the Internal Revenue Code of 1986 is amended to read as follows:

26 USC 430.

"If the calendar year is:	The applicable minimum percentage is:	The applicable maximum percentage is:
Any year in the period starting in 2012 and ending in 2019	90%	110%
Any year in the period starting in 2020 and ending in 2025	95%	105%
2026	90%	110%
2027	85%	115%
2028	80%	120%
2029	75%	125%
After 2029	70%	130%.".

(2) FLOOR ON 25-YEAR AVERAGES.—Subclause (I) of section 430(h)(2)(C)(iv) of such Code is amended by adding at the end the following: "Notwithstanding anything in this subclause, if the average of the first, second, or third segment rate for any 25-year period is less than 5 percent, such average shall be deemed to be 5 percent.".

(b) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—The table contained in subclause (II) of section 303(h)(2)(C)(iv) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(h)(2)(C)(iv)(II)) is amended to read as follows:

"If the calendar year is:	The applicable minimum percentage is:	The applicable maximum percentage is:
Any year in the period starting in 2012 and ending in 2019	90%	110%
Any year in the period starting in 2020 and ending in 2025	95%	105%
2026	90%	110%
2027	85%	115%
2028	80%	120%
2029	75%	125%
After 2029	70%	130%.".

(2) FLOOR ON 25-YEAR AVERAGES.—Subclause (I) of section 303(h)(2)(C)(iv) of such Act (29 U.S.C. 1083(h)(2)(C)(iv)(I)) is amended by adding at the end the following: "Notwithstanding anything in this subclause, if the average of the first, second, or third segment rate for any 25-year period is less than 5 percent, such average shall be deemed to be 5 percent.".

(3) CONFORMING AMENDMENTS.—

(A) IN GENERAL.—Section 101(f)(2)(D) of such Act (29 U.S.C. 1021(f)(2)(D)) is amended—

(i) in clause (i) by striking "and the Bipartisan Budget Act of 2015" both places it appears and inserting ", the Bipartisan Budget Act of 2015, and the American Rescue Plan Act of 2021", and

(ii) in clause (ii) by striking "2023" and inserting "2029".

(B) STATEMENTS.—The Secretary of Labor shall modify the statements required under subclauses (I) and (II) of section 101(f)(2)(D)(i) of such Act to conform to the amendments made by this section. 29 USC 1021 note.

(c) EFFECTIVE DATE.— 26 USC 430 note.

(1) IN GENERAL.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 2019.

(2) ELECTION NOT TO APPLY.—A plan sponsor may elect not to have the amendments made by this section apply to any plan year beginning before January 1, 2022, either (as specified in the election)—

(A) for all purposes for which such amendments apply, or

(B) solely for purposes of determining the adjusted funding target attainment percentage under sections 436 of the Internal Revenue Code of 1986 and 206(g) of the Determination.

Employee Retirement Income Security Act of 1974 for such plan year.

A plan shall not be treated as failing to meet the requirements of sections 204(g) of such Act and 411(d)(6) of such Code solely by reason of an election under this paragraph.

Definitions.

SEC. 9707. MODIFICATION OF SPECIAL RULES FOR MINIMUM FUNDING STANDARDS FOR COMMUNITY NEWSPAPER PLANS.

29 USC 430.

(a) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Subsection (m) of section 430 of the Internal Revenue Code of 1986 is amended to read as follows:

"(m) SPECIAL RULES FOR COMMUNITY NEWSPAPER PLANS.—

Effective date.

"(1) IN GENERAL.—An eligible newspaper plan sponsor of a plan under which no participant has had the participant's accrued benefit increased (whether because of service or compensation) after April 2, 2019, may elect to have the alternative standards described in paragraph (4) apply to such plan.

"(2) ELIGIBLE NEWSPAPER PLAN SPONSOR.—The term 'eligible newspaper plan sponsor' means the plan sponsor of—

"(A) any community newspaper plan, or

Effective date.

"(B) any other plan sponsored, as of April 2, 2019, by a member of the same controlled group of a plan sponsor of a community newspaper plan if such member is in the trade or business of publishing 1 or more newspapers.

"(3) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as prescribed by the Secretary. Such election, once made with respect to a plan year, shall apply to all subsequent plan years unless revoked with the consent of the Secretary.

Applicability.

"(4) ALTERNATIVE MINIMUM FUNDING STANDARDS.—The alternative standards described in this paragraph are the following:

"(A) INTEREST RATES.—

"(i) IN GENERAL.—Notwithstanding subsection (h)(2)(C) and except as provided in clause (ii), the first, second, and third segment rates in effect for any month for purposes of this section shall be 8 percent.

Determination.

"(ii) NEW BENEFIT ACCRUALS.—Notwithstanding subsection (h)(2), for purposes of determining the funding target and normal cost of a plan for any plan year, the present value of any benefits accrued or earned under the plan for a plan year with respect to which an election under paragraph (1) is in effect shall be determined on the basis of the United States Treasury obligation yield curve for the day that is the valuation date of such plan for such plan year.

"(iii) UNITED STATES TREASURY OBLIGATION YIELD CURVE.—For purposes of this subsection, the term 'United States Treasury obligation yield curve' means, with respect to any day, a yield curve which shall be prescribed by the Secretary for such day on interest-bearing obligations of the United States.

"(B) SHORTFALL AMORTIZATION BASE.—

Applicability.

"(i) PREVIOUS SHORTFALL AMORTIZATION BASES.—The shortfall amortization bases determined under subsection (c)(3) for all plan years preceding the first plan year to which the election under paragraph (1)

applies (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero under rules similar to the rules of subsection (c)(6).

"(ii) NEW SHORTFALL AMORTIZATION BASE.—Notwithstanding subsection (c)(3), the shortfall amortization base for the first plan year to which the election under paragraph (1) applies shall be the funding shortfall of such plan for such plan year (determined using the interest rates as modified under subparagraph (A)).

"(C) DETERMINATION OF SHORTFALL AMORTIZATION INSTALLMENTS.—

"(i) 30-YEAR PERIOD.—Subparagraphs (A) and (B) of subsection (c)(2) shall be applied by substituting '30-plan-year' for '7-plan-year' each place it appears.

"(ii) NO SPECIAL ELECTION.—The election under subparagraph (D) of subsection (c)(2) shall not apply to any plan year to which the election under paragraph (1) applies.

"(D) EXEMPTION FROM AT-RISK TREATMENT.—Subsection (i) shall not apply.

"(5) COMMUNITY NEWSPAPER PLAN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'community newspaper plan' means any plan to which this section applies maintained as of December 31, 2018, by an employer which— Effective date. Time periods.

"(i) maintains the plan on behalf of participants and beneficiaries with respect to employment in the trade or business of publishing 1 or more newspapers which were published by the employer at any time during the 11-year period ending on December 20, 2019,

"(ii)(I) is not a company the stock of which is publicly traded (on a stock exchange or in an over-the-counter market), and is not controlled, directly or indirectly, by such a company, or

"(II) is controlled, directly or indirectly, during the entire 30-year period ending on December 20, 2019, by individuals who are members of the same family, and does not publish or distribute a daily newspaper that is carrier-distributed in printed form in more than 5 States, and

"(iii) is controlled, directly or indirectly—

"(I) by 1 or more persons residing primarily in a State in which the community newspaper has been published on newsprint or carrier-distributed,

"(II) during the entire 30-year period ending on December 20, 2019, by individuals who are members of the same family,

"(III) by 1 or more trusts, the sole trustees of which are persons described in subclause (I) or (II), or

"(IV) by a combination of persons described in subclause (I), (II), or (III).

"(B) NEWSPAPER.—The term 'newspaper' does not include any newspaper (determined without regard to this subparagraph) to which any of the following apply:

"(i) Is not in general circulation.

Time period. "(ii) Is published (on newsprint or electronically) less frequently than 3 times per week.

"(iii) Has not ever been regularly published on newsprint.

"(iv) Does not have a bona fide list of paid subscribers.

"(C) CONTROL.—A person shall be treated as controlled by another person if such other person possesses, directly or indirectly, the power to direct or cause the direction and management of such person (including the power to elect a majority of the members of the board of directors of such person) through the ownership of voting securities.

Effective date. "(6) CONTROLLED GROUP.—For purposes of this subsection, the term 'controlled group' means all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 as of December 20, 2019.".

(b) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Subsection (m) of section 303 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(m)) is amended to read as follows:

"(m) SPECIAL RULES FOR COMMUNITY NEWSPAPER PLANS.—

Effective date. Applicability. "(1) IN GENERAL.—An eligible newspaper plan sponsor of a plan under which no participant has had the participant's accrued benefit increased (whether because of service or compensation) after April 2, 2019, may elect to have the alternative standards described in paragraph (4) apply to such plan.

"(2) ELIGIBLE NEWSPAPER PLAN SPONSOR.—The term 'eligible newspaper plan sponsor' means the plan sponsor of—

"(A) any community newspaper plan, or

Effective date. "(B) any other plan sponsored, as of April 2, 2019, by a member of the same controlled group of a plan sponsor of a community newspaper plan if such member is in the trade or business of publishing 1 or more newspapers.

"(3) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as prescribed by the Applicability. Secretary of the Treasury. Such election, once made with respect to a plan year, shall apply to all subsequent plan years unless revoked with the consent of the Secretary of the Treasury.

"(4) ALTERNATIVE MINIMUM FUNDING STANDARDS.—The alternative standards described in this paragraph are the following:

"(A) INTEREST RATES.—

"(i) IN GENERAL.—Notwithstanding subsection (h)(2)(C) and except as provided in clause (ii), the first, second, and third segment rates in effect for any month for purposes of this section shall be 8 percent.

Determination. "(ii) NEW BENEFIT ACCRUALS.—Notwithstanding subsection (h)(2), for purposes of determining the funding target and normal cost of a plan for any plan year, the present value of any benefits accrued or earned under the plan for a plan year with respect to which an election under paragraph (1) is in effect

shall be determined on the basis of the United States Treasury obligation yield curve for the day that is the valuation date of such plan for such plan year.

"(iii) UNITED STATES TREASURY OBLIGATION YIELD CURVE.—For purposes of this subsection, the term 'United States Treasury obligation yield curve' means, with respect to any day, a yield curve which shall be prescribed by the Secretary of the Treasury for such day on interest-bearing obligations of the United States.

"(B) SHORTFALL AMORTIZATION BASE.— Applicability.

"(i) PREVIOUS SHORTFALL AMORTIZATION BASES.—The shortfall amortization bases determined under subsection (c)(3) for all plan years preceding the first plan year to which the election under paragraph (1) applies (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero under rules similar to the rules of subsection (c)(6).

"(ii) NEW SHORTFALL AMORTIZATION BASE.—Notwithstanding subsection (c)(3), the shortfall amortization base for the first plan year to which the election under paragraph (1) applies shall be the funding shortfall of such plan for such plan year (determined using the interest rates as modified under subparagraph (A)).

"(C) DETERMINATION OF SHORTFALL AMORTIZATION INSTALLMENTS.—

"(i) 30-YEAR PERIOD.—Subparagraphs (A) and (B) of subsection (c)(2) shall be applied by substituting '30-plan-year' for '7-plan-year' each place it appears. Applicability.

"(ii) NO SPECIAL ELECTION.—The election under subparagraph (D) of subsection (c)(2) shall not apply to any plan year to which the election under paragraph (1) applies.

"(D) EXEMPTION FROM AT-RISK TREATMENT.—Subsection (i) shall not apply.

"(5) COMMUNITY NEWSPAPER PLAN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'community newspaper plan' means a plan to which this section applies maintained as of December 31, 2018, by an employer which— Effective date. Time periods.

"(i) maintains the plan on behalf of participants and beneficiaries with respect to employment in the trade or business of publishing 1 or more newspapers which were published by the employer at any time during the 11-year period ending on December 20, 2019,

"(ii)(I) is not a company the stock of which is publicly traded (on a stock exchange or in an over-the-counter market), and is not controlled, directly or indirectly, by such a company, or

"(II) is controlled, directly, or indirectly, during the entire 30-year period ending on December 20, 2019, by individuals who are members of the same family, and does not publish or distribute a daily newspaper that is carrier-distributed in printed form in more than 5 States, and

"(iii) is controlled, directly, or indirectly—

"(I) by 1 or more persons residing primarily in a State in which the community newspaper has been published on newsprint or carrier-distributed,

"(II) during the entire 30-year period ending on December 20, 2019, by individuals who are members of the same family,

"(III) by 1 or more trusts, the sole trustees of which are persons described in subclause (I) or (II), or

"(IV) by a combination of persons described in subclause (I), (II), or (III).

"(B) NEWSPAPER.—The term 'newspaper' does not include any newspaper (determined without regard to this subparagraph) to which any of the following apply:

"(i) Is not in general circulation.

Time period.

"(ii) Is published (on newsprint or electronically) less frequently than 3 times per week.

"(iii) Has not ever been regularly published on newsprint.

"(iv) Does not have a bona fide list of paid subscribers.

"(C) CONTROL.—A person shall be treated as controlled by another person if such other person possesses, directly or indirectly, the power to direct or cause the direction and management of such person (including the power to elect a majority of the members of the board of directors of such person) through the ownership of voting securities.

Effective date.

"(6) CONTROLLED GROUP.—For purposes of this subsection, the term 'controlled group' means all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 as of December 20, 2019.

"(7) EFFECT ON PREMIUM RATE CALCULATION.—In the case of a plan for which an election is made to apply the alternative standards described in paragraph (3), the additional premium under section 4006(a)(3)(E) shall be determined as if such election had not been made.".

26 USC 430 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years ending after December 31, 2017.

SEC. 9708. EXPANSION OF LIMITATION ON EXCESSIVE EMPLOYEE REMUNERATION.

26 USC 162.

Paragraph (3) of section 162(m) of the Internal Revenue Code of 1986 is amended—

(1) by redesignating subparagraph (C) as subparagraph (D),

(2) by striking "or" at the end of subparagraph (B),

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) in the case of taxable years beginning after December 31, 2026, such employee is among the 5 highest compensated employees for the taxable year other than any individual described in subparagraph (A) or (B), or", and

(4) by striking "employee" in subparagraph (D), as so redesignated, and inserting "employee described in subparagraph (A) or (B)".

Subtitle I—Child Care for Workers

SEC. 9801. CHILD CARE ASSISTANCE.

(a) APPROPRIATION.—

(1) IN GENERAL.—Section 418(a)(3) of the Social Security Act (42 U.S.C. 618(a)(3)) is amended to read as follows:

"(3) APPROPRIATION.—For grants under this section, there are appropriated $3,550,000,000 for each fiscal year, of which—

"(A) $3,375,000,000 shall be available for grants to States;

"(B) $100,000,000 shall be available for grants to Indian tribes and tribal organizations; and

"(C) $75,000,000 shall be available for grants to territories.".

(2) CONFORMING AMENDMENT.—Section 418(a)(2)(A) of such Act (42 U.S.C. 618(a)(2)(A)) is amended by striking "paragraph (3), and remaining after the reservation described in paragraph (4) and" and inserting "paragraph (3)(A),".

(b) MODIFICATION OF STATE MATCH REQUIREMENT FOR FUNDING INCREASES IN FISCAL YEARS 2021 AND 2022.—With respect to the amounts made available by section 418(a)(3) of the Social Security Act for each of fiscal years 2021 and 2022, section 418(a)(2)(C) of such Act shall be applied and administered with respect to any State that is entitled to receive the entire amount that would be allotted to the State under section 418(a)(2)(B) of such Act for the fiscal year in the manner authorized for fiscal year 2020, as if the Federal medical assistance percentage for the State for the fiscal year were 100 percent.

Applicability.
26 USC 618 note.

(c) FUNDING FOR THE TERRITORIES.—Section 418(a)(4) of such Act (42 U.S.C. 618(a)(4)) is amended to read as follows:

"(4) TERRITORIES.—

"(A) GRANTS.—The Secretary shall use the amounts made available by paragraph (3)(C) to make grants to the territories under this paragraph.

"(B) ALLOTMENTS.—The amount described in subparagraph (A) shall be allotted among the territories in proportion to their respective needs.

"(C) REDISTRIBUTION.—The 1st sentence of clause (i) and clause (ii) of paragraph (2)(D) shall apply with respect to the amounts allotted to the territories under this paragraph, except that the 2nd sentence of paragraph (2)(D) shall not apply and the amounts allotted to the territories that are available for redistribution for a fiscal year shall be redistributed to each territory that applies for the additional amounts, to the extent that the Secretary determines that the territory will be able to use the additional amounts to provide child care assistance, in an amount that bears the same ratio to the amount so available for redistribution as the amount allotted to the territory for the fiscal year bears to the total amount allotted to all the territories receiving redistributed funds under this paragraph for the fiscal year.

Applicability.
Determination.

"(D) INAPPLICABILITY OF PAYMENT LIMITATION.— Section 1108(a) shall not apply with respect to any amount paid under this paragraph.

Definition.

"(E) TERRITORY.—In this paragraph, the term 'territory' means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.".

Subtitle J—Medicaid

SEC. 9811. MANDATORY COVERAGE OF COVID–19 VACCINES AND ADMINISTRATION AND TREATMENT UNDER MEDICAID.

Time periods.

(a) COVERAGE.—

(1) IN GENERAL.—Section 1905(a)(4) of the Social Security Act (42 U.S.C. 1396d(a)(4)) is amended by striking the semicolon at the end and inserting "; and (E) during the period beginning on the date of the enactment of the American Rescue Plan Act of 2021 and ending on the last day of the first calendar quarter that begins one year after the last day of the emergency period described in section 1135(g)(1)(B), a COVID–19 vaccine and administration of the vaccine; and (F) during the period beginning on the date of the enactment of the American Rescue Plan Act of 2021 and ending on the last day of the first calendar quarter that begins one year after the last day of the emergency period described in section 1135(g)(1)(B), testing and treatments for COVID–19, including specialized equipment and therapies (including preventive therapies), and, without regard to the requirements of section 1902(a)(10)(B) (relating to comparability), in the case of an individual who is diagnosed with or presumed to have COVID–19, during the period such individual has (or is presumed to have) COVID–19, the treatment of a condition that may seriously complicate the treatment of COVID–19, if otherwise covered under the State plan (or waiver of such plan);".

(2) MAKING COVID–19 VACCINE AVAILABLE TO ADDITIONAL ELIGIBILITY GROUPS AND TREATMENT AVAILABLE TO CERTAIN UNINSURED.—Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)) is amended in the matter following subparagraph (G)—

(A) by striking "and to other conditions which may complicate pregnancy, (VIII)" and inserting ", medical assistance for services related to other conditions which may complicate pregnancy, and medical assistance for vaccines described in section 1905(a)(4)(E) and the administration of such vaccines during the period described in such section, (VIII)";

(B) by inserting "and medical assistance for vaccines described in section 1905(a)(4)(E) and the administration of such vaccines during the period described in such section" after "(described in subsection (z)(2))";

(C) by inserting "and medical assistance for vaccines described in section 1905(a)(4)(E) and the administration of such vaccines during the period described in such section" after "described in subsection (k)(1)";

(D) by inserting "and medical assistance for vaccines described in section 1905(a)(4)(E) and the administration

of such vaccines during the period described in such section" after "family planning setting";

(E) by striking "and any visit described in section 1916(a)(2)(G) that is furnished during any such portion" and inserting ", any service described in section 1916(a)(2)(G) that is furnished during any such portion, any vaccine described in section 1905(a)(4)(E) (and the administration of such vaccine) that is furnished during any such portion, and testing and treatments for COVID–19, including specialized equipment and therapies (including preventive therapies), and, in the case of an individual who is diagnosed with or presumed to have COVID–19, during the period such individual has (or is presumed to have) COVID–19, the treatment of a condition that may seriously complicate the treatment of COVID–19, if otherwise covered under the State plan (or waiver of such plan)"; and

(F) by striking the semicolon at the end and inserting ", and (XIX) medical assistance shall be made available during the period described in section 1905(a)(4)(E) for vaccines described in such section and the administration of such vaccines, for any individual who is eligible for and receiving medical assistance under the State plan or under a waiver of such plan (other than an individual who is eligible for medical assistance consisting only of payment of premiums pursuant to subparagraph (E) or (F) or section 1933), notwithstanding any provision of this title or waiver under section 1115 impacting such individual's eligibility for medical assistance under such plan or waiver to coverage for a limited type of benefits and services that would not otherwise include coverage of a COVID–19 vaccine and its administration;".

(3) PROHIBITION OF COST SHARING.—

(A) IN GENERAL.—Subsections (a)(2) and (b)(2) of section 1916 of the Social Security Act (42 U.S.C. 1396o) are each amended—

(i) in subparagraph (F), by striking "or" at the end;

(ii) in subparagraph (G), by striking "; and"; and

(iii) by adding at the end the following subparagraphs:

"(H) during the period beginning on the date of the enactment of this subparagraph and ending on the last day of the first calendar quarter that begins one year after the last day of the emergency period described in section 1135(g)(1)(B), a COVID–19 vaccine and the administration of such vaccine (for any individual eligible for medical assistance for such vaccine (and administration)); or

"(I) during the period beginning on the date of the enactment of this subparagraph and ending on the last day of the first calendar quarter that begins one year after the last day of the emergency period described in section 1135(g)(1)(B), testing and treatments for COVID–19, including specialized equipment and therapies (including preventive therapies), and, in the case of an individual who is diagnosed with or presumed to have COVID–19, during the period during which such individual

has (or is presumed to have) COVID–19, the treatment of a condition that may seriously complicate the treatment of COVID–19, if otherwise covered under the State plan (or waiver of such plan); and".

(B) APPLICATION TO ALTERNATIVE COST SHARING.—Section 1916A(b)(3)(B) of the Social Security Act (42 U.S.C. 1396o–1(b)(3)(B)) is amended—

(i) in clause (xi), by striking "any visit" and inserting "any service"; and

(ii) by adding at the end the following clauses:

"(xii) During the period beginning on the date of the enactment of this clause and ending on the last day of the first calendar quarter that begins one year after the last day of the emergency period described in section 1135(g)(1)(B), a COVID–19 vaccine and the administration of such vaccine (for any individual eligible for medical assistance for such vaccine (and administration)).

"(xiii) During the period beginning on the date of the enactment of this clause and ending on the last day of the first calendar quarter that begins one year after the last day of the emergency period described in section 1135(g)(1)(B), testing and treatments for COVID–19, including specialized equipment and therapies (including preventive therapies), and, in the case of an individual who is diagnosed with or presumed to have COVID–19, during the period during which such individual has (or is presumed to have) COVID–19, the treatment of a condition that may seriously complicate the treatment of COVID–19, if otherwise covered under the State plan (or waiver of such plan).".

(4) INCLUSION IN THE MEDICAID DRUG REBATE PROGRAM OF COVERED OUTPATIENT DRUGS USED FOR COVID–19 TREATMENT.—

Applicability.
42 USC 1396r–8 note.

(A) IN GENERAL.—The requirements of section 1927 of the Social Security Act (42 U.S.C. 1396r–8) shall apply to any drug or biological product to which subparagraph (F) of section 1905(a)(4) of such Act, as added by paragraph (1), applies or to which the subclause (XVIII) in the matter following subparagraph (G) of section 1902(a)(10) of such Act, as added by paragraph (2), applies that is—

(i) furnished as medical assistance in accordance with section 1902(a)(10)(A) of such Act and such subparagraph (F) or subclause (XVIII) and section 1902(a)(10)(A) of such Act, as applicable, for the treatment, or prevention, of COVID–19, as described in such subparagraph or subclause, respectively; and

(ii) a covered outpatient drug (as defined in section 1927(k) of such Act, except that, in applying paragraph (2)(A) of such section to a drug to which such subparagraph (F) or such subclause (XVIII) applies, such drug shall be deemed a prescribed drug for purposes of section 1905(a)(12) of such Act).

(B) CONFORMING AMENDMENT.—Section 1927(d)(7) of the Social Security Act (42 U.S.C. 1396r–8(d)(7)) is

amended by adding at the end the following new subparagraph:

"(E) Drugs and biological products to which section 1905(a)(4)(F) and subclause (XVIII) in the matter following subparagraph (G) of section 1902(a)(10) apply that are furnished as medical assistance in accordance with such section or clause, respectively, for the treatment or prevention, of COVID–19, as described in such subparagraph or subclause, respectively, and section 1902(a)(10)(A).".

(5) ALTERNATIVE BENEFIT PLANS.—Section 1937(b) of the Social Security Act (42 U.S.C. 1396u–7(b)) is amended by adding at the end the following new paragraph:

"(8) COVID–19 VACCINES, TESTING, AND TREATMENT.—Notwithstanding the previous provisions of this section, a State may not provide for medical assistance through enrollment of an individual with benchmark coverage or benchmark-equivalent coverage under this section unless, during the period beginning on the date of the enactment of the American Rescue Plan Act of 2021 and ending on the last day of the first calendar quarter that begins one year after the last day of the emergency period described in section 1135(g)(1)(B), such coverage includes (and does not impose any deduction, cost sharing, or similar charge for)—

"(A) COVID–19 vaccines and administration of the vaccines; and

"(B) testing and treatments for COVID–19, including specialized equipment and therapies (including preventive therapies), and, in the case of such an individual who is diagnosed with or presumed to have COVID–19, during the period such individual has (or is presumed to have) COVID–19, the treatment of a condition that may seriously complicate the treatment of COVID–19, if otherwise covered under the State plan (or waiver of such plan).".

(b) TEMPORARY INCREASE IN FEDERAL PAYMENTS FOR COVERAGE AND ADMINISTRATION OF COVID–19 VACCINES.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(1) in subsection (b), by striking "and (ff)" and inserting "(ff), and (hh)";

(2) in subsection (ff), in the matter preceding paragraph (1), by inserting ", subject to subsection (hh)" after "or (z)(2)" and

(3) by adding at the end the following new subsection:

"(hh) TEMPORARY INCREASED FMAP FOR MEDICAL ASSISTANCE FOR COVERAGE AND ADMINISTRATION OF COVID–19 VACCINES.—

"(1) IN GENERAL.—Notwithstanding any other provision of this title, during the period described in paragraph (2), the Federal medical assistance percentage for a State, with respect to amounts expended by the State for medical assistance for a vaccine described in subsection (a)(4)(E) (and the administration of such a vaccine), shall be equal to 100 percent.

"(2) PERIOD DESCRIBED.—The period described in this paragraph is the period that—

"(A) begins on the first day of the first quarter beginning after the date of the enactment of this subsection; and

"(B) ends on the last day of the first quarter that begins one year after the last day of the emergency period described in section 1135(g)(1)(B).

"(3) EXCLUSION OF EXPENDITURES FROM TERRITORIAL CAPS.—Any payment made to a territory for expenditures for medical assistance under subsection (a)(4)(E) that are subject to the Federal medical assistance percentage specified under paragraph (1) shall not be taken into account for purposes of applying payment limits under subsections (f) and (g) of section 1108.".

SEC. 9812. MODIFICATIONS TO CERTAIN COVERAGE UNDER MEDICAID FOR PREGNANT AND POSTPARTUM WOMEN.

(a) STATE OPTION.—Section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)) is amended by adding at the end the following new paragraph:

Time periods.

"(16) EXTENDING CERTAIN COVERAGE FOR PREGNANT AND POSTPARTUM WOMEN.—

"(A) IN GENERAL.—At the option of the State, the State plan (or waiver of such State plan) may provide, that an individual who, while pregnant, is eligible for and has received medical assistance under the State plan approved under this title (or a waiver of such plan) (including during a period of retroactive eligibility under subsection (a)(34)) shall, in addition to remaining eligible under paragraph (5) for all pregnancy-related and postpartum medical assistance available under the State plan (or waiver) through the last day of the month in which the 60-day period (beginning on the last day of her pregnancy) ends, remain eligible under the State plan (or waiver) for medical assistance for the period beginning on the first day occurring after the end of such 60-day period and ending on the last day of the month in which the 12-month period (beginning on the last day of her pregnancy) ends.

"(B) FULL BENEFITS DURING PREGNANCY AND THROUGHOUT THE 12-MONTH POSTPARTUM PERIOD.—The medical assistance provided for a pregnant or postpartum individual by a State making an election under this paragraph, without regard to the basis on which the individual is eligible for medical assistance under the State plan (or waiver), shall—

"(i) include all items and services covered under the State plan (or waiver) that are not less in amount, duration, or scope, or are determined by the Secretary to be substantially equivalent, to the medical assistance available for an individual described in subsection (a)(10)(A)(i); and

"(ii) be provided for the individual while pregnant and during the 12-month period that begins on the last day of the individual's pregnancy and ends on the last day of the month in which such 12-month period ends.

"(C) COVERAGE UNDER CHIP.—A State making an election under this paragraph that covers under title XXI child health assistance for targeted low-income children who are pregnant or targeted low-income pregnant women, as

applicable, shall also make the election under section 2107(e)(1)(J) of such title.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to State elections made under paragraph (16) of section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)), as added by subsection (a), during the 5-year period beginning on the 1st day of the 1st fiscal year quarter that begins one year after the date of the enactment of this Act.

Applicability. Time period. 42 USC 1396a note.

SEC. 9813. STATE OPTION TO PROVIDE QUALIFYING COMMUNITY-BASED MOBILE CRISIS INTERVENTION SERVICES.

Title XIX of the Social Security Act is amended by adding after section 1946 (42 U.S.C. 1396w–5) the following new section:

"SEC. 1947. STATE OPTION TO PROVIDE QUALIFYING COMMUNITY-BASED MOBILE CRISIS INTERVENTION SERVICES.

42 USC 1396w–6.

"(a) IN GENERAL.—Notwithstanding section 1902(a)(1) (relating to Statewideness), section 1902(a)(10)(B) (relating to comparability), section 1902(a)(23)(A) (relating to freedom of choice of providers), or section 1902(a)(27) (relating to provider agreements), a State may, during the 5-year period beginning on the first day of the first fiscal year quarter that begins on or after the date that is 1 year after the date of the enactment of this section, provide medical assistance for qualifying community-based mobile crisis intervention services.

Time period.

"(b) QUALIFYING COMMUNITY-BASED MOBILE CRISIS INTERVENTION SERVICES DEFINED.—For purposes of this section, the term 'qualifying community-based mobile crisis intervention services' means, with respect to a State, items and services for which medical assistance is available under the State plan under this title or a waiver of such plan, that are—

"(1) furnished to an individual otherwise eligible for medical assistance under the State plan (or waiver of such plan) who is—

"(A) outside of a hospital or other facility setting; and

"(B) experiencing a mental health or substance use disorder crisis;

"(2) furnished by a multidisciplinary mobile crisis team—

"(A) that includes at least 1 behavioral health care professional who is capable of conducting an assessment of the individual, in accordance with the professional's permitted scope of practice under State law, and other professionals or paraprofessionals with appropriate expertise in behavioral health or mental health crisis response, including nurses, social workers, peer support specialists, and others, as designated by the State through a State plan amendment (or waiver of such plan);

"(B) whose members are trained in trauma-informed care, de-escalation strategies, and harm reduction;

"(C) that is able to respond in a timely manner and, where appropriate, provide—

"(i) screening and assessment;

"(ii) stabilization and de-escalation; and

"(iii) coordination with, and referrals to, health, social, and other services and supports as needed, and health services as needed;

"(D) that maintains relationships with relevant community partners, including medical and behavioral

health providers, primary care providers, community health centers, crisis respite centers, and managed care organizations (if applicable); and

"(E) that maintains the privacy and confidentiality of patient information consistent with Federal and State requirements; and

"(3) available 24 hours per day, every day of the year.

"(c) PAYMENTS.—Notwithstanding section 1905(b) or 1905(ff) and subject to subsections (y) and (z) of section 1905, during each of the first 12 fiscal quarters occurring during the period described in subsection (a) that a State meets the requirements described in subsection (d), the Federal medical assistance percentage applicable to amounts expended by the State for medical assistance for qualifying community-based mobile crisis intervention services furnished during such quarter shall be equal to 85 percent. In no case shall the application of the previous sentence result in the Federal medical assistance percentage applicable to amounts expended by a State for medical assistance for such qualifying community-based mobile crisis intervention services furnished during a quarter being less than the Federal medical assistance percentage that would apply to such amounts expended by the State for such services furnished during such quarter without application of the previous sentence.

"(d) REQUIREMENTS.—The requirements described in this subsection are the following:

"(1) The State demonstrates, to the satisfaction of the Secretary that it will be able to support the provision of qualifying community-based mobile crisis intervention services that meet the conditions specified in subsection (b).

"(2) The State provides assurances satisfactory to the Secretary that—

"(A) any additional Federal funds received by the State for qualifying community-based mobile crisis intervention services provided under this section that are attributable to the increased Federal medical assistance percentage under subection (c) will be used to supplement, and not supplant, the level of State funds expended for such services for the fiscal year preceding the first fiscal quarter occurring during the period described in subsection (a);

"(B) if the State made qualifying community-based mobile crisis intervention services available in a region of the State in such fiscal year, the State will continue to make such services available in such region under this section during each month occurring during the period described in subsection (a) for which the Federal medical assistance percentage under subsection (c) is applicable with respect to the State.

"(e) FUNDING FOR STATE PLANNING GRANTS.—There is appropriated, out of any funds in the Treasury not otherwise appropriated, $15,000,000 to the Secretary for purposes of implementing, administering, and making planning grants to States as soon as practicable for purposes of developing a State plan amendment or section 1115, 1915(b), or 1915(c) waiver request (or an amendment to such a waiver) to provide qualifying community-based mobile crisis intervention services under this section, to remain available until expended.".

SEC. 9814. TEMPORARY INCREASE IN FMAP FOR MEDICAL ASSISTANCE UNDER STATE MEDICAID PLANS WHICH BEGIN TO EXPEND AMOUNTS FOR CERTAIN MANDATORY INDIVIDUALS.

Section 1905 of the Social Security Act (42 U.S.C. 1396d), as amended by section 9811 of this subtitle, is further amended—

(1) in subsection (b), in the first sentence, by striking "and (hh)" and inserting "(hh), and (ii)";

(2) in subsection (ff), by striking "subject to subsection (hh)" and inserting "subject to subsections (hh) and (ii)"; and

(3) by adding at the end the following new subsection:

"(ii) TEMPORARY INCREASE IN FMAP FOR MEDICAL ASSISTANCE UNDER STATE MEDICAID PLANS WHICH BEGIN TO EXPEND AMOUNTS FOR CERTAIN MANDATORY INDIVIDUALS.—

Time periods.

"(1) IN GENERAL.—For each quarter occurring during the 8-quarter period beginning with the first calendar quarter during which a qualifying State (as defined in paragraph (3)) expends amounts for all individuals described in section 1902(a)(10)(A)(i)(VIII) under the State plan (or waiver of such plan), the Federal medical assistance percentage determined under subsection (b) for such State shall, after application of any increase, if applicable, under section 6008 of the Families First Coronavirus Response Act, be increased by 5 percentage points, except for any quarter (and each subsequent quarter) during such period during which the State ceases to provide medical assistance to any such individual under the State plan (or waiver of such plan).

"(2) SPECIAL APPLICATION RULES.—Any increase described in paragraph (1) (or payment made for expenditures on medical assistance that are subject to such increase)—

"(A) shall not apply with respect to disproportionate share hospital payments described in section 1923;

"(B) shall not be taken into account in calculating the enhanced FMAP of a State under section 2105;

"(C) shall not be taken into account for purposes of part A, D, or E of title IV; and

"(D) shall not be taken into account for purposes of applying payment limits under subsections (f) and (g) of section 1108.

"(3) DEFINITION.—For purposes of this subsection, the term 'qualifying State' means a State which has not expended amounts for all individuals described in section 1902(a)(10)(A)(i)(VIII) before the date of the enactment of this subsection.".

SEC. 9815. EXTENSION OF 100 PERCENT FEDERAL MEDICAL ASSISTANCE PERCENTAGE TO URBAN INDIAN HEALTH ORGANIZATIONS AND NATIVE HAWAIIAN HEALTH CARE SYSTEMS.

Time periods.

Section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended by inserting after "(as defined in section 4 of the Indian Health Care Improvement Act)" the following: "; for the 8 fiscal year quarters beginning with the first fiscal year quarter beginning after the date of the enactment of the American Rescue Plan Act of 2021, the Federal medical assistance percentage shall also be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Urban

Indian organization (as defined in paragraph (29) of section 4 of the Indian Health Care Improvement Act) that has a grant or contract with the Indian Health Service under title V of such Act; and, for such 8 fiscal year quarters, the Federal medical assistance percentage shall also be 100 per centum with respect to amounts expended as medical assistance for services which are received through a Native Hawaiian Health Center (as defined in section 12(4) of the Native Hawaiian Health Care Improvement Act) or a qualified entity (as defined in section 6(b) of such Act) that has a grant or contract with the Papa Ola Lokahi under section 8 of such Act".

SEC. 9816. SUNSET OF LIMIT ON MAXIMUM REBATE AMOUNT FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS.

Section 1927(c)(2)(D) of the Social Security Act (42 U.S.C. 1396r–8(c)(2)(D)) is amended by inserting after "December 31, 2009," the following: "and before January 1, 2024,".

42 USC 1396d note.

SEC. 9817. ADDITIONAL SUPPORT FOR MEDICAID HOME AND COMMUNITY-BASED SERVICES DURING THE COVID–19 EMERGENCY.

(a) INCREASED FMAP.—

(1) IN GENERAL.—Notwithstanding section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) or section 1905(ff), in the case of a State that meets the HCBS program requirements under subsection (b), the Federal medical assistance percentage determined for the State under section 1905(b) of such Act (or, if applicable, under section 1905(ff)) and, if applicable, increased under subsection (y), (z), (aa), or (ii) of section 1905 of such Act (42 U.S.C. 1396d), section 1915(k) of such Act (42 U.S.C. 1396n(k)), or section 6008(a) of the Families First Coronavirus Response Act (Public Law 116–127), shall be increased by 10 percentage points with respect to expenditures of the State under the State Medicaid program for home and community-based services (as defined in paragraph (2)(B)) that are provided during the HCBS program improvement period (as defined in paragraph (2)(A)). In no case may the application of the previous sentence result in the Federal medical assistance percentage determined for a State being more than 95 percent with respect to such expenditures. Any payment made to Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa for expenditures on medical assistance that are subject to the Federal medical assistance percentage increase specified under the first sentence of this paragraph shall not be taken into account for purposes of applying payment limits under subsections (f) and (g) of section 1108 of the Social Security Act (42 U.S.C. 1308).

Territories.

(2) DEFINITIONS.—In this section:

Time period.

(A) HCBS PROGRAM IMPROVEMENT PERIOD.—The term "HCBS program improvement period" means, with respect to a State, the period—

(i) beginning on April 1, 2021; and

(ii) ending on March 31, 2022.

(B) HOME AND COMMUNITY-BASED SERVICES.—The term "home and community-based services" means any of the following:

(i) Home health care services authorized under paragraph (7) of section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)).

(ii) Personal care services authorized under paragraph (24) of such section.

(iii) PACE services authorized under paragraph (26) of such section.

(iv) Home and community-based services authorized under subsections (b), (c), (i), (j), and (k) of section 1915 of such Act (42 U.S.C. 1396n), such services authorized under a waiver under section 1115 of such Act (42 U.S.C. 1315), and such services through coverage authorized under section 1937 of such Act (42 U.S.C. 1396u–7).

(v) Case management services authorized under section 1905(a)(19) of the Social Security Act (42 U.S.C. 1396d(a)(19)) and section 1915(g) of such Act (42 U.S.C. 1396n(g)).

(vi) Rehabilitative services, including those related to behavioral health, described in section 1905(a)(13) of such Act (42 U.S.C. 1396d(a)(13)).

(vii) Such other services specified by the Secretary of Health and Human Services.

(C) ELIGIBLE INDIVIDUAL.—The term "eligible individual" means an individual who is eligible for and enrolled for medical assistance under a State Medicaid program and includes an individual who becomes eligible for medical assistance under a State Medicaid program when removed from a waiting list.

(D) MEDICAID PROGRAM.—The term "Medicaid program" means, with respect to a State, the State program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver or demonstration under such title or under section 1115 of such Act (42 U.S.C. 1315) relating to such title).

(E) STATE.—The term "State" has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(b) STATE REQUIREMENTS FOR FMAP INCREASE.—As conditions for receipt of the increase under subsection (a) to the Federal medical assistance percentage determined for a State, the State shall meet each of the following requirements (referred to in subsection (a) as the HCBS program requirements):

(1) SUPPLEMENT, NOT SUPPLANT.—The State shall use the Federal funds attributable to the increase under subsection (a) to supplement, and not supplant, the level of State funds expended for home and community-based services for eligible individuals through programs in effect as of April 1, 2021. Effective date.

(2) REQUIRED IMPLEMENTATION OF CERTAIN ACTIVITIES.—The State shall implement, or supplement the implementation of, one or more activities to enhance, expand, or strengthen home and community-based services under the State Medicaid program.

SEC. 9818. FUNDING FOR STATE STRIKE TEAMS FOR RESIDENT AND EMPLOYEE SAFETY IN NURSING FACILITIES.

Section 1919 of the Social Security Act (42 U.S.C. 1396r) is amended by adding at the end the following new subsection:

Time period.

"(k) FUNDING FOR STATE STRIKE TEAMS.—In addition to amounts otherwise available, there is appropriated to the Secretary, out of any monies in the Treasury not otherwise appropriated, $250,000,000, to remain available until expended, for purposes of allocating such amount among the States (including the District of Columbia and each territory of the United States) for such a State to establish and implement a strike team that will be deployed to a nursing facility in the State with diagnosed or suspected cases of COVID–19 among residents or staff for the purposes of assisting with clinical care, infection control, or staffing during the emergency period described in section 1135(g)(1)(B) and the 1-year period immediately following the end of such emergency period.".

SEC. 9819. SPECIAL RULE FOR THE PERIOD OF A DECLARED PUBLIC HEALTH EMERGENCY RELATED TO CORONAVIRUS.

(a) IN GENERAL.—Section 1923(f)(3) of the Social Security Act (42 U.S.C. 1396r–4(f)(3)) is amended—

(1) in subparagraph (A), by striking "subparagraph (E)" and inserting "subparagraphs (E) and (F)" ; and

(2) by adding at the end the following new subparagraph:

"(F) ALLOTMENTS DURING THE CORONAVIRUS TEMPORARY MEDICAID FMAP INCREASE.—

"(i) IN GENERAL.—Notwithstanding any other provision of this subsection, for any fiscal year for which the Federal medical assistance percentage applicable to expenditures under this section is increased pursuant to section 6008 of the Families First Coronavirus Response Act, the Secretary shall recalculate the annual DSH allotment, including the DSH allotment specified under paragraph (6)(A)(vi), to ensure that the total DSH payments (including both Federal and State shares) that a State may make related to a fiscal year is equal to the total DSH payments that the State could have made for such fiscal year without such increase to the Federal medical assistance percentage.

Determination.

"(ii) NO APPLICATION TO ALLOTMENTS BEGINNING AFTER COVID–19 EMERGENCY PERIOD.—The DSH allotment for any State for the first fiscal year beginning after the end of the emergency period described in section 1135(g)(1)(B) or any succeeding fiscal year shall be determined under this paragraph without regard to the DSH allotments determined under clause (i).".

42 USC 1396r–4 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect and apply as if included in the enactment of the Families First Coronavirus Response Act (Public Law 116–127).

Subtitle K—Children's Health Insurance Program

SEC. 9821. MANDATORY COVERAGE OF COVID–19 VACCINES AND ADMINISTRATION AND TREATMENT UNDER CHIP.

(a) COVERAGE.—

(1) IN GENERAL.—Section 2103(c) of the Social Security Act (42 U.S.C. 1397cc(c)) is amended by adding at the end the following paragraph:

"(11) REQUIRED COVERAGE OF COVID–19 VACCINES AND TREATMENT.—Regardless of the type of coverage elected by a State under subsection (a), the child health assistance provided for a targeted low-income child, and, in the case of a State that elects to provide pregnancy-related assistance pursuant to section 2112, the pregnancy-related assistance provided for a targeted low-income pregnant woman (as such terms are defined for purposes of such section), shall include coverage, during the period beginning on the date of the enactment of this paragraph and ending on the last day of the first calendar quarter that begins one year after the last day of the emergency period described in section 1135(g)(1)(B), of— Time period.

"(A) a COVID–19 vaccine (and the administration of the vaccine); and

"(B) testing and treatments for COVID–19, including specialized equipment and therapies (including preventive therapies), and, in the case of an individual who is diagnosed with or presumed to have COVID–19, during the period during which such individual has (or is presumed to have) COVID–19, the treatment of a condition that may seriously complicate the treatment of COVID–19, if otherwise covered under the State child health plan (or waiver of such plan).".

(2) PROHIBITION OF COST SHARING.—Section 2103(e)(2) of the Social Security Act (42 U.S.C. 1397cc(e)(2)), as amended by section 6004(b)(3) of the Families First Coronavirus Response Act, is amended—

(A) in the paragraph header, by inserting "A COVID–19 VACCINE, COVID–19 TREATMENT," before "OR PREGNANCY-RELATED ASSISTANCE"; and

(B) by striking "visits described in section 1916(a)(2)(G), or" and inserting "services described in section 1916(a)(2)(G), vaccines described in section 1916(a)(2)(H) administered during the period described in such section (and the administration of such vaccines), testing or treatments described in section 1916(a)(2)(I) furnished during the period described in such section, or".

(b) TEMPORARY INCREASE IN FEDERAL PAYMENTS FOR COVERAGE AND ADMINISTRATION OF COVID–19 VACCINES.—Section 2105(c) of the Social Security Act (42 U.S.C. 1397ee(c)) is amended by adding at the end the following new paragraph:

"(12) TEMPORARY ENHANCED PAYMENT FOR COVERAGE AND ADMINISTRATION OF COVID–19 VACCINES.—During the period described in section 1905(hh)(2), notwithstanding subsection (b), the enhanced FMAP for a State, with respect to payments under subsection (a) for expenditures under the State child health plan (or a waiver of such plan) for a vaccine described

in section 1905(a)(4)(E) (and the administration of such a vaccine), shall be equal to 100 percent.".

(c) ADJUSTMENT OF CHIP ALLOTMENTS.—Section 2104(m) of the Social Security Act (42 U.S.C. 1397dd(m)) is amended—

(1) in paragraph (2)(B), in the matter preceding clause (i), by striking "paragraphs (5) and (7)" and inserting "paragraphs (5), (7), and (12)"; and

(2) by adding at the end the following new paragraph:

Effective date.

"(12) ADJUSTING ALLOTMENTS TO ACCOUNT FOR INCREASED FEDERAL PAYMENTS FOR COVERAGE AND ADMINISTRATION OF COVID–19 VACCINES.—If a State, commonwealth, or territory receives payment for a fiscal year (beginning with fiscal year 2021) under subsection (a) of section 2105 for expenditures that are subject to the enhanced FMAP specified under subsection (c)(12) of such section, the amount of the allotment determined for the State, commonwealth, or territory under this subsection—

"(A) for such fiscal year shall be increased by the projected expenditures for such year by the State, commonwealth, or territory under the State child health plan (or a waiver of such plan) for vaccines described in section 1905(a)(4)(E) (and the administration of such vaccines); and

"(B) once actual expenditures are available in the subsequent fiscal year, the fiscal year allotment that was adjusted by the amount described in subparagraph (A) shall be adjusted on the basis of the difference between—

"(i) such projected amount of expenditures described in subparagraph (A) for such fiscal year described in such subparagraph by the State, commonwealth, or territory; and

"(ii) the actual amount of expenditures for such fiscal year described in subparagraph (A) by the State, commonwealth, or territory under the State child health plan (or waiver of such plan) for vaccines described in section 1905(a)(4)(E) (and the administration of such vaccines).".

SEC. 9822. MODIFICATIONS TO CERTAIN COVERAGE UNDER CHIP FOR PREGNANT AND POSTPARTUM WOMEN.

(a) MODIFICATIONS TO COVERAGE.—

(1) IN GENERAL.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended—

(A) by redesignating subparagraphs (J) through (S) as subparagraphs (K) through (T), respectively; and

(B) by inserting after subparagraph (I) the following new subparagraph:

Time period.
Requirement.

"(J) Paragraphs (5) and (16) of section 1902(e) (relating to the State option to provide medical assistance consisting of full benefits during pregnancy and throughout the 12-month postpartum period under title XIX), if the State provides child health assistance for targeted low-income children who are pregnant or to targeted low-income pregnant women and the State has elected to apply such paragraph (16) with respect to pregnant women under title XIX, the provision of assistance under the State child health plan or waiver for targeted low-income children

or targeted low-income pregnant women during pregnancy and the 12-month postpartum period shall be required and not at the option of the State and shall include coverage of all items or services provided to a targeted low-income child or targeted low-income pregnant woman (as applicable) under the State child health plan or waiver).".

(2) OPTIONAL COVERAGE OF TARGETED LOW-INCOME PREGNANT WOMEN.—Section 2112(d)(2)(A) of the Social Security Act (42 U.S.C. 1397ll(d)(2)(A)) is amended by inserting after "60-day period" the following: ", or, in the case that subparagraph (A) of section 1902(e)(16) applies to the State child health plan (or waiver of such plan), pursuant to section 2107(e)(1), the 12-month period,".

(b) EFFECTIVE DATE.—The amendments made by subsection (a), shall apply with respect to State elections made under paragraph (16) of section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)), as added by section 9812(a) of subtitle J of this title, during the 5-year period beginning on the 1st day of the 1st fiscal year quarter that begins one year after the date of the enactment of this Act.

Applicability.
Time period.
42 USC 1397gg note.

Subtitle L—Medicare

SEC. 9831. FLOOR ON THE MEDICARE AREA WAGE INDEX FOR HOSPITALS IN ALL-URBAN STATES.

(a) IN GENERAL.—Section 1886(d)(3)(E) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)) is amended—

(1) in clause (i), in the first sentence, by striking "or (iii)" and inserting ", (iii), or (iv)"; and

(2) by adding at the end the following new clause:

"(iv) FLOOR ON AREA WAGE INDEX FOR HOSPITALS IN ALL-URBAN STATES.—

"(I) IN GENERAL.—For discharges occurring on or after October 1, 2021, the area wage index applicable under this subparagraph to any hospital in an all-urban State (as defined in subclause (IV)) may not be less than the minimum area wage index for the fiscal year for hospitals in that State, as established under subclause (II).

Effective date.

"(II) MINIMUM AREA WAGE INDEX.—For purposes of subclause (I), the Secretary shall establish a minimum area wage index for a fiscal year for hospitals in each all-urban State using the methodology described in section 412.64(h)(4)(vi) of title 42, Code of Federal Regulations, as in effect for fiscal year 2018.

"(III) WAIVING BUDGET NEUTRALITY.—Pursuant to the fifth sentence of clause (i), this clause shall not be applied in a budget neutral manner.

"(IV) ALL-URBAN STATE DEFINED.—In this clause, the term 'all-urban State' means a State in which there are no rural areas (as defined in paragraph (2)(D)) or a State in which there are no hospitals classified as rural under this section.".

(b) WAIVING BUDGET NEUTRALITY.—Section 1886(d)(3)(E)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)(i)) is amended, in the fifth sentence—

(1) by striking "and the amendments" and inserting ", the amendments"; and

(2) by inserting ", and the amendments made by section 9831(a) of the American Rescue Plan Act of 2021" after "Care Act".

SEC. 9832. SECRETARIAL AUTHORITY TO TEMPORARILY WAIVE OR MODIFY APPLICATION OF CERTAIN MEDICARE REQUIREMENTS WITH RESPECT TO AMBULANCE SERVICES FURNISHED DURING CERTAIN EMERGENCY PERIODS.

(a) WAIVER AUTHORITY.—Section 1135(b) of the Social Security Act (42 U.S.C. 1320b–5(b)) is amended—

(1) in the first sentence—

(A) in paragraph (7), by striking "and" at the end;

(B) in paragraph (8), by striking the period at the end and inserting "; and"; and

(C) by inserting after paragraph (8) the following new paragraph:

"(9) any requirement under section 1861(s)(7) or section 1834(l) that an ambulance service include the transport of an individual to the extent necessary to allow payment for ground ambulance services furnished in response to a 911 call (or the equivalent in areas without a 911 call system) in cases in which an individual would have been transported to a destination permitted under Medicare regulations (as described in section 410.40 to title 42, Code of Federal Regulations (or successor regulations)) but such transport did not occur as a result of community-wide emergency medical service (EMS) protocols due to the public health emergency described in subsection (g)(1)(B).."; and

(2) in the flush matter at the end, by adding at the end the following: "Ground ambulance services for which payment is made pursuant to paragraph (9) shall be paid at the base rate that would have been paid under the fee schedule established under 1834(l) (excluding any mileage payment) if the individual had been so transported and, with respect to ambulance services furnished by a critical access hospital or an entity described in paragraph (8) of such section, at the amount that otherwise would be paid under such paragraph.".

(b) EMERGENCY PERIOD EXCEPTION.—Section 1135(g)(1)(B) of the Social Security Act (42 U.S.C. 1320b–5(g)(1)(B)) is amended, in the matter preceding clause (i), by striking "subsection (b)(8)" and inserting "paragraphs (8) and (9) of subsection (b)".

SEC. 9833. FUNDING FOR OFFICE OF INSPECTOR GENERAL.

In addition to amounts otherwise available, there is appropriated to the inspector general of the Department of Health and Human Services for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $5,000,000, to remain available until expended, for oversight of activities supported with funds appropriated to the Department of Health and Human Services to prevent, prepare for, and respond to coronavirus 2019 or COVID–19, domestically or internationally.

Subtitle M—Coronavirus State and Local Fiscal Recovery Funds

SEC. 9901. CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS.

(a) IN GENERAL.—Title VI of the Social Security Act (42 U.S.C. 801 et seq.) is amended by adding at the end the following:

"SEC. 602. CORONAVIRUS STATE FISCAL RECOVERY FUND. 42 USC 802.

"(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated—

"(1) $219,800,000,000, to remain available through December 31, 2024, for making payments under this section to States, territories, and Tribal governments to mitigate the fiscal effects stemming from the public health emergency with respect to the Coronavirus Disease (COVID–19); and

"(2) $50,000,000, to remain available until expended, for the costs of the Secretary for administration of the funds established under this title.

"(b) AUTHORITY TO MAKE PAYMENTS.—

"(1) PAYMENTS TO TERRITORIES.—

"(A) IN GENERAL.—The Secretary shall reserve $4,500,000,000 of the amount appropriated under subsection (a)(1) to make payments to the territories.

"(B) ALLOCATION.—Of the amount reserved under subparagraph (A)—

"(i) 50 percent of such amount shall be allocated by the Secretary equally to each territory; and

"(ii) 50 percent of such amount shall be allocated by the Secretary as an additional amount to each territory in an amount which bears the same proportion to ½ of the total amount reserved under subparagraph (A) as the population of the territory bears to the total population of all such territories.

"(C) PAYMENT.—The Secretary shall pay each territory the total of the amounts allocated for the territory under subparagraph (B) in accordance with paragraph (6).

"(2) PAYMENTS TO TRIBAL GOVERNMENTS.—

"(A) IN GENERAL.—The Secretary shall reserve $20,000,000,000 of the amount appropriated under subsection (a)(1) to make payments to Tribal governments.

"(B) ALLOCATION.—Of the amount reserved under subparagraph (A)—

"(i) $1,000,000,000 shall be allocated by the Secretary equally among each of the Tribal governments; and

"(ii) $19,000,000,000 shall be allocated by the Secretary to the Tribal governments in a manner determined by the Secretary.

"(C) PAYMENT.— The Secretary shall pay each Tribal government the total of the amounts allocated for the Tribal government under subparagraph (B) in accordance with paragraph (6).

"(3) PAYMENTS TO EACH OF THE 50 STATES AND THE DISTRICT OF COLUMBIA.—

"(A) IN GENERAL.—The Secretary shall reserve $195,300,000,000 of the amount appropriated under subsection (a)(1) to make payments to each of the 50 States and the District of Columbia.

"(B) ALLOCATIONS.—Of the amount reserved under subparagraph (A)—

"(i) $25,500,000,000 of such amount shall be allocated by the Secretary equally among each of the 50 States and the District of Columbia;

"(ii) an amount equal to $1,250,000,000 less the amount allocated for the District of Columbia pursuant to section 601(c)(6) shall be allocated by the Secretary as an additional amount to the District of Columbia; and

Estimates.
Time period.

"(iii) an amount equal to the remainder of the amount reserved under subparagraph (A) after the application of clauses (i) and (ii) of this subparagraph shall be allocated by the Secretary as an additional amount to each of the 50 States and the District of Columbia in an amount which bears the same proportion to such remainder as the average estimated number of seasonally-adjusted unemployed individuals (as measured by the Bureau of Labor Statistics Local Area Unemployment Statistics program) in the State or District of Columbia over the 3-month period ending with December 2020 bears to the average estimated number of seasonally-adjusted unemployed individuals in all of the 50 States and the District of Columbia over the same period.

"(C) PAYMENT.—

"(i) IN GENERAL.—Subject to clause (ii), the Secretary shall pay each of the 50 States and the District of Columbia, from the amount reserved under subparagraph (A), the total of the amounts allocated for the State and District of Columbia under subparagraph (B) in accordance with paragraph (6).

"(ii) MINIMUM PAYMENT REQUIREMENT.—

"(I) IN GENERAL.—The sum of—

"(aa) the total amounts allocated for 1 of the 50 States or the District of Columbia under subparagraph (B) (as determined without regard to this clause); and

"(bb) the amounts allocated under section 603 to the State (for distribution by the State to nonentitlement units of local government in the State) and to metropolitan cities and counties in the State;

shall not be less than the amount allocated to the State or District of Columbia for fiscal year 2020 under section 601, including any amount paid directly to a unit of local government in the State under such section.

Determination.
Compliance.

"(II) PRO RATA ADJUSTMENT.—The Secretary shall adjust on a pro rata basis the amount of the allocations for each of the 50 States and the District of Columbia determined under subparagraph (B)(iii) (without regard to this clause) to

the extent necessary to comply with the requirement of subclause (I).

"(4) PRO RATA ADJUSTMENT AUTHORITY.—The amounts otherwise determined for allocation and payment under paragraphs (1), (2), and (3) may be adjusted by the Secretary on a pro rata basis to the extent necessary to ensure that all available funds are allocated to States, territories, and Tribal governments in accordance with the requirements specified in each such paragraph (as applicable).

"(5) POPULATION DATA.—For purposes of determining allocations for a territory under this section, the population of the territory shall be determined based on the most recent data available from the Bureau of the Census. Determination.

"(6) TIMING.— Deadlines.

"(A) STATES AND TERRITORIES.—

"(i) IN GENERAL.—To the extent practicable, subject to clause (ii), with respect to each State and territory allocated a payment under this subsection, the Secretary shall make the payment required for the State or territory not later than 60 days after the date on which the certification required under subsection (d)(1) is provided to the Secretary.

"(ii) AUTHORITY TO SPLIT PAYMENT.—

"(I) IN GENERAL.—The Secretary shall have the authority to withhold payment of up to 50 percent of the amount allocated to each State and territory (other than payment of the amount allocated under paragraph (3)(B)(ii) to the District of Columbia) for a period of up to 12 months from the date on which the State or territory provides the certification required under subsection (d)(1). The Secretary shall exercise such authority with respect to a State or territory based on the unemployment rate in the State or territory as of such date. Time period.

"(II) PAYMENT OF WITHHELD AMOUNT.—Before paying to a State or territory the remainder of an amount allocated to the State or territory (subject to subclause (III)) that has been withheld by the Secretary under subclause (I), the Secretary shall require the State or territory to submit a second certification under subsection (d)(1), in addition to such other information as the Secretary may require. Requirement.

"(III) RECOVERY OF AMOUNTS SUBJECT TO RECOUPMENT.—If a State or territory is required under subsection (e) to repay funds for failing to comply with subsection (c), the Secretary may reduce the amount otherwise payable to the State or territory under subclause (II) by the amount that the State or territory would otherwise be required to repay under such subsection (e).

"(B) TRIBAL GOVERNMENTS.—To the extent practicable, with respect to each Tribal government for which an amount is allocated under this subsection, the Secretary shall make the payment required for the Tribal government

not later than 60 days after the date of enactment of this section.

"(C) INITIAL PAYMENT TO DISTRICT OF COLUMBIA.—The Secretary shall pay the amount allocated under paragraph (3)(B)(ii) to the District of Columbia not later than 15 days after the date of enactment of this section.

"(c) REQUIREMENTS.—

Deadline.

"(1) USE OF FUNDS.—Subject to paragraph (2), and except as provided in paragraph (3), a State, territory, or Tribal government shall only use the funds provided under a payment made under this section, or transferred pursuant to section 603(c)(4), to cover costs incurred by the State, territory, or Tribal government, by December 31, 2024—

"(A) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

Grants.

"(B) to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the State, territory, or Tribal government that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;

"(C) for the provision of government services to the extent of the reduction in revenue of such State, territory, or Tribal government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the State, territory, or Tribal government prior to the emergency; or

"(D) to make necessary investments in water, sewer, or broadband infrastructure.

"(2) FURTHER RESTRICTION ON USE OF FUNDS.—

"(A) IN GENERAL.—A State or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.

"(B) PENSION FUNDS.—No State or territory may use funds made available under this section for deposit into any pension fund.

"(3) TRANSFER AUTHORITY.—A State, territory, or Tribal government receiving a payment from funds made available under this section may transfer funds to a private nonprofit organization (as that term is defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17)), a Tribal organization (as that term is defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)), a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government.

"(d) CERTIFICATIONS AND REPORTS.—

"(1) IN GENERAL.—In order for a State or territory to receive a payment under this section, or a transfer of funds under section 603(c)(4), the State or territory shall provide the Secretary with a certification, signed by an authorized officer of such State or territory, that such State or territory requires the payment or transfer to carry out the activities specified in subsection (c) of this section and will use any payment under this section, or transfer of funds under section 603(c)(4), in compliance with subsection (c) of this section.

"(2) REPORTING.—Any State, territory, or Tribal government receiving a payment under this section shall provide to the Secretary periodic reports providing a detailed accounting of—

"(A) the uses of funds by such State, territory, or Tribal government, including, in the case of a State or a territory, all modifications to the State's or territory's tax revenue sources during the covered period; and

"(B) such other information as the Secretary may require for the administration of this section.

"(e) RECOUPMENT.—Any State, territory, or Tribal government that has failed to comply with subsection (c) shall be required to repay to the Secretary an amount equal to the amount of funds used in violation of such subsection, provided that, in the case of a violation of subsection (c)(2)(A), the amount the State or territory shall be required to repay shall be lesser of— Requirement.

"(1) the amount of the applicable reduction to net tax revenue attributable to such violation; and

"(2) the amount of funds received by such State or territory pursuant to a payment made under this section or a transfer made under section 603(c)(4).

"(f) REGULATIONS.—The Secretary shall have the authority to issue such regulations as may be necessary or appropriate to carry out this section.

"(g) DEFINITIONS.—In this section:

"(1) COVERED PERIOD.—The term 'covered period' means, with respect to a State, territory, or Tribal government, the period that—

"(A) begins on March 3, 2021; and

"(B) ends on the last day of the fiscal year of such State, territory, or Tribal government in which all funds received by the State, territory, or Tribal government from a payment made under this section or a transfer made under section 603(c)(4) have been expended or returned to, or recovered by, the Secretary.

"(2) ELIGIBLE WORKERS.—The term 'eligible workers' means those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.

"(3) PREMIUM PAY.—The term 'premium pay' means an amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID–19 public health emergency. Such

amount may not exceed $25,000 with respect to any single eligible worker.

"(4) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

"(5) STATE.—The term 'State' means each of the 50 States and the District of Columbia.

"(6) TERRITORY.—The term 'territory' means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

"(7) TRIBAL GOVERNMENT.—The term 'Tribal Government' means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this Act pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

42 USC 803.

"SEC. 603. CORONAVIRUS LOCAL FISCAL RECOVERY FUND.

"(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $130,200,000,000, to remain available through December 31, 2024, for making payments under this section to metropolitan cities, nonentitlement units of local government, and counties to mitigate the fiscal effects stemming from the public health emergency with respect to the Coronavirus Disease (COVID–19).

"(b) AUTHORITY TO MAKE PAYMENTS.—

"(1) METROPOLITAN CITIES.—

"(A) IN GENERAL.—Of the amount appropriated under subsection (a), the Secretary shall reserve $45,570,000,000 to make payments to metropolitan cities.

"(B) ALLOCATION AND PAYMENT.—From the amount reserved under subparagraph (A), the Secretary shall allocate and, in accordance with paragraph (7), pay to each metropolitan city an amount determined for the metropolitan city consistent with the formula under section 106(b) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(b)), except that, in applying such formula, the Secretary shall substitute 'all metropolitan cities' for 'all metropolitan areas' each place it appears.

"(2) NONENTITLEMENT UNITS OF LOCAL GOVERNMENT.—

"(A) IN GENERAL.—Of the amount appropriated under subsection (a), the Secretary shall reserve $19,530,000,000 to make payments to States for distribution by the State to nonentitlement units of local government in the State.

"(B) ALLOCATION AND PAYMENT.—From the amount reserved under subparagraph (A), the Secretary shall allocate and, in accordance with paragraph (7), pay to each State an amount which bears the same proportion to such reserved amount as the total population of all areas that are non-metropolitan cities in the State bears to the total population of all areas that are non-metropolitan cities in all such States.

Deadlines.

"(C) DISTRIBUTION TO NONENTITLEMENT UNITS OF LOCAL GOVERNMENT.—

"(i) IN GENERAL.—Not later than 30 days after a State receives a payment under subparagraph (B), the State shall distribute to each nonentitlement unit of local government in the State an amount that bears the same proportion to the amount of such payment as the population of the nonentitlement unit of local government bears to the total population of all the nonentitlement units of local government in the State, subject to clause (iii).

"(ii) DISTRIBUTION OF FUNDS.— Time period.

"(I) EXTENSION FOR DISTRIBUTION.—If an authorized officer of a State required to make distributions under clause (i) certifies in writing to the Secretary before the end of the 30-day distribution period described in such clause that it would constitute an excessive administrative burden for the State to meet the terms of such clause with respect to 1 or more such distributions, the authorized officer may request, and the Secretary shall grant, an extension of such period of not more than 30 days to allow the State to make such distributions in accordance with clause (i). Certification.

"(II) ADDITIONAL EXTENSIONS.—

"(aa) IN GENERAL.—If a State has been granted an extension to the distribution period under subclause (I) but is unable to make all the distributions required under clause (i) before the end of such period as extended, an authorized officer of the State may request an additional extension of the distribution period of not more than 30 days. The Secretary may grant a request for an additional extension of such period only if—

"(AA) the authorized officer making such request provides a written plan to the Secretary specifying, for each distribution for which an additional extension is requested, when the State expects to make such distribution and the actions the State has taken and will take in order to make all such distributions before the end of the distribution period (as extended under subclause (I) and this subclause); and Plan.

"(BB) the Secretary determines that such plan is reasonably designed to distribute all such funds to nonentitlement units of local government by the end of the distribution period (as so extended). Determination.

"(bb) FURTHER ADDITIONAL EXTENSIONS.—If a State granted an additional extension of the distribution period under item (aa) requires any further additional extensions of such period, the request only may be made and granted subject to the requirements specified in item (aa).

"(iii) CAPPED AMOUNT.—The total amount distributed to a nonentitlement unit of local government

under this paragraph may not exceed the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020.

"(iv) RETURN OF EXCESS AMOUNTS.—Any amounts not distributed to a nonentitlement unit of local government as a result of the application of clause (iii) shall be returned to the Secretary.

Time period.

"(D) PENALTY FOR NONCOMPLIANCE.—If, by the end of the 120-day period that begins on the date a State receives a payment from the amount allocated under subparagraph (B) or, if later, the last day of the distribution period for the State (as extended with respect to the State under subparagraph (C)(ii)), such State has failed to make all the distributions from such payment in accordance with the terms of subparagraph (C) (including any extensions of the distribution period granted in accordance with such subparagraph), an amount equal to the amount of such payment that remains undistributed as of such date shall be booked as a debt of such State owed to the Federal Government, shall be paid back from the State's allocation provided under section 602(b)(3)(B)(iii), and shall be deposited into the general fund of the Treasury.

"(3) COUNTIES.—

"(A) AMOUNT.—From the amount appropriated under subsection (a), the Secretary shall reserve and allocate $65,100,000,000 of such amount to make payments directly to counties in an amount which bears the same proportion to the total amount reserved under this paragraph as the population of each such county bears to the total population of all such entities and shall pay such allocated amounts to such counties in accordance with paragraph (7).

"(B) SPECIAL RULES.—

"(i) URBAN COUNTIES.—No county that is an 'urban county' (as defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302)) shall receive less than the amount the county would otherwise receive if the amount paid under this paragraph were allocated to metropolitan cities and urban counties under section 106(b) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(b)).

Distribution.

"(ii) COUNTIES THAT ARE NOT UNITS OF GENERAL LOCAL GOVERNMENT.—In the case of an amount to be paid to a county that is not a unit of general local government, the amount shall instead be paid to the State in which such county is located, and such State shall distribute such amount to each unit of general local government within such county in an amount that bears the same proportion to the amount to be paid to such county as the population of such units of general local government bears to the total population of such county.

"(iii) DISTRICT OF COLUMBIA.—For purposes of this paragraph, the District of Columbia shall be considered to consist of a single county that is a unit of general local government.

"(4) CONSOLIDATED GOVERNMENTS.—A unit of general local government that has formed a consolidated government, or that is geographically contained (in full or in part) within the boundaries of another unit of general local government may receive a distribution under each of paragraphs (1), (2), and (3), as applicable, based on the respective formulas specified in such paragraphs.

"(5) PRO RATA ADJUSTMENT AUTHORITY.—The amounts otherwise determined for allocation and payment under paragraphs (1), (2), and (3) may be adjusted by the Secretary on a pro rata basis to the extent necessary to ensure that all available funds are distributed to metropolitan cities, counties, and States in accordance with the requirements specified in each paragraph (as applicable) and the certification requirement specified in subsection (d).

"(6) POPULATION.—For purposes of determining allocations under this section, the population of an entity shall be determined based on the most recent data are available from the Bureau of the Census or, if not available, from such other data as a State determines appropriate. Determination.

"(7) TIMING.—

"(A) FIRST TRANCHE AMOUNT.—To the extent practicable, with respect to each metropolitan city for which an amount is allocated under paragraph (1), each State for which an amount is allocated under paragraph (2) for distribution to nonentitlement units of local government, and each county for which an amount is allocated under paragraph (3), the Secretary shall pay from such allocation the First Tranche Amount for such city, State, or county not later than 60 days after the date of enactment of this section. Deadline.

"(B) SECOND TRANCHE AMOUNT.—The Secretary shall pay to each metropolitan city for which an amount is allocated under paragraph (1), each State for which an amount is allocated under paragraph (2) for distribution to nonentitlement units of local government, and each county for which an amount is allocated under paragraph (3), the Second Tranche Amount for such city, State, or county not earlier than 12 months after the date on which the First Tranche Amount is paid to the city, State, or county. Time period.

"(c) REQUIREMENTS.—

"(1) USE OF FUNDS.—Subject to paragraph (2), and except as provided in paragraphs (3) and (4), a metropolitan city, nonentitlement unit of local government, or county shall only use the funds provided under a payment made under this section to cover costs incurred by the metropolitan city, nonentitlement unit of local government, or county, by December 31, 2024— Deadline.

"(A) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

"(B) to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the metropolitan city, nonentitlement unit of local government, or county that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;

"(C) for the provision of government services to the extent of the reduction in revenue of such metropolitan city, nonentitlement unit of local government, or county due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the metropolitan city, nonentitlement unit of local government, or county prior to the emergency; or

"(D) to make necessary investments in water, sewer, or broadband infrastructure.

"(2) PENSION FUNDS.—No metropolitan city, nonentitlement unit of local government, or county may use funds made available under this section for deposit into any pension fund.

"(3) TRANSFER AUTHORITY.—A metropolitan city, nonentitlement unit of local government, or county receiving a payment from funds made available under this section may transfer funds to a private nonprofit organization (as that term is defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17)), a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government.

"(4) TRANSFERS TO STATES.—Notwithstanding paragraph (1), a metropolitan city, nonentitlement unit of local government, or county receiving a payment from funds made available under this section may transfer such funds to the State in which such entity is located.

"(d) REPORTING.—Any metropolitan city, nonentitlement unit of local government, or county receiving funds provided under a payment made under this section shall provide to the Secretary periodic reports providing a detailed accounting of the uses of such funds by such metropolitan city, nonentitlement unit of local government, or county and including such other information as the Secretary may require for the administration of this section.

Requirement.

"(e) RECOUPMENT.—Any metropolitan city, nonentitlement unit of local government, or county that has failed to comply with subsection (c) shall be required to repay to the Secretary an amount equal to the amount of funds used in violation of such subsection.

"(f) REGULATIONS.—The Secretary shall have the authority to issue such regulations as may be necessary or appropriate to carry out this section.

"(g) DEFINITIONS.—In this section:

"(1) COUNTY.—The term 'county' means a county, parish, or other equivalent county division (as defined by the Bureau of the Census).

"(2) ELIGIBLE WORKERS.—The term 'eligible workers' means those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each chief executive officer of a metropolitan city, nonentitlement unit of local government, or county may designate as critical to protect the health and well-being of the residents

of their metropolitan city, nonentitlement unit of local government, or county.

"(3) FIRST TRANCHE AMOUNT.—The term 'First Tranche Amount' means, with respect to each metropolitan city for which an amount is allocated under subsection (b)(1), each State for which an amount is allocated under subsection (b)(2) for distribution to nonentitlement units of local government, and each county for which an amount is allocated under subsection (b)(3), 50 percent of the amount so allocated to such metropolitan city, State, or county (as applicable).

"(4) METROPOLITAN CITY.—The term 'metropolitan city' has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

"(5) NONENTITLEMENT UNIT OF LOCAL GOVERNMENT.—The term 'nonentitlement unit of local government' means a 'city', as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5))), that is not a metropolitan city.

"(6) PREMIUM PAY.—The term 'premium pay' has the meaning given such term in section 602(g).

"(7) SECOND TRANCHE AMOUNT.—The term 'Second Tranche Amount' means, with respect to each metropolitan city for which an amount is allocated under subsection (b)(1), each State for which an amount is allocated under subsection (b)(2) for distribution to nonentitlement units of local government, and each county for which an amount is allocated under subsection (b)(3), an amount not to exceed 50 percent of the amount so allocated to such metropolitan city, State, or county (as applicable).

"(8) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

"(9) STATE.—The term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

"(10) UNIT OF GENERAL LOCAL GOVERNMENT.—The term 'unit of general local government' has the meaning given that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

"SEC. 604. CORONAVIRUS CAPITAL PROJECTS FUND. 42 USC 804.

"(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $10,000,000,000, to remain available until expended, for making payments to States, territories, and Tribal governments to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID–19).

"(b) PAYMENTS.—

"(1) MINIMUM AMOUNTS.—From the amount appropriated under subsection (a)—

"(A) the Secretary shall pay $100,000,000 to each State;

"(B) the Secretary shall pay $100,000,000 of such amount in equal shares to 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; and

"(C) the Secretary shall pay $100,000,000 of such amount in equal shares to Tribal governments and the State of Hawaii (in addition to the amount paid to the State of Hawaii under subparagraph (A)), of which—

"(i) not less than $50,000 shall be paid to each Tribal government; and

"(ii) not less than $50,000, and not more than $200,000, shall be paid to the State of Hawaii for the exclusive use of the Department of Hawaiian Home Lands and the Native Hawaiian Education Programs to assist Native Hawaiians in accordance with this section.

"(2) REMAINING AMOUNTS.—

Allocations.

"(A) IN GENERAL.—From the amount of the appropriation under subsection (a) that remains after the application of paragraph (1), the Secretary shall make payments to States based on population such that—

"(i) 50 percent of such amount shall be allocated among the States based on the proportion that the population of each State bears to the population of all States;

"(ii) 25 percent of such amount shall be allocated among the States based on the proportion that the number of individuals living in rural areas in each State bears to the number of individuals living in rural areas in all States; and

"(iii) 25 percent of such amount shall be allocated among the States based on the proportion that the number of individuals with a household income that is below 150 percent of the poverty line applicable to a family of the size involved in each State bears to the number of such individuals in all States.

Determinations.

"(B) DATA.—In determining the allocations to be made to each State under subparagraph (A), the Secretary of the Treasury shall use the most recent data available from the Bureau of the Census.

Grants.
Deadline.

"(c) TIMING.—The Secretary shall establish a process of applying for grants to access funding made available under section (b) not later than 60 days after enactment of this section.

"(d) DEFINITIONS.—In this section:

"(1) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

"(2) STATE.—The term 'State' means each of the 50 States, the District of Columbia, and Puerto Rico.

"(3) TRIBAL GOVERNMENT.—The term 'Tribal government' has the meaning given such term in section 602(g).

42 USC 805.

"SEC. 605. LOCAL ASSISTANCE AND TRIBAL CONSISTENCY FUND.

"(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $2,000,000,000 to

remain available until September 30, 2023, with amounts to be obligated for each of fiscal years 2022 and 2023 in accordance with subsection (b), for making payments under this section to eligible revenue sharing counties and eligible Tribal governments.

"(b) AUTHORITY TO MAKE PAYMENTS.— Allocations. Determinations. Time period.

"(1) PAYMENTS TO ELIGIBLE REVENUE SHARING COUNTIES.—For each of fiscal years 2022 and 2023, the Secretary shall reserve $750,000,000 of the total amount appropriated under subsection (a) to allocate and pay to each eligible revenue sharing county in amounts that are determined by the Secretary taking into account economic conditions of each eligible revenue sharing county, using measurements of poverty rates, household income, land values, and unemployment rates as well as other economic indicators, over the 20-year period ending with September 30, 2021.

"(2) PAYMENTS TO ELIGIBLE TRIBAL GOVERNMENTS.—For each of fiscal years 2022 and 2023, the Secretary shall reserve $250,000,000 of the total amount appropriated under subsection (a) to allocate and pay to eligible Tribal governments in amounts that are determined by the Secretary taking into account economic conditions of each eligible Tribe.

"(c) USE OF PAYMENTS.—An eligible revenue sharing county or an eligible Tribal government may use funds provided under a payment made under this section for any governmental purpose other than a lobbying activity. Lobbying

"(d) REPORTING REQUIREMENT.—Any eligible revenue sharing county receiving a payment under this section shall provide to the Secretary periodic reports providing a detailed accounting of the uses of fund by such eligible revenue sharing county and such other information as the Secretary may require for the administration of this section.

"(e) RECOUPMENT.—Any eligible revenue sharing county that has failed to submit a report required under subsection (d) or failed to comply with subsection (c), shall be required to repay to the Secretary an amount equal to— Requirement.

"(1) in the case of a failure to comply with subsection (c), the amount of funds used in violation of such subsection; and

"(2) in the case of a failure to submit a report required under subsection (d), such amount as the Secretary determines appropriate, but not to exceed 5 percent of the amount paid to the eligible revenue sharing county under this section for all fiscal years. Determination.

"(f) DEFINITIONS.—In this section:

"(1) ELIGIBLE REVENUE SHARING COUNTY.—The term 'eligible revenue sharing county' means—

"(A) a county, parish, or borough— Determinations.

"(i) that is independent of any other unit of local government; and

"(ii) that, as determined by the Secretary, is the principal provider of government services for the area within its jurisdiction; and

"(iii) for which, as determined by the Secretary, there is a negative revenue impact due to implementation of a Federal program or changes to such program; and

"(B) the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands.

"(2) ELIGIBLE TRIBAL GOVERNMENT.—The term 'eligible Tribal government' means the recognized governing body of an eligible Tribe.

"(3) ELIGIBLE TRIBE.—The term 'eligible Tribe' means any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this section pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

"(4) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.".

(b) CONFORMING AMENDMENT.—The heading for title VI of the Social Security Act (42 U.S.C. 801 et seq.) is amended by striking "**FUND**" and inserting "**, FISCAL RECOVERY, AND CRITICAL CAPITAL PROJECTS FUNDS**".

Subtitle N—Other Provisions

SEC. 9911. FUNDING FOR PROVIDERS RELATING TO COVID–19.

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following:

42 USC 1320b–26.

"SEC. 1150C. FUNDING FOR PROVIDERS RELATING TO COVID–19.

"(a) FUNDING.—In addition to amounts otherwise available, there is appropriated to the Secretary, for fiscal year 2021, out of any monies in the Treasury not otherwise appropriated, $8,500,000,000 for purposes of making payments to eligible health care providers for health care related expenses and lost revenues that are attributable to COVID–19. Amounts appropriated under the preceding sentence shall remain available until expended.

"(b) APPLICATION REQUIREMENT.—To be eligible for a payment under this section, an eligible health care provider shall submit to the Secretary an application in such form and manner as the Secretary shall prescribe. Such application shall contain the following:

"(1) A statement justifying the need of the provider for the payment, including documentation of the health care related expenses attributable to COVID–19 and lost revenues attributable to COVID–19.

"(2) The tax identification number of the provider.

Reports.

"(3) Such assurances as the Secretary determines appropriate that the eligible health care provider will maintain and make available such documentation and submit such reports (at such time, in such form, and containing such information as the Secretary shall prescribe) as the Secretary determines is necessary to ensure compliance with any conditions imposed by the Secretary under this section.

"(4) Any other information determined appropriate by the Secretary.

"(c) LIMITATION.—Payments made to an eligible health care provider under this section may not be used to reimburse any expense or loss that—

"(1) has been reimbursed from another source; or

"(2) another source is obligated to reimburse.

"(d) APPLICATION OF REQUIREMENTS, RULES, AND PROCEDURES.—The Secretary shall apply any requirements, rules, or procedures as the Secretary deems appropriate for the efficient execution of this section.

"(e) DEFINITIONS.—In this section:

"(1) ELIGIBLE HEALTH CARE PROVIDER.—The term 'eligible health care provider' means—

"(A) a provider of services (as defined in section 1861(u)) or a supplier (as defined in section 1861(d)) that—

"(i) is enrolled in the Medicare program under title XVIII under section 1866(j) (including temporarily enrolled during the emergency period described in section 1135(g)(1)(B) for such period);

"(ii) provides diagnoses, testing, or care for individuals with possible or actual cases of COVID–19; and

"(iii) is a rural provider or supplier; or

"(B) a provider or supplier that—

"(i) is enrolled with a State Medicaid plan under title XIX (or a waiver of such plan) in accordance with subsections (a)(77) and (kk) of section 1902 (including enrolled pursuant to section 1902(a)(78) or section 1932(d)(6)) or enrolled with a State child health plan under title XXI (or a waiver of such plan) in accordance with subparagraph (G) of section 2107(e)(1) (including enrolled pursuant to subparagraph (D) or (Q) of such section);

"(ii) provides diagnoses, testing, or care for individuals with possible or actual cases of COVID–19; and

"(iii) is a rural provider or supplier.

"(2) HEALTH CARE RELATED EXPENSES ATTRIBUTABLE TO COVID–19.—The term 'health care related expenses attributable to COVID–19' means health care related expenses to prevent, prepare for, and respond to COVID–19, including the building or construction of a temporary structure, the leasing of a property, the purchase of medical supplies and equipment, including personal protective equipment and testing supplies, providing for increased workforce and training (including maintaining staff, obtaining additional staff, or both), the operation of an emergency operation center, retrofitting a facility, providing for surge capacity, and other expenses determined appropriate by the Secretary.

"(3) LOST REVENUE ATTRIBUTABLE TO COVID–19.—The term 'lost revenue attributable to COVID–19' has the meaning given that term in the Frequently Asked Questions guidance released by the Department of Health and Human Services in June 2020, including the difference between such provider's budgeted and actual revenue if such budget had been established and approved prior to March 27, 2020.

"(4) PAYMENT.— The term 'payment' includes, as determined appropriate by the Secretary, a pre-payment, a prospective payment, a retrospective payment, or a payment through a grant or other mechanism.

"(5) RURAL PROVIDER OR SUPPLIER.—The term 'rural provider or supplier' means—

"(A) a—

"(i) provider or supplier located in a rural area (as defined in section 1886(d)(2)(D)); or

"(ii) provider treated as located in a rural area pursuant to section 1886(d)(8)(E);

"(B) a provider or supplier located in any other area that serves rural patients (as defined by the Secretary), which may include, but is not required to include, a metropolitan statistical area with a population of less than 500,000 (determined based on the most recently available data);

"(C) a rural health clinic (as defined in section 1861(aa)(2));

"(D) a provider or supplier that furnishes home health, hospice, or long-term services and supports in an individual's home located in a rural area (as defined in section 1886(d)(2)(D)); or

"(E) any other rural provider or supplier (as defined by the Secretary).".

SEC. 9912. EXTENSION OF CUSTOMS USER FEES.

(a) IN GENERAL.—Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended—

(1) in subparagraph (A), by striking "October 21, 2029" and inserting "September 30, 2030"; and

(2) in subparagraph (B)(i), by striking "October 21, 2029" and inserting "September 30, 2030".

(b) RATE FOR MERCHANDISE PROCESSING FEES.—Section 503 of the United States-Korea Free Trade Agreement Implementation Act (Public Law 112–41; 19 U.S.C. 3805 note) is amended by striking "October 21, 2029" and inserting "September 30, 2030".

TITLE X—COMMITTEE ON FOREIGN RELATIONS

SEC. 10001. DEPARTMENT OF STATE OPERATIONS.

In addition to amounts otherwise available, there is authorized and appropriated to the Secretary of State for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $204,000,000, to remain available until September 30, 2022, for necessary expenses of the Department of State to carry out the authorities, functions, duties, and responsibilities in the conduct of the foreign affairs of the United States, to prevent, prepare for, and respond to coronavirus domestically or internationally, which shall include maintaining Department of State operations.

SEC. 10002. UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT OPERATIONS.

In addition to amounts otherwise available, there is authorized and appropriated to the Administrator of the United States Agency for International Development for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $41,000,000, to remain available until September 30, 2022, to carry out the provisions of section 667 of the Foreign Assistance Act of 1961 (22 U.S.C. 2427) for necessary expenses of the United States Agency for International Development to prevent, prepare for, and respond to

coronavirus domestically or internationally, and for other operations and maintenance requirements related to coronavirus.

SEC. 10003. GLOBAL RESPONSE.

(a) IN GENERAL.—In addition to amounts otherwise available, there is authorized and appropriated to the Secretary of State for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $8,675,000,000, to remain available until September 30, 2022, for necessary expenses to carry out the provisions of section 531 of chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346) as health programs to prevent, prepare for, and respond to coronavirus, which shall include recovery from the impacts of such virus and shall be allocated as follows—

(1) $905,000,000 to be made available to the United States Agency for International Development for global health activities to prevent, prepare for, and respond to coronavirus, which shall include a contribution to a multilateral vaccine development partnership to support epidemic preparedness;

(2) $3,750,000,000 to be made available to the Department of State to support programs for the prevention, treatment, and control of HIV/AIDS in order to prevent, prepare for, and respond to coronavirus, including to mitigate the impact on such programs from coronavirus and support recovery from the impacts of the coronavirus, of which not less than $3,500,000,000 shall be for a United States contribution to the Global Fund to Fight AIDS, Tuberculosis and Malaria;

(3) $3,090,000,000 to be made available to the United States Agency for International Development to prevent, prepare for, and respond to coronavirus, which shall include support for international disaster relief, rehabilitation, and reconstruction, for health activities, and to meet emergency food security needs; and

(4) $930,000,000 to be made available to prevent, prepare for, and respond to coronavirus, which shall include activities to address economic and stabilization requirements resulting from such virus.

(b) WAIVER OF LIMITATION.—Any contribution to the Global Fund to Fight AIDS, Tuberculosis and Malaria made pursuant to subsection (a)(2) shall be made available notwithstanding section 202(d)(4)(A)(i) of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (22 U.S.C. 7622(d)(4)(A)(i)), and such contribution shall not be considered a contribution for the purpose of applying such section 202(d)(4)(A)(i).

SEC. 10004. HUMANITARIAN RESPONSE.

(a) IN GENERAL.—In addition to amounts otherwise available, there is authorized and appropriated to the Secretary of State for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $500,000,000, to remain available until September 30, 2022, to carry out the provisions of section 2(a) and (b) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601(a) and (b)) to prevent, prepare for, and respond to coronavirus.

(b) USE OF FUNDS.—Funds appropriated pursuant to this section shall not be made available for the costs of resettling refugees in the United States. Refugee resettlement.

SEC. 10005. MULTILATERAL ASSISTANCE.

In addition to amounts otherwise available, there is authorized and appropriated to the Secretary of State for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $580,000,000, to remain available until September 30, 2022, to carry out the provisions of section 301(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2221(a)) to prevent, prepare for, and respond to coronavirus, which shall include support for the priorities and objectives of the United Nations Global Humanitarian Response Plan COVID–19 through voluntary contributions to international organizations and programs administered by such organizations.

TITLE XI—COMMITTEE ON INDIAN AFFAIRS

SEC. 11001. INDIAN HEALTH SERVICE.

(a) In addition to amounts otherwise available, there is appropriated to the Secretary of Health and Human Services (in this section referred to as the "Secretary") for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $6,094,000,000, to remain available until expended, of which—

(1) $5,484,000,000 shall be for carrying out the Act of August 5, 1954 (42 U.S.C. 2001 et seq.) (commonly referred to as the Transfer Act), the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.), the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.), and titles II and III of the Public Health Service Act (42 U.S.C. 201 et seq. and 241 et seq.) with respect to the Indian Health Service, of which—

(A) $2,000,000,000 shall be for lost reimbursements, in accordance with section 207 of the Indian Health Care Improvement Act (25 U.S.C. 1621f);

(B) $500,000,000 shall be for the provision of additional health care services, services provided through the Purchased/Referred Care program, and other related activities;

(C) $140,000,000 shall be for information technology, telehealth infrastructure, and the Indian Health Service electronic health records system;

(D) $84,000,000 shall be for maintaining operations of the Urban Indian health program, which shall be in addition to other amounts made available under this subsection for Urban Indian organizations (as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603));

(E) $600,000,000 shall be for necessary expenses to plan, prepare for, promote, distribute, administer, and track COVID–19 vaccines, for the purposes described in subparagraphs (F) and (G), and for other vaccine-related activities;

(F) $1,500,000,000 shall be for necessary expenses to detect, diagnose, trace, and monitor COVID–19 infections, activities necessary to mitigate the spread of COVID–19, supplies necessary for such activities, for the purposes described in subparagraphs (E) and (G), and for other related activities;

(G) $240,000,000 shall be for necessary expenses to establish, expand, and sustain a public health workforce to prevent, prepare for, and respond to COVID–19, other public health workforce-related activities, for the purposes described in subparagraphs (E) and (F), and for other related activities; and

(H) $420,000,000 shall be for necessary expenses related to mental health and substance use prevention and treatment services, for the purposes described in subparagraph (C) and paragraph (2) as related to mental health and substance use prevention and treatment services, and for other related activities;

(2) $600,000,000 shall be for the lease, purchase, construction, alteration, renovation, or equipping of health facilities to respond to COVID–19, and for maintenance and improvement projects necessary to respond to COVID–19 under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a), the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.), the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.), and titles II and III of the Public Health Service Act (42 U.S.C. 202 et seq.) with respect to the Indian Health Service; and

(3) $10,000,000 shall be for carrying out section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a) for expenses relating to potable water delivery.

Reimbursement. Time period.

(b) Funds appropriated by subsection (a) shall be made available to restore amounts, either directly or through reimbursement, for obligations for the purposes specified in this section that were incurred to prevent, prepare for, and respond to COVID–19 during the period beginning on the date on which the public health emergency was declared by the Secretary on January 31, 2020, pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) with respect to COVID–19 and ending on the date of the enactment of this Act.

(c) Funds made available under subsection (a) to Tribes and Tribal organizations under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) shall be available on a one-time basis. Such non-recurring funds shall not be part of the amount required by section 106 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5325), and such funds shall only be used for the purposes identified in this section.

SEC. 11002. BUREAU OF INDIAN AFFAIRS.

(a) IN GENERAL.—In addition to amounts otherwise made available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $900,000,000 to remain available until expended, pursuant to the Snyder Act (25 U.S.C. 13), of which—

(1) $100,000,000 shall be for Tribal housing improvement;

(2) $772,500,000 shall be for Tribal government services, public safety and justice, social services, child welfare assistance, and for other related expenses;

(3) $7,500,000 shall be for related Federal administrative costs and oversight; and

(4) $20,000,000 shall be to provide and deliver potable water.

(b) EXCLUSIONS FROM CALCULATION.—Funds appropriated under subsection (a) shall be excluded from the calculation of funds received by those Tribal governments that participate in the "Small and Needy'" program.

(c) ONE-TIME BASIS FUNDS.—Funds made available under subsection (a) to Tribes and Tribal organizations under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) shall be available on a one-time basis. Such non-recurring funds shall not be part of the amount required by section 106 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5325), and such funds shall only be used for the purposes identified in this section.

SEC. 11003. HOUSING ASSISTANCE AND SUPPORTIVE SERVICES PROGRAMS FOR NATIVE AMERICANS.

(a) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Secretary of Housing and Urban Development (in this section referred to as the "Secretary") for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $750,000,000, to remain available until September 30, 2025, to prevent, prepare for, and respond to coronavirus, for activities and assistance authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4111 et seq.), under title VIII of NAHASDA (25 U.S.C. 4221 et seq.), and under section 106(a)(1) of the Housing and Community Development Act of 1974 with respect to Indian tribes (42 U.S.C. 5306(a)(1)), which shall be made available as follows:

(1) HOUSING BLOCK GRANTS.—$455,000,000 shall be available for the Native American Housing Block Grants and Native Hawaiian Housing Block Grant programs, as authorized under titles I and VIII of NAHASDA, subject to the following terms and conditions:

(A) FORMULA.—Of the amounts made available under this paragraph, $450,000,000 shall be for grants under title I of NAHASDA and shall be distributed according to the same funding formula used in fiscal year 2021.

(B) NATIVE HAWAIIANS.—Of the amounts made available under this paragraph, $5,000,000 shall be for grants under title VIII of NAHASDA.

(C) USE.—Amounts made available under this paragraph shall be used by recipients to prevent, prepare for, and respond to coronavirus, including to maintain normal operations and fund eligible affordable housing activities under NAHASDA during the period that the program is impacted by coronavirus. In addition, amounts made available under subparagraph (B) may be used to provide rental assistance to eligible Native Hawaiian families both on and off the Hawaiian Home Lands.

Reimbursement.

(D) TIMING OF OBLIGATIONS.—Amounts made available under this paragraph shall be used, as necessary, to cover or reimburse allowable costs to prevent, prepare for, and respond to coronavirus that are incurred by a recipient, including for costs incurred after January 21, 2020.

(E) WAIVERS OR ALTERNATIVE REQUIREMENTS.—The Secretary may waive or specify alternative requirements for any provision of NAHASDA (25 U.S.C. 4101 et seq.)

or regulation applicable to the Native American Housing Block Grants or Native Hawaiian Housing Block Grant program other than requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that the waiver or alternative requirement is necessary to expedite or facilitate the use of amounts made available under this paragraph.

(F) UNOBLIGATED AMOUNTS.—Amounts made available under this paragraph which are not accepted, are voluntarily returned, or otherwise recaptured for any reason shall be used to fund grants under paragraph (2).

(2) INDIAN COMMUNITY DEVELOPMENT BLOCK GRANTS.—$280,000,000 shall be available for grants under title I of the Housing and Community Development Act of 1974, subject to the following terms and conditions:

(A) USE.—Amounts made available under this paragraph shall be used for emergencies that constitute imminent threats to health and safety and are designed to prevent, prepare for, and respond to coronavirus.

(B) PLANNING.—Not to exceed 20 percent of any grant made with funds made available under this paragraph shall be expended for planning and management development and administration.

(C) TIMING OF OBLIGATIONS.—Amounts made available under this paragraph shall be used, as necessary, to cover or reimburse allowable costs to prevent, prepare for, and respond to coronavirus incurred by a recipient, including for costs incurred after January 21, 2020. Reimbursement.

(D) INAPPLICABILITY OF PUBLIC SERVICES CAP.—Indian tribes may use up to 100 percent of any grant from amounts made available under this paragraph for public services activities to prevent, prepare for, and respond to coronavirus.

(E) WAIVERS OR ALTERNATIVE REQUIREMENTS.—The Secretary may waive or specify alternative requirements for any provision of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) or regulation applicable to the Indian Community Development Block Grant program other than requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that the waiver or alternative requirement is necessary to expedite or facilitate the use of amounts made available under this paragraph.

(3) TECHNICAL ASSISTANCE.—$10,000,000 shall be used to make new awards or increase prior awards to existing technical assistance providers to provide an immediate increase in training and technical assistance to Indian tribes, Indian housing authorities, tribally designated housing entities, and recipients under title VIII of NAHASDA for activities under this section.

(4) OTHER COSTS.—$5,000,000 shall be used for the administrative costs to oversee and administer the implementation of this section, and pay for associated information technology, financial reporting, and other costs.

SEC. 11004. COVID–19 RESPONSE RESOURCES FOR THE PRESERVATION AND MAINTENANCE OF NATIVE AMERICAN LANGUAGES.

(a) Section 816 of the Native American Programs Act of 1974 (42 U.S.C. 2992d) is amended by adding at the end the following:

"(f) In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $20,000,000 to remain available until expended, to carry out section 803C(g) of this Act.".

(b) Section 803C of the Native American Programs Act of 1974 (42 U.S.C. 2991b–3) is amended by adding at the end the following:

Deadline.

"(g) EMERGENCY GRANTS FOR NATIVE AMERICAN LANGUAGE PRESERVATION AND MAINTENANCE.—Not later than 180 days after the effective date of this subsection, the Secretary shall award grants to entities eligible to receive assistance under subsection (a)(1) to ensure the survival and continuing vitality of Native American languages during and after the public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) with respect to the COVID–19 pandemic.".

SEC. 11005. BUREAU OF INDIAN EDUCATION.

Deadline.

In addition to amounts otherwise available, there is appropriated to the Bureau of Indian Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $850,000,000, to remain available until expended, to be allocated by the Director of the Bureau of Indian Education not more than 45 calendar days after the date of enactment of this Act, for programs or activities operated or funded by the Bureau of Indian Education, for Bureau-funded schools (as defined in section 1141(3) of the Education Amendments of 1978 (25 U.S.C. 2021(3)), and for Tribal Colleges or Universities (as defined in section 316(b)(3) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)(3))).

SEC. 11006. AMERICAN INDIAN, NATIVE HAWAIIAN, AND ALASKA NATIVE EDUCATION.

Determination.
Deadline.

In addition to amounts otherwise available, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $190,000,000, to remain available until expended, for awards, which shall be determined by the Secretary of Education not more than 180 calendar days after the date of enactment of this Act, of which—

(1) $20,000,000 shall be for awards for Tribal education agencies for activities authorized under section 6121(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7441(c));

(2) $85,000,000 shall be for awards to entities eligible to receive grants under section 6205(a)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7515(a)(1)) for activities authorized under section 6205(a)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7515(a)(3)); and

(3) $85,000,000 shall be for awards to entities eligible to receive grants under section 6304(a)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7544(a)(1)) for activities authorized under section 6304(a)(2–3) of the

Elementary and Secondary Education Act of 1965 (20 U.S.C. 7544(a)(2–3)) and other related activities.

Approved March 11, 2021.

LEGISLATIVE HISTORY—H.R. 1319:

HOUSE REPORTS: No. 117–7 (Comm. on the Budget).
CONGRESSIONAL RECORD, Vol. 167 (2021):
Feb. 26, considered and passed House.
Mar. 4, 5, considered and passed Senate, amended.
Mar. 10, House concurred in Senate amendment.
DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2021):
Mar. 11, Presidential remarks.

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CODE OF FEDERAL REGULATIONS

Title 2
Grants and Agreements

Revised as of January 1, 2023

Containing a codification of documents
of general applicability and future effect

As of January 1, 2023

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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

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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.

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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.

''[RESERVED]'' TERMINOLOGY

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.

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OLIVER A. POTTS,
Director,
Office of the Federal Register
January 1, 2023.

THIS TITLE

Title 2—GRANTS AND AGREEMENTS is composed of one volume. This volume is comprised of Subtitle A—Office of Management and Budget Guidance for Grants and Agreements 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, 2023.

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—Grants and Agreements

SUBTITLE A—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE FOR GRANTS AND AGREEMENTS

SUBTITLE B—FEDERAL AGENCY REGULATIONS FOR GRANTS AND AGREEMENTS

Subtitle A—Office of Management and Budget Guidance for Grants and Agreements

PART 1—ABOUT TITLE 2 OF THE CODE OF FEDERAL REGULATIONS AND SUBTITLE A

Subpart A—Introduction to Title 2 of the CFR

Subpart B—Introduction to Subtitle A

Subpart C—Responsibilities of OMB and Federal Agencies

AUTHORITY: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

SOURCE: 69 FR 26280, May 11, 2004, unless otherwise noted.

Subpart A—Introduction to Title 2 of the CFR

§ 1.100 Content of this title.

This title contains—

(a) Office of Management and Budget (OMB) guidance to Federal agencies on government-wide policies and procedures for the award and administration of grants and agreements; 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 and not regulation.

(c) Each Federal agency that publishes regulations implementing the OMB guidance 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 guidance).

§ 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.

(a) 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 management of the agencies' grants and agreements.

(b) There are two chapters for publication of the guidance because portions of it may be revised as a result of ongoing efforts to streamline and simplify requirements for the award and administration of grants and other financial assistance (and thereby implement the Federal Financial Assistance Management Improvement Act of 1999, Pub. L. 106–107).

(c) The OMB guidance in its initial form—before completion of revisions described in paragraph (b) of this section—is published in chapter II of this subtitle. When revisions to a part of the guidance are finalized, that part is published in chapter I and removed from chapter II.

§ 1.205 Applicability to grants and other funding instruments.

The types of instruments that are subject to the guidance in this subtitle vary from one portion of the guidance to another (note that each part identifies the types of instruments to which it applies). All portions of the guidance apply to grants and cooperative agreements, some portions also apply to other types of financial assistance or nonprocurement instruments, and some portions also apply to procurement contracts. For example, the:

(a) Guidance on debarment and suspension in part 180 of this subtitle applies broadly to all financial assistance and other nonprocurement transactions, and not just to grants and cooperative agreements.

(b) Cost principles in parts 220, 225 and 230 of this subtitle apply to procurement contracts, as well as to financial assistance, although those principles are implemented for procurement contracts through the Federal Acquisition Regulation in title 48 of the CFR, rather than through Federal agency regulations on grants and agreements in this title.

[70 FR 51863, Aug. 31, 2005]

§ 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 others through each Federal agency's implementation of the guidance, portions of which may apply to—

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

(2) Non-Federal entities that receive or apply for the agency's grants or agreements or receive subawards under those grants or 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. Specifically:

Guidance in * * *	On * * *	Previously was in * * *
(a) Chapter I, part 180.	Nonprocurement debarment and suspension.	OMB guidance that conforms with the government-wide common rule (see 60 FR 33036, June 26, 1995).
(b) Chapter I, part 182.	Drug-free workplace requirements.	OMB guidance (54 FR 4946, January 31, 1989) and a government-wide common rule (as amended at 68 FR 66534, November 26, 2003).
(c) Chapter II, part 200.	Uniform administrative requirements, cost principles, and audit requirements for federal awards.	OMB Circulars A–21, "Cost Principles for Educational Institutions" (Chapter II, part 225); A–87, "Cost Principles for State, Local and Indian Tribal Governments" (Chapter II, part 225); A–89, "Federal Domestic Assistance Program Information"; "; A–102 and a government-wide common rule (53 FR 8034, March 11, 1988); A–110, "Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" (Chapter II, part 215); A–122, "Cost Principles for Non-Profit Organizations" (Chapter II, part 230); and A–133 "Audits of States, Local Governments and Non-Profit Organizations".

[79 FR 75878, Dec. 19, 2014]

§ 1.220 Federal agency implementation of this subtitle.

A Federal agency that awards grants and agreements subject to the guidance in this subtitle implements the guidance in agency regulations in subtitle B of this title and/or in policy and procedural issuances, such as internal instructions to the agency's awarding and administering officials. An applicant or recipient 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.

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.

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

§ 1.305 Federal agency responsibilities.

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

(a) Implementing the guidance in this subtitle.

(b) Ensuring that the agency's components and subcomponents comply with the agency's implementation of the guidance.

(c) Performing other functions specified in this subtitle.

CHAPTER I—OFFICE OF MANAGEMENT AND BUDGET GOVERNMENTWIDE GUIDANCE FOR GRANTS AND AGREEMENTS

PARTS 2–24 [RESERVED]

PART 25—UNIVERSAL IDENTIFIER AND SYSTEM FOR AWARD MANAGEMENT

Subpart A—General

Subpart B—Policy

Subpart C—Recipient Requirements of Subrecipients

Subpart D—Definitions

AUTHORITY: Pub. L. 109–282; 31 U.S.C. 6102.

SOURCE: 75 FR 55673, Sept. 14, 2010, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 25 appear at 79 FR 75879, Dec. 19, 2014.

Subpart A—General

§ 25.100 Purposes of this part.

This part provides guidance to Federal awarding agencies to establish:

(a) The unique entity identifier as a universal identifier for Federal financial assistance applicants, as well as recipients and their direct subrecipients, and;

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

[75 FR 55673, Sept. 14, 2010, as amended at 79 FR 75879, Dec. 19, 2014; 80 FR 54407, Sept. 10, 2015; 85 FR 49522, Aug. 13, 2020]

§ 25.105 Types of awards to which this part applies.

This part applies to a Federal awarding agency's grants, cooperative agreements, loans, and other types of Federal financial assistance as defined in § 25.406.

[85 FR 49522, Aug. 13, 2020]

§ 25.110 Exceptions to this part.

(a) *General.* Through a Federal awarding agency's implementation of the guidance in this part, this part applies to all applicants and recipients of Federal awards, other than those exempted by statute or exempted in paragraphs (b) and (c) of this section that apply for or receive agency awards.

(b) *Exceptions for individuals.* 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 nonprofit organization he or she may own or operate in his or her name).

(c) *Other exceptions.* (1) Under a condition identified in paragraph (c)(2) of this section, a Federal awarding agency may exempt an applicant or recipient from an applicable requirement to

obtain a unique entity identifier and register in the SAM, or both.

(i) In that case, the Federal awarding agency must use a generic unique entity identifier in data it reports to *USAspending.gov* if reporting for a prime award to the recipient is required by the Federal Funding Accountability and Transparency Act (Pub. L. 109–282, hereafter cited as ''Transparency Act'').

(ii) Federal awarding agency use of a generic unique entity identifier should be used rarely for prime award reporting because it prevents prime awardees from being able to fulfill the subaward or executive compensation reporting required by the Transparency Act.

(2) The conditions under which a Federal awarding agency may exempt an applicant or recipient are—

(i) For any applicant or recipient, if the Federal awarding agency determines that it must protect information about the entity from disclosure if it is in the national security or foreign policy interests of the United States, or to avoid jeopardizing the personal safety of the applicant or recipient's staff or clients.

(ii) For a foreign organization or foreign public entity applying for or receiving a Federal award or subaward for a project or program performed outside the United States valued at less than $25,000, if the Federal awarding agency deems it to be impractical for the entity to comply with the requirement(s). This exemption must be determined by the Federal awarding agency on a case-by-case basis while utilizing a risk-based approach and does not apply if subawards are anticipated.

(iii) For an applicant, if the Federal awarding agency makes a determination that there are exigent circumstances that prohibit the applicant from receiving a unique entity identifier and completing SAM registration prior to receiving a Federal award. In these instances, Federal awarding agencies must require the recipient to obtain a unique entity identifier and complete SAM registration within 30 days of the Federal award date.

(3) Federal awarding agencies' use of generic unique entity identifier, as described in paragraphs (c)(1) and (2) of this section, should be rare. Having a generic unique entity identifier limits a recipient's ability to use Governmentwide systems that are needed to comply with some reporting requirements.

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

[85 FR 49523, Aug. 13, 2020]

Subpart B—Policy

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

(a) Each Federal awarding agency that awards the types of Federal financial assistance defined in § 25.406 must include the requirements described in 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 August 13, 2020.

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

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

(2) Maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency; and

(3) Provide its unique entity identifier in each application or plan it submits to the Federal awarding agency.

(c) For purposes of this policy:

(1) The applicant meets the Federal awarding agency's eligibility criteria and has the legal authority to apply and to 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 unique entity identifier. If a consortium is eligible to receive funding under a Federal awarding agency program but the agency's policy is to make the Federal award to a lead entity for the consortium, the unique entity identifier of the lead applicant will be used.

(2) A 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.

(3) To remain registered in the SAM database after the initial registration, the applicant is required to review and update its information in the SAM database on an annual basis from the date of initial registration or subsequent updates to ensure it is current, accurate and complete.

[85 FR 49523, Aug. 13, 2020]

§ 25.205 Effect of noncompliance with a requirement to obtain a unique entity identifier or register in the SAM.

(a) A Federal awarding agency may not make a Federal award or financial modification to an existing Federal award to an applicant or recipient until the entity has complied with the requirements described in § 25.200 to provide a valid unique entity identifier and maintain an active SAM registration with current information (other than any requirement that is not applicable because the entity is exempted under § 25.110).

(b) At the time a Federal awarding agency is ready to make a Federal award, if the intended recipient has not complied with an applicable requirement to provide a unique entity identifier or maintain an active SAM registration with current information, the Federal awarding agency:

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

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

[85 FR 49523, Aug. 13, 2020]

§ 25.210 Authority to modify agency application forms or formats.

To implement the policies in §§ 25.200 and 25.205, a Federal awarding agency may add a unique entity identifier field to information collections previously approved by OMB, without having to obtain further approval to add the field.

[85 FR 49523, Aug. 13, 2020]

§ 25.215 Requirements for agency information systems.

Each Federal awarding agency that awards Federal financial assistance (as defined in § 25.406) must ensure that systems processing information related to the Federal awards, and other systems as appropriate, are able to accept and use the unique entity identifier as the universal identifier for Federal financial assistance applicants and recipients.

[85 FR 49523, Aug. 13, 2020]

§ 25.220 Use of award term.

(a) To accomplish the purposes described in § 25.100, a Federal awarding agency must include in each Federal award (as defined in § 25.405) the award term in appendix A to this part.

(b) A Federal awarding agency may use different letters and numbers than those in appendix A to this part to designate the paragraphs of the Federal award term, if necessary, to conform the system of paragraph designations with the one used in other terms and conditions in the Federal awarding agency's Federal awards.

[85 FR 49524, Aug. 13, 2020]

Subpart C—Recipient Requirements of Subrecipients

SOURCE: 85 FR 49524, Aug. 13, 2020, unless otherwise noted.

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

(a) A recipient may not make a subaward to a subrecipient unless that subrecipient has obtained and provided to the recipient a unique entity identifier. Subrecipients are not required to complete full SAM registration to obtain a unique entity identifier.

(b) A recipient must notify any potential subrecipients that the recipient cannot make a subaward unless the subrecipient has obtained a unique entity identifier as described in paragraph (a) of this section.

Subpart D—Definitions

SOURCE: 85 FR 49524, Aug. 13, 2020, unless otherwise noted.

§ 25.400 Applicant.

Applicant, for the purposes of this part, means a non-Federal entity or Federal agency that applies for Federal awards.

§ 25.401 Federal Awarding Agency.

Federal Awarding Agency has the meaning given in 2 CFR 200.1.

§ 25.405 Federal Award.

Federal Award, for the purposes of this part, means an award of Federal financial assistance that a non-Federal entity or Federal agency received from a Federal awarding agency.

§ 25.406 Federal financial assistance.

(a) *Federal financial assistance*, for the purposes of this part, means assistance that entities received or administer in the form of:

(1) Grant;

(2) Cooperative agreements (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));

(3) Loans;

(4) Loan guarantees;

(5) Subsidies;

(6) Insurance;

(7) Food commodities;

(8) Direct appropriations;

(9) Assessed or voluntary contributions; or

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

(b) *Federal financial assistance*, for the purposes of this part, does not include:

(1) Technical assistance, which provides services in lieu of money; and

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

§ 25.407 Recipient.

Recipient, for the purposes of this part, means a non-Federal entity or Federal agency that received a Federal award. This term also includes a non-Federal entity who administers Federal financial assistance awards on behalf of a Federal agency.

§ 25.410 System for Award Management (SAM).

System for Award Management (SAM) has the meaning given in paragraph C.1 of the award term in appendix A to this part.

§ 25.415 Unique entity identifier.

Unique entity identifier has the meaning given in paragraph C.2 of the award term in appendix A to this part.

§ 25.425 For-profit organization.

For-profit organization means a non-Federal entity 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.

§ 25.430 Foreign organization.

Foreign organization has the meaning given in 2 CFR 200.1.

§ 25.431 Foreign public entity.

Foreign public entity has the meaning given in 2 CFR 200.1.

§ 25.432 Highest level owner.

Highest level owner has the meaning given in 2 CFR 200.1.

§ 25.433 Indian Tribe (or "federally recognized Indian Tribe").

Indian Tribe (or ''federally recognized Indian Tribe'') has the meaning given in 2 CFR 200.1.

§ 25.440 Local government.

Local government has the meaning given in 2 CFR 200.1.

§ 25.443 Non-Federal entity.

Non-Federal entity, as it is used in this part, has the meaning given in paragraph C.3 of the award term in appendix A to this part.

§ 25.445 Nonprofit organization.

Non-Federal organization, has the meaning given in 2 CFR 200.1.

§ 25.447 Predecessor.

Predecessor means a non-Federal entity that is replaced by a successor and includes any predecessors of the predecessor.

§ 25.450 State.

State has the meaning given in 2 CFR 200.1.

§ 25.455 Subaward.

Subaward has the meaning given in 2 CFR 200.1.

§ 25.460 Subrecipient.

Subrecipient has the meaning given in 2 CR 200.1.

§ 25.462 Subsidiary.

Subsidiary has the meaning given in 2 CFR 200.1.

§ 25.465 Successor.

Successor means a non-Federal entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term ''successor'' does not include new offices or divisions of the same company or a company that only changes its name.

APPENDIX A TO PART 25—AWARD TERM

I. SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.

B. Requirement for Unique Entity Identifier

If you are authorized to make subawards under this Federal award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this award term) may receive a subaward from you until the entity has provided its Unique Entity Identifier to you.

2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.

C. Definitions

For purposes of this term:

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

2. *Unique Entity Identifier* means the identifier assigned by SAM to uniquely identify business entities.

3. *Entity* includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following, for purposes of this part:

a. A foreign organization;

b. A foreign public entity;

c. A domestic for-profit organization; and

d. A Federal agency.

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

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

[85 FR 49525, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

PARTS 26–169 [RESERVED]

PART 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

Subpart A—General

Subpart B—Policy

Subpart C—Definitions

AUTHORITY: Pub. L. 109–282; 31 U.S.C. 6102.

SOURCE: 75 FR 55669, Sept. 14, 2010, unless otherwise noted.

Subpart A—General

§ 170.100 Purposes of this part.

This part provides guidance to Federal awarding agencies on reporting Federal awards to establish requirements for recipients' reporting of 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 section 6202 of Public Law 110–252, hereafter referred to as ''the Transparency Act''.

[85 FR 49525, Aug. 13, 2020]

§ 170.105 Types of awards to which this part applies.

This part applies to Federal awarding agency's grants, cooperative agreements, loans, and other forms of Federal financial assistance subject to the Transparency Act, as defined in § 170.320.

[85 FR 49525, Aug. 13, 2020]

§ 170.110 Exceptions to which this part applies.

(a) *General.* Through a Federal awarding agency's implementation of the guidance in this part, this part applies to recipients, other than those exempted by law or excepted in accordance with paragraphs (b) and (c) of this section, that—

(1) Apply for or receive Federal awards; or

(2) Receive subawards under Federal awards.

(b) *Exceptions.* (1) None of the requirements in this part apply to an individual who applies for or receives a Federal award as a natural person (*i.e.*, unrelated to any business or nonprofit organization he or she may own or operate in his or her name).

(2) None of the requirements regarding reporting names and total compensation of a non-Federal entity's five most highly compensated executives apply unless in the non-Federal entity's preceding fiscal year, it received—

(i) 80 percent or more of its annual gross revenue in Federal procurement contracts (and subcontracts) and Federal financial assistance awards subject to the Transparency Act, as defined at § 170.320 (and subawards); and

(ii) $25,000,000 or more in annual gross revenue from Federal procurement contracts (and subcontracts) and Federal financial assistance awards subject to the Transparency Act, as defined at § 170.320; and

(3) The public does not have access to information about the compensation of senior executives, unless otherwise publicly available, 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.

(c) *Exceptions for classes of Federal awards or recipients.* OMB may allow exceptions for classes of Federal awards or recipients subject to the requirements of this part when exceptions are not prohibited by statute.

[85 FR 49525, Aug. 13, 2020]

Subpart B—Policy

§ 170.200 Federal awarding agency reporting requirements.

(a) Federal awarding agencies are required to publicly report Federal awards that equal or exceed the micropurchase threshold and publish the required information on a public-facing, OMB-designated, governmentwide website and follow OMB guidance to support Transparency Act implementation.

(b) Federal awarding agencies that obtain post-award data on subaward obligations outside of this policy should take the necessary steps to ensure that their recipients are not required, due to the combination of agency-specific and Transparency Act reporting requirements, to submit the same or similar data multiple times during a given reporting period.

[85 FR 49525, Aug. 13, 2020]

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

(a) Each Federal awarding agency that makes awards of Federal financial assistance subject to the Transparency Act must include the requirements described in 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, and is issued on or after the effective date of this part.

(b) The notice of funding opportunity, regulation, or other issuance must require each non-Federal entity that applies for Federal financial assistance and that does not have an exception under §170.110(b) to have the necessary processes and systems in place to comply with the reporting requirements should they receive Federal funding.

[85 FR 49526, Aug. 13, 2020]

§ 170.220 Award term.

(a) To accomplish the purposes described in §170.100, a Federal awarding 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) A Federal awarding agency, consistent with paragraph (a) of this section, is not required to include the award term in appendix A to this part if it determines that there is no possibility that the total amount of Federal funding under the Federal award will equal or exceed $30,000. However, the Federal awarding agency must subsequently modify the award to add the award term if changes in circumstances increase the total Federal funding under the award is anticipated to equal or exceed $30,000 during the period of performance.

[85 FR 49526, Aug. 13, 2020]

Subpart C—Definitions

§ 170.300 Federal agency.

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

[85 FR 49526, Aug. 13, 2020]

§ 170.301 Federal awarding agency.

Federal awarding agency has the meaning given in 2 CFR 200.1.

[85 FR 49526, Aug. 13, 2020]

§ 170.305 Federal award.

Federal award, for the purposes of this part, means an award of Federal financial assistance that a recipient receives directly from a Federal awarding agency.

[85 FR 49526, Aug. 13, 2020]

§ 170.307 Foreign organization.

Foreign organization has the meaning given in 2 CFR 200.1.

[85 FR 49526, Aug. 13, 2020]

§ 170.308 Foreign public entity.

Foreign public entity has the meaning given in 2 CFR 200.1.

[85 FR 49526, Aug. 13, 2020]

§ 170.310 Non-Federal entity.

Non-Federal entity has the meaning given in 2 CFR 200.1 and also includes all of the following, for the purposes of this part:

(a) A foreign organization;

(b) A foreign public entity; and

(c) A domestic or foreign for-profit organization.

[85 FR 49526, Aug. 13, 2020]

§ 170.315 Executive.

Executive means officers, managing partners, or any other employees in management positions.

§ 170.320 Federal financial assistance subject to the Transparency Act.

Federal financial assistance subject to the Transparency Act means assistance that non-Federal entities described in § 170.105 receive or administer in the form of—

(a) Grants;

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

(c) Loans;

(d) Loan guarantees;

(e) Subsidies;

(f) Insurance;

(g) Food commodities;

(h) Direct appropriations;

(i) Assessed and voluntary contributions; and

(j) Other financial assistance transactions that authorize the non-Federal entities' expenditure of Federal funds.

(k) Federal financial assistance subject to the Transparency Act, does not include—

(1) Technical assistance, which provides services in lieu of money;

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

(3) Any classified award; or

(4) 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).

[75 FR 55669, Sept. 14, 2010, as amended at 85 FR 49526, Aug. 13, 2020]

§ 170.322 Recipient.

Recipient, for the purposes of this part, means a non-Federal entity or Federal agency that received a Federal award.

[85 FR 49526, Aug. 13, 2020]

§ 170.325 Subaward.

Subaward has the meaning given in 2 CFR 200.1.

[85 FR 49526, Aug. 13, 2020]

§ 170.330 Total compensation.

Total Compensation has the meaning given in paragraph e.5 of the award term in Appendix A to this part.

APPENDIX A TO PART 170—AWARD TERM

I. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. *Reporting of first-tier subawards.*

Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds $30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).

2. *Where and when to report.*

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph a.1. of this award term to *http://www.fsrs.gov*.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at *http://www.fsrs.gov specify*.

b. *Reporting total compensation of recipient executives for non-Federal entities.*

1. *Applicability and what to report.* You must report total compensation for each of your 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 as defined in 2 CFR 170.320;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); 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. (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. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at *https://www.sam.gov*.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. *Reporting of Total Compensation of Subrecipient Executives.*

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. 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 financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and,

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. 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. (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. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions.*

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are 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:

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

2. Non-Federal *entity* means all of the following, as defined in 2 CFR part 25:

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

3. *Executive* means officers, managing partners, or any other employees in management positions.

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 you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).

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

5. *Subrecipient* means a non-Federal entity or Federal agency that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)).

[85 FR 49526, Aug. 13, 2020]

PARTS 171–174 [RESERVED]

PART 175—AWARD TERM FOR TRAFFICKING IN PERSONS

Sec.
175.5 Purpose of this part.
175.10 Statutory requirement.
175.15 Award term.
175.20 Referral.
175.25 Definitions.

AUTHORITY: 22 U.S.C. 7104(g); 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

SOURCE: 72 FR 63783, Nov. 13, 2007, unless otherwise noted.

§ 175.5 Purpose of this part.

This part establishes a Governmentwide award term for grants and cooperative agreements to implement the requirement in paragraph (g) of section 106 of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)).

§ 175.10 Statutory requirement.

In each agency award (i.e., grant or cooperative agreement) under which funding is provided to a private entity, section 106(g) of the TVPA, as amended, requires the agency to include a condition that authorizes the agency to terminate the award, without penalty, if the recipient or a subrecipient—

(a) Engages in severe forms of trafficking in persons during the period of time that the award is in effect;

(b) Procures a commercial sex act during the period of time that the award is in effect; or

(c) Uses forced labor in the performance of the award or subawards under the award.

§ 175.15 Award term.

(a) To implement the trafficking in persons requirement in section 106(g) of the TVPA, as amended, a Federal awarding agency must include the award term in paragraph (b) of this section in—

(1) A grant or cooperative agreement to a private entity, as defined in §175.25(d); and

(2) A grant or cooperative agreement to a State, local government, Indian tribe or foreign public entity, if funding could be provided under the award to a private entity as a subrecipient.

(b) The award term that an agency must include, as described in paragraph (a) of this section, is:

I. Trafficking in persons.

a. *Provisions applicable to a recipient that is a private entity.*

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

ii. Procure a commercial sex act during the period of time that the award is in effect; or

iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you 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 Governmentwide 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 (e.g., ''2 CFR part XX'')]*.

b. *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. 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 Governmentwide 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 (e.g., ''2 CFR part XX'')].

c. *Provisions applicable to any recipient.*

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

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

1. ''Employee'' means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you 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 or matching requirements.

2. ''Forced labor'' means labor obtained by any of the following methods: 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.

3. ''Private entity'':

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. ''Severe forms of trafficking in persons,'' ''commercial sex act,'' and ''coercion'' have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

(c) An agency may use different letters and numbers to designate the paragraphs of the award term in paragraph (b) of this section, if necessary, to conform the system of paragraph designations with the one used in other terms and conditions in the agency's awards.

§ 175.20 Referral.

An agency official should inform the agency's suspending or debarring official if he or she terminates an award based on a violation of a prohibition contained in the award term under § 175.15.

§ 175.25 Definitions.

Terms used in this part are defined as follows:

(a) *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; and

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

(b) *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.

(c) *Local government* means 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 instrumentality of a local government.

(d) *Private entity.* (1) This term means any entity other than a State, local government, Indian tribe, or foreign public entity.

(2) This term includes:

(i) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe in paragraph (b) of this section.

(ii) A for-profit organization.

(e) *State*, consistent with the definition in section 103 of the TVPA, as amended (22 U.S.C. 7102), means:

(1) Any State of the United States;

(2) The District of Columbia;

(3) Any agency or instrumentality of a State other than a local government or State-controlled institution of higher education;

(4) The Commonwealths of Puerto Rico and the Northern Mariana Islands; and

(5) The United States Virgin Islands, Guam, American Samoa, and a territory or possession of the United States.

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

Sec.

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:

[*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. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Arkansas	Executive branch agencies, including universities but excluding the Office of Fish and Game.	Construction services	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
California	Executive branch agencies		—WTO GPA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Colorado	Executive branch agencies		—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Connecticut	—Department of Administrative Services —Department of Transportation.. —Department of Public Works.. —Constituent Units of Higher Education.		—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Delaware	—Administrative Services (Central Procurement Agency). —State Universities. —State Colleges.	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Florida	Executive branch agencies	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Georgia	—Department of Administrative Services. —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. —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.

States	Entities covered	Exclusions	Relevant international agreements
Idaho	Central Procurement Agency (including all colleges and universities subject to central purchasing oversight).		—WTO GPA. —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Illinois	—Department of Central Management Services.	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA. —U.S.-EC. 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 —Department of Transportation. —Board of Regents' Institutions (universities).	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Kansas	Executive branch agencies	Construction services; automobiles; aircraft.	—WTO GPA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Kentucky	Division of Purchases, Finance and Administration Cabinet.	Construction projects	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Louisiana	Executive branch agencies		—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Maine	—Department of Administrative and Financial Services —Bureau of General Services (covering State government agencies and school construction). — Department of Transportation..	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Maryland	—Office of the Treasury —Department of the Environment.. —Department of General Services.. —Department of Housing and Community Development.. —Department of Human Resources.. —Department of Licensing and Regulation.. —Department of Natural Resources.. —Department of Public Safety and Correctional Services.. —Department of Personnel. .. —Department of Transportation..	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Massachusetts	—Executive Office for Administration and Finance.		—WTO GPA. —U.S.-Chile FTA.

States	Entities covered	Exclusions	Relevant international agreements
	—Executive Office of Communities and Development. —Executive Office of Consumer Affairs. —Executive Office of Economic Affairs. —Executive Office of Education. —Executive Office of Elder Affairs. —Executive Office of Environmental Affairs. —Executive Office of Health and Human Service. —Executive Office of Labor. —Executive Office of Public Safety. —Executive Office of Transportation and Construction.		—U.S.-Singapore FTA.
Michigan	Department of Management and Budget.	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Minnesota	Executive branch agencies		—WTO GPA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Mississippi	Department of Finance and Administration.	Services	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Missouri	—Office of Administration —Division of Purchasing and Materials Management.		—WTO GPA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Montana	Executive branch agencies	Goods	—WTO GPA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Nebraska	Central Procurement Agency		—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
New Hampshire	Central Procurement Agency	Construction-grade steel (including requirements on subcontracts), motor vehicles; coal.	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
New York	—State agencies —State university system. —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. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —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. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Oregon	Department of Administrative Services.		—WTO GPA. —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA.

States	Entities covered	Exclusions	Relevant international agreements
			—U.S.-Morocco FTA. —U.S.-Singapore FTA.
Pennsylvania	Executive branch agencies, including: —Governor's Office. —Department of the Auditor General.. —Treasury Department. —Department of Agriculture. —Department of Banking. —Pennsylvania Securities Commission. —Department of Health. —Department of Transportation. —Insurance Department. —Department of Aging. —Department of Correction. —Department of Labor and Industry. —Department of Military Affairs. —Office of Attorney General. —Department of General Services. —Department of Education. —Public Utility Commission. —Department of Revenue. —Department of State. —Pennsylvania State Police. —Department of Public Welfare. —Fish Commission. —Game Commission. —Department of Commerce. —Board of Probation and Parole. —Liquor Control Board. —Milk Marketing Board. —Lieutenant Governor's Office. —Department of Community Affairs. —Pennsylvania Historical and Museum Commission. —Pennsylvania Emergency Management Agency. —State Civil Service Commission. —Pennsylvania Public Television Network. —Department of Environmental Resources. —State Tax Equalization Board. —Department of Public Welfare. —State Employees' Retirement System. —Pennsylvania Municipal Retirement Board. —Public School Employees' Retirement System. —Pennsylvania Crime Commission. —Executive Offices.	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Rhode Island	Executive branch agencies	Boats, automobiles, buses and related equipment.	—WTO GPA. —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.

States	Entities covered	Exclusions	Relevant international agreements
South Dakota	Central Procuring Agency (including universities and penal institutions).	Beef	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Tennessee	Executive branch agencies	Services; construction	—WTO GPA-U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Singapore FTA.
Texas	Texas Building and Procurement Commission.		—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Utah	Executive branch agencies		—WTO GPA. —DR-CAFTA (except Honduras). —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Vermont	Executive branch agencies		—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Washington	Executive branch agencies, including: —General Administration. —Department of Transportation. —State Universities.	Fuel; paper products; boats; ships; and vessels.	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
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: —Department of Administration. —State Correctional Institutions. —Department of Development. —Educational Communications Board. —Department of Employment Relations. —State Historical Society. —Department of Health and Social Services. —Insurance Commissioner. —Department of Justice. —Lottery Board. —Department of Natural Resources. —Administration for Public Instruction. —Racing Board. —Department of Revenue. —State Fair Park Board. —Department of Transportation. —State University System.		—WTO GPA. —U.S.-Chile FTA. —U.S.-Singapore FTA.

States	Entities covered	Exclusions	Relevant international agreements
Wyoming	—Procurement Services Division —Wyoming Department of Transportation. —University of Wyoming.	Construction-grade steel (including requirements on subcontracts); motor vehicles; coal.	—WTO GPA. —DR-CAFTA. —U.S.-Australia FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Singapore FTA.
Other sub-federal entities	**Entities covered**	**Exclusions**	**Relevant international agreements**
Puerto Rico	—Department of State —Department of Justice. —Department of the Treasury. ..... —Department of Labor and Human Resources. —Department of Natural and Environmental Resources. —Department of Consumer Affairs. —Department of Sports and Recreation.	Construction services ..... —Department of Economic Development and Commerce.	—DR-CAFTA. —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). —U.S.-Chile FTA. —U.S.-Singapore FTA.
Port of Baltimore	.....	Restrictions attached to Federal funds for airport projects.	—WTO GPA (except Canada). —U.S.-Chile FTA. —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). —U.S.-Chile FTA. —U.S.-Singapore FTA.
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. —DR-CAFTA. —NAFTA. —U.S.-Australia FTA. —U.S.-Bahrain FTA. —U.S.-Chile FTA. —U.S.-Morocco FTA. —U.S.-Oman FTA. —U.S.-Peru TPA. —U.S.-Singapore FTA.
Rural Utilities Service (waiver of Buy American restriction on financing for telecommunications projects).	Any recipient	.....	—NAFTA. —U.S.-Israel FTA.

States	Entities covered	Exclusions	Relevant international agreements
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.
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.

States	Entities covered	Exclusions	Relevant international agreements
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 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

Subpart A—General

Subpart B—Covered Transactions

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

Subpart I—Definitions

AUTHORITY: Pub. L. 109–282; 31 U.S.C. 6102, 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: 70 FR 51865, Aug. 31, 2005, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 180 appear at 79 FR 75879, Dec. 19, 2014.

§ 180.5 What does this part do?

This part provides Office of Management and Budget (OMB) guidance for Federal agencies on the governmentwide debarment and suspension system for nonprocurement programs and activities.

§ 180.10 How is this part organized?

This part is organized in 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 of this part.

(b) Subparts A through I of this part contain uniform governmentwide 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 governmentwide 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?

The guidance provides OMB guidance only to Federal agencies. Publication of the guidance in the CFR does not change its nature—it is guidance and not regulation. Federal agencies' implementation of the 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 required by Section 3 of E.O. 12549, 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 implementing regulation:

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

of the guidance have regulatory effect for that 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 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) an 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 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 needs to require agency officials, when entering into covered transactions with primary tier participants, to communicate that requirement.

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

(1) Identify any specific types of transactions that 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 at §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.

[70 FR 51865, Aug. 31, 2005, as amended at 71 FR 66432, Nov. 15, 2006; 79 FR 75879, Dec. 19, 2014]

§180.30 Where does a Federal agency implement these guidelines?

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

§180.35 By when must a Federal agency implement these guidelines?

Federal agencies must submit proposed regulations to the OMB for review within nine months of the issuance of these guidelines and issue final regulations within eighteen months of these guidelines.

§180.40 How are these guidelines maintained?

The Interagency Committee on Debarment and Suspension established by section 4 of E.O. 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 of this part—

(a) Address disqualified persons only to—

(1) Provide for their inclusion in SAM Exclusions; and

(2) State 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 the following table:

In subpart . . .	You will find provisions related to . . .
A	general information about Subparts A through I of this part.
B	the types of transactions that are covered by the Governmentwide 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 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) The following table shows which subparts may be of special interest to you, depending on who you are:

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) an 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 to use. The section headings and text, often in the form of questions and answers, must be read together.

(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 meaning. Those terms are defined in subpart I of this part. 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 Regulation (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 of this part provide for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, 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 of this part (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 or 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 from Federal programs persons who are not presently responsible.

(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 agency head 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.

(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?

If any 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 FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

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

If any Federal agency excludes a person under the 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 reciprocal effect in 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 Governmentwide System for Award Management Exclusions (SAM Exclusions) to determine whether a person is excluded. The General Services Administration (GSA) maintains the SAM Exclusions and makes it available, as detailed in Subpart E of this part. 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 the SAM Exclusions.

[70 FR 51865, Aug. 31, 2005, as amended at 79 FR 75879, Dec. 19, 2014]

Subpart B—Covered Transactions

§ 180.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. 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, if 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 awarding 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 the System for Award Management Exclusions List on the basis of involvement in activities that violate arms control, nonproliferation or disarmament agreements or commitments with the United States, pursuant to section 1290 of the National Defense Authorization Act for Fiscal Year 2017, unless the head of a Federal agency grants an exception pursuant to 2 CFR 180.135 with the concurrence of the OMB Director.

[70 FR 51865, Aug. 31, 2005, as amended at 83 FR 31038, July 3, 2018]

§ 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 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, 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 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.

[70 FR 51865, Aug. 31, 2005, as amended at 71 FR 66432, Nov. 15, 2006]

§ 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 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 Exclusions; or

(b) Collecting a certification from that person; or

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

[70 FR 51865, Aug. 31, 2005, as amended at 71 FR 66432, Nov. 15, 2006]

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

(a) You as a participant 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) 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 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) 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 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?

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

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

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

If as a participant 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 participation 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 with whom 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 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, your disclosure of 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 agency will consider the information when it determines whether to enter into the covered transaction. The agency will also consider any additional information or explanation that 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 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?

If 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) You as a Federal agency official 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 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.

§ 180.405 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) 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 § 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 agency's approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if your 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) You as a Federal agency official must check SAM Exclusions when you take any action listed in § 180.425.

(b) You must review 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?

You as a Federal agency official must require each participant in a primary tier covered transaction to—

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

(b) Communicate the requirement to comply with subpart C of this part 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?

If you as a Federal agency official 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?

If you as a Federal agency official 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 Exclusions

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

SAM 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 Exclusions?

(a) Federal agency officials use SAM 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 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) Sam Exclusions are available to the general public.

[70 FR 51865, Aug. 31, 2005, as amended at 79 FR 75879, Dec. 19, 2014]

§ 180.510 Who maintains SAM Exclusions?

The General Services Administration (GSA) maintains SAM 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 Exclusions.

§ 180.515 What specific information is in SAM Exclusions?

(a) At a minimum, SAM Exclusions indicates—

(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 database for SAM Exclusions includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.

(2) Agencies disclose the SSN of an individual to verify the identity of an individual, 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).

[70 FR 51865, Aug. 31, 2005, as amended at 79 FR 75879, Dec. 19, 2014]

§ 180.520 Who places the information into SAM 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 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 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.

[70 FR 51865, Aug. 31, 2005, as amended at 80 FR 43308, July 22, 2015]

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

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

§ 180.530 Where can I find SAM Exclusions?

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

[79 FR 75879, Dec. 19, 2014]

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 in eligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings.	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must—	

A suspending official . . .	A debarring official . . .
(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 of this part.

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

§ 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 e-mail 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 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 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.

§ 180.635 May a Federal agency settle a debarment or suspension action?

Yes, a Federal agency may settle a debarment or suspension action at any time if it is in the best interest of the Federal Government.

§ 180.640 May a settlement include a voluntary exclusion?

Yes, if a Federal agency enters into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide 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 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.

[80 FR 43308, July 22, 2015]

§ 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 to the designated integrity and performance system within three business days after entering into the agreement. This information is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (41 U.S.C. 2313).

[80 FR 43308, July 22, 2015]

§ 180.660 Will administrative agreement information about me in the designated integrity and performance system accessible through SAM be corrected or updated?

Yes, the suspending or debarring official who entered information into the designated integrity and performance system about an administrative agreement with you:

(a) Must correct the information within three business days if he or she subsequently learns that any of the information is erroneous.

(b) Must correct in the designated integrity and performance system, 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 to the designated integrity and performance system, within three business days, any other modification to the administrative agreement.

(d) Is strongly encouraged to amend the information in the designated integrity and performance system in a timely way to incorporate any update that he or she obtains that could be helpful to Federal awarding agencies who must use the system.

[80 FR 43308, July 22, 2015]

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. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

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

(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 conviction;

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

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

(c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;

(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 agency procedures governing suspension decisionmaking; and

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

§ 180.720 How may I contest a suspension?

If you as a respondent 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, but 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 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 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 agency sends the notice by e-mail or five days after the agency sends it if the e-mail 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) 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) You as a respondent 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 finding 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 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) You as a respondent 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 fact-finder 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, if proceedings are not initiated, a suspension may not exceed 12 months.

(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 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, tax evasion, 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 an 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 settlement of 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 of so serious or compelling a 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) Of 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) Of the cause(s) under §180.800 upon which the debarring official relied for proposing your debarment;

(d) Of the applicable provisions of this subpart, subpart F of this part, and any other agency procedures governing debarment; and

(e) Of the governmentwide effect of a debarment from procurement and nonprocurement programs and activities.

§180.810 When does a debarment take effect?

Unlike 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?

If you as a respondent 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, but 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 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 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 agency sends the notice by e-mail or five days after the agency sends it if the e-mail 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) You as a respondent 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 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 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 fact-finder 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 and/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 governmentwide 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 remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(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) 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 Regulation (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 put 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 of this part, 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 which has been organized following the exclusion of a person which has 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, 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 1988 (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 Regulation (48 CFR chapter 1). A person so excluded is debarred.

§ 180.930 Debarring official.

Debarring official means an 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. 276(a));

(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 (3 CFR, 1973 Comp., p. 799).

§ 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 Exclusions (SAM Exclusions).

System for Award Management Exclusions (SAM Exclusions) means the list maintained and disseminated by the General Services Administration (GSA)

containing the names and other information about persons who are ineligible.

[79 FR 75880, Dec. 19, 2014]

§ 180.950 Federal agency.

Federal agency means any United States executive department, military department, defense agency or any other agency of the executive branch. Other agencies of the Federal Government are not considered ''agencies'' for the purposes of this part 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 shall 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 proceedings means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (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.
(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 e-mail or facsimile. (See § 180.615.)

§ 180.980 Participant.

Participant means any person who submits a proposal for or who 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, however 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 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.

§ 180.1000 Respondent.

Respondent means a person against whom an 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 an agency official who is 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 Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

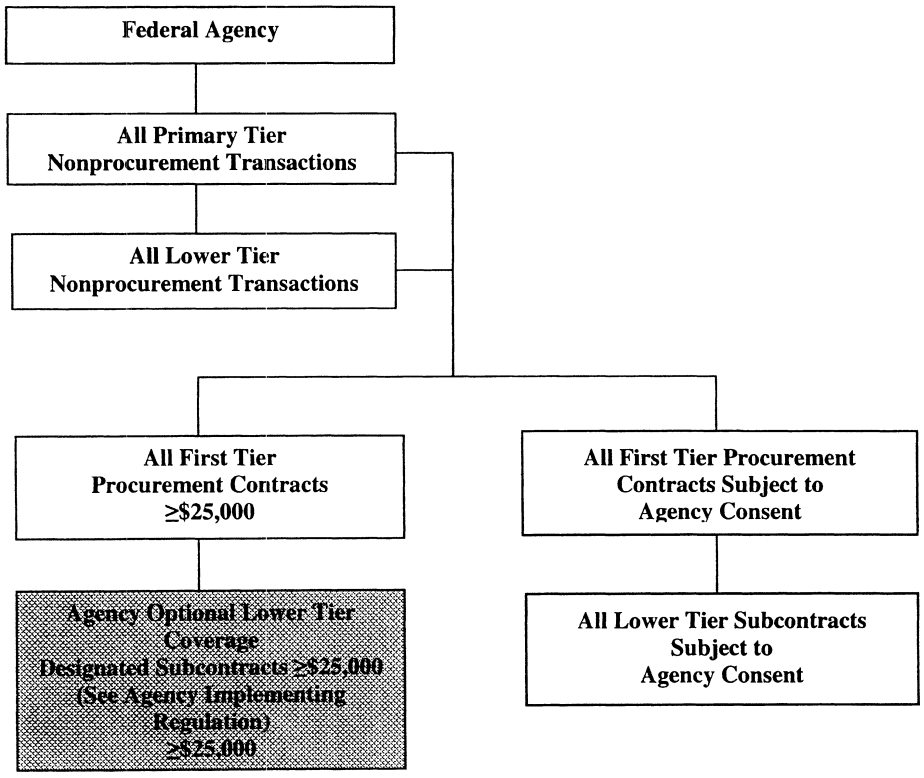
§ 180.1020 Voluntary exclusion or voluntarily excluded.

(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 governmentwide effect.

(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

APPENDIX TO PART 180—COVERED TRANSACTIONS

COVERED TRANSACTIONS



PART 181 [RESERVED]

PART 182—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

Subpart A—Purpose and Coverage

Subpart B—Requirements for Recipients Other Than Individuals

AUTHORITY: 41 U.S.C. 701, *et seq.*

SOURCE: 74 FR 28150, June 15, 2009, unless otherwise noted.

§ 182.5 What does this part do?

This part provides Office of Management and Budget (OMB) guidance for Federal agencies on the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, 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 in 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 of this part.

(b) Subparts A through F of this part contain uniform governmentwide 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 an 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 OMB guidance only to Federal agencies. Publication of this guidance in the Code of Federal Regulations does not change its nature—it is guidance and not regulation. Federal agencies' implementation of the 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 Section 41 U.S.C. 705 for Governmentwide 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

agency's awards that are consistent with the guidance in this part. When adopted by a Federal agency, the provisions of the guidance have regulatory effect for that agency's awards.

(b) Must address some matters for which the guidance in this part gives the agency discretion. Specifically, the regulation must—

(1) State whether the 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 awarding official for each agency award, or to his or her official designee.

(2) Either:

(i) State that the 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 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.

§182.35 By when must a Federal agency implement the guidance?

Federal agencies must submit proposed regulations to the OMB for review within nine months of the issuance of this part and issue final regulations within eighteen months of the guidance.

§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, often in the form of questions and answers, must be read together.

(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 of this part.

§182.110 What do subparts A through F of this part do?

Subparts A through F of this part 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 agency head, or his or her 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 who are 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, 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.

§ 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.
(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 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 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 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.

§ 182.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each agency award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces—

(1) To the agency 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 agency 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 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 award, you must inform the 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 agency 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 Federal agency awarding official or other designee for each 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 award.

Subpart D—Responsibilities of Agency Awarding Officials

§ 182.400 What are my responsibilities as an 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 agency head or his or her designee 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.

§ 182.505 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 agency head or his or her 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 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 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?

The agency head 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 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 Governmentwide 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 (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).

§ 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 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 (e.g., volunteers, even if used to meet a matching 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, however 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 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.

AUTHORITY: Pub. L. 113–291.

SOURCE: 85 FR 49527, Aug. 13, 2020, unless otherwise noted.

§ 183.5 Purpose of this part.

This part provides guidance to Federal awarding 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. 822 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92).

§ 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 awarding agencies.

(a) Prior to making an award for a covered grant or cooperative agreement (see also §183.35), the Federal awarding agency must check the current list of prohibited or restricted persons or entities in the System Award Management (SAM) Exclusions.

(b) The Federal awarding agency may include the award term provided in appendix A of this part in all covered grant and cooperative agreement awards in accordance with Never Contract with the Enemy.

(c) A Federal awarding 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 none of the funds, including goods and services, received under a covered grant or cooperative agreement of an executive agency are provided directly or indirectly to covered persons or entities.

(d) When a Federal awarding 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 contract, grant, or cooperative agreement to a covered person or entity upon becoming aware that the recipient has failed to exercise due diligence to ensure that none of the 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 other appropriate official that the grant or cooperative agreement provides funds directly or indirectly to a covered person or entity.

(e) The Federal awarding agency must notify recipients in writing regarding its decision to restrict all future awards and/or to terminate or void a grant or cooperative agreement. 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 awarding agencies.

(a) If a Federal awarding agency restricts all future awards to a covered person or entity, it must enter information on the ineligible person or entity into SAM Exclusions as a prohibited or restricted source pursuant to Subtitle E, Title VIII of the NDAA for FY 2015 (Pub. L. 113–291).

(b) When a Federal awarding agency terminates or voids a grant or cooperative agreement due to Never Contract with the Enemy, it must report the termination as a Termination for Material Failure to Comply in the Office of Management and Budget (OMB)-designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)).

(c) The Federal awarding agency shall 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 shall include:

(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 shall include:

(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 (*e.g.*, 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 awarding agency may only exercise this authority upon a written determination by the Federal awarding 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. 101a, 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, 12301a, 12302, 12304, 12304a, 12305, 12406 of 10 U.S.C. chapter 15, 14 U.S.C. 712 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 awarding agencies may include the following award terms in all awards for covered grants and cooperative agreements in accordance with Never Contract with the Enemy:

TERM 1

PROHIBITION ON PROVIDING FUNDS TO THE ENEMY

(a) The recipient must—

(1) Exercise due diligence to ensure that none of the 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 SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.

(b) The recipient 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 awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (a) of this clause or if the Federal awarding 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)

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 records of the recipient and its 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 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), is required to 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)

PARTS 184–199 [RESERVED]

CHAPTER II—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

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ACRONYMS

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Subpart F—Audit Requirements

AUTHORITY: 31 U.S.C. 503

SOURCE: 78 FR 78608, Dec. 26, 2013, unless otherwise noted.

Subpart A—Acronyms and Definitions

ACRONYMS

§ 200.0 Acronyms.

ACRONYM	TERM
CAS	Cost Accounting Standards
CFR	Code of Federal Regulations
CMIA	Cash Management Improvement Act
COG	Councils Of Governments
COSO	Committee of Sponsoring Organizations of the Treadway Commission
EPA	Environmental Protection Agency
ERISA	Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301–1461)
EUI	Energy Usage Index
F&A	Facilities and Administration
FAC	Federal Audit Clearinghouse
FAIN	Federal Award Identification Number
FAPIIS	Federal Awardee Performance and Integrity Information System
FAR	Federal Acquisition Regulation
FFATA	Federal Funding Accountability and Transparency Act of 2006 or Transparency Act—Public Law 109–282, as amended by section 6202(a) of Public Law 110–252 (31 U.S.C. 6101)
FICA	Federal Insurance Contributions Act
FOIA	Freedom of Information Act
FR	Federal Register

FTE Full-time equivalent
GAAP Generally Accepted Accounting Principles
GAGAS Generally Accepted Government Auditing Standards
GAO Government Accountability Office
GOCO Government owned, contractor operated
GSA General Services Administration
IBS Institutional Base Salary
IHE Institutions of Higher Education
IRC Internal Revenue Code
ISDEAA Indian Self-Determination and Education and Assistance Act
MTC Modified Total Cost
MTDC Modified Total Direct Cost
NFE Non-Federal Entity
OMB Office of Management and Budget
PII Personally Identifiable Information
PMS Payment Management System
PRHP Post-retirement Health Plans
PTE Pass-through Entity
REUI Relative Energy Usage Index
SAM System for Award Management
SFA Student Financial Aid
SNAP Supplemental Nutrition Assistance Program
SPOC Single Point of Contact
TANF Temporary Assistance for Needy Families
TFM Treasury Financial Manual
U.S.C. United States Code
VAT Value Added Tax

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75880, Dec. 19, 2014; 80 FR 43308, July 22, 2015; 85 FR 49529, Aug. 13, 2020]

§ 200.1 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. These definitions could be supplemented by additional instructional information provided in governmentwide standard information collections. For purposes of this part, the following definitions apply:

Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, 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 includes 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 non-Federal entity's regular accounting practices.

Advance payment means a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity 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 refers to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration, formerly known as the Catalog of Federal Domestic Assistance (CFDA).

Assistance listing number means a unique number assigned to identify a Federal Assistance Listings, formerly known as the CFDA Number.

Assistance listing program title means the title that corresponds to the Federal Assistance Listings Number, formerly known as the CFDA program title.

Audit finding means deficiencies which the auditor is required by § 200.516(a) to report in the schedule of findings and questioned costs.

Auditee means any non-Federal entity that expends Federal awards which must be audited under subpart F of this part.

Auditor means an auditor who is a public accountant or a Federal, State, local government, or Indian tribe audit organization, which 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 awarding 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 awarding 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 are authorized to expend 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 and/or equipment for a period of time under a lease contract. See also § 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 or local government or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

Claim means, depending on the context, either:

(1) A written demand or written assertion by one of the parties to a Federal award seeking as a matter of right:

(i) The payment of money in a sum certain;

(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 that is 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 non-Federal entity or group of non-Federal entities to which specific provisions or exceptions may apply.

Closeout means the process by which the Federal awarding 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 as defined by OMB in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an ''other cluster,'' 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).

A cluster of programs must be considered as one program for determining major programs, as described in §200.518, and, with the exception of R&D as described in §200.501(c), 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 cognizant agencies for audit 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 developed under this part 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 to this part, paragraph C.11.

(2) For nonprofit organizations: Appendix IV to this part, paragraph C.2.a.

(3) For State and local governments: Appendix V to this part, paragraph F.1.

(4) For Indian tribes: Appendix VII to this part, paragraph D.1.

Compliance supplement means an annually updated authoritative source for auditors that serves to identify 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 used to 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 purchases property or services needed to carry out the project or program 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 as defined in this section.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency and a recipient or a pass-through entity and a subrecipient that, 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 awarding agency 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.

Cooperative audit resolution means the use of audit follow-up techniques which promote 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:

(1) A strong commitment by Federal agency and non-Federal entity leadership to program integrity;

(2) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and

their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies;

(3) A focus on current conditions and corrective action going forward;

(4) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(5) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

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 central service cost allocation plan 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, capital projects, etc. A cost objective may be a major function of the non-Federal entity, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in subpart E of this part. See also the definitions of *final cost objective* and *intermediate cost objective* in this section.

Cost sharing or matching means the portion of project costs not paid by Federal funds or contributions (unless otherwise authorized by Federal statute). See also § 200.306.

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 awarding agency or pass-through entity).

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

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 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 which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000. See also 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 non-Federal entity to a project or program for which a Federal award was received.

(1) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is 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 non-Federal entity 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).

Federal Audit Clearinghouse (FAC) means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the information required by subpart F of this part.

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 awarding agency or indirectly from a pass-through entity, as described in § 200.101; or

(ii) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding 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 Federal Government owned, contractor operated facilities (GOCOs).

(4) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency.

Federal awarding agency means the Federal agency that provides a Federal award directly to a non-Federal entity.

Federal financial assistance means

(1) Assistance that non-Federal entities 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 non-Federal entities 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 non-Federal entities 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).

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 that are paid using Federal funds.

Final cost objective means a cost objective which has allocated to it both direct and indirect costs and, in the non-Federal entity's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a non-Federal entity. See also the definitions of *cost objective* and *intermediate cost objective* in this section.

Financial obligations, when referencing a recipient's or subrecipient's use of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions that require payment.

Fixed amount awards means a type of grant or cooperative agreement under which the Federal awarding agency or pass-through entity provides a specific level of support 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 non-Federal entity and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. See §§ 200.102(c), 200.201(b), and 200.333.

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 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 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 which 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 GASB and the 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 are applicable to financial audits.

Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, 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 awarding 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 awarding 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 the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. 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:

(1) Any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other *legally applicable* requirements.

(i) Incorrect amounts are overpayments or underpayments that are made to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for an incorrect amount, and duplicate payments). An improper payment also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law).

Note 1 to paragraph (1)(i) of this definition. Applicable discounts are only those discounts where it is both advantageous and within the agency's control to claim them.

(ii) When an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment should also be considered an improper payment. When establishing documentation requirements for payments, agencies should ensure that all documentation requirements are necessary and should refrain from imposing additional burdensome documentation requirements.

(iii) Interest or other fees that may result from an underpayment by an agency are not considered an improper payment if the interest was paid correctly. These payments are generally separate transactions and may be necessary under certain statutory, contractual, administrative, or other legally applicable requirements.

(iv) A ''questioned cost'' (as defined in this section) should not be considered an improper payment until the transaction has been completely reviewed and is confirmed to be improper.

(v) The term ''payment'' in this definition means any disbursement or transfer of Federal funds (including a commitment for future payment, such as cash, securities, loans, loan guarantees, and insurance subsidies) to any non-Federal person, non-Federal entity, or Federal employee, that is made by a Federal agency, a Federal contractor, a Federal grantee, or a governmental or other organization administering a Federal program or activity.

(vi) The term ''payment'' includes disbursements made pursuant to prime contracts awarded under the Federal Acquisition Regulation and Federal awards subject to this part that are expended by recipients.

(2) See definition of improper payment in OMB Circular A–123 appendix C, part I A (1) ''What is an improper payment?'' Questioned costs, including those identified in audits, are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A–123 appendix C.

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 annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

Institutions of Higher Education (IHEs) is defined at 20 U.S.C. 1001.

Indirect (facilities & administrative (F&A)) 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. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Indirect cost rate proposal means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of 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 similar procedures, services (including support services), and related resources. See also the definitions of *computing devices* and *equipment* in this section.

Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

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 also the definitions of *cost objective* and *final cost objective* in this section.

Internal controls for non-Federal entities means:

(1) Processes designed and implemented by non-Federal entities to provide reasonable assurance regarding the achievement of objectives in the following categories:

(i) Effectiveness and efficiency of operations;

(ii) Reliability of reporting for internal and external use; and

(iii) Compliance with applicable laws and regulations.

(2) Federal awarding agencies are required to follow internal control compliance requirements in OMB Circular No. A–123, Management's Responsibility for Enterprise Risk Management and Internal Control.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity, except as used in the definition of *program income* in this section.

(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 awarding 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 pledge with respect to 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 awarding 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 awarding agency or pass-through entity in accordance with §200.503(e).

Management decision means the Federal awarding 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 a purchase of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases comprise a subset of a non-Federal entity's small purchases as defined in §200.320.

Micro-purchase threshold means the dollar amount at or below which a non-Federal entity may purchase property or services using micro-purchase procedures (see §200.320). Generally, 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 non-Federal entity 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 $25,000 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 $25,000. 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 awarding agency to specific recipients in accordance with statutory, eligibility and compliance requirements, such that in keeping with specific statutory authority the agency has no ability to exercise judgement (''discretion''). A non-discretionary award amount could be determined specifically 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 corporation, trust, association, cooperative, or other organization, not including IHEs, 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.

Notice of funding opportunity means a formal announcement of the availability of Federal funding through a financial assistance program from a Federal awarding agency. The notice of funding opportunity provides information on the award, who is eligible to apply, the evaluation criteria for selection of an awardee, 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 awarding 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 non-Federal entity 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 non-Federal entity, 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 awarding agency which 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 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.

Pass-through entity (PTE) means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Performance goal means a 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 (*e.g.*, 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 total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the period of performance in the Federal award per §200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period.

Personal property means property other than real property. It may be tangible, having physical existence, 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 information that is considered to be PII is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, 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, when combined with other available information, could be used to identify an individual.

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 except as provided in §200.307(f). (See the definition of *period of performance* in this section.) 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, and interest earned on any of them. See also §200.407. See also 35 U.S.C. 200–212 ''Disposition of Rights in Educational Awards'' applies to inventions made under Federal awards.

Project cost means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

Property means real property or personal property. See also the definitions of *real property* and *personal property* in this section.

Protected Personally Identifiable Information (Protected PII) means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but 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, educational transcripts. This does not include PII that is required by law to be disclosed. See also the definition of *Personally Identifiable Information (PII)* in this section.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(1) 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;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

(4) 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 this section).

Real property means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.

Recipient means an entity, usually but not limited to non-Federal entities that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.

Renewal award means an award made subsequent to an expiring Federal award for which the start date is contiguous with, or closely follows, the end of the expiring Federal award. A renewal award's start date will begin a distinct period of performance.

Research and Development (R&D) means all research activities, both basic and applied, and all development activities that are performed by non-Federal entities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. ''Research'' is defined as a 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 directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods (see §200.320). Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold for procurement activities administered under Federal awards is set by the FAR at 48 CFR part 2, subpart 2.1. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. However, in no

circumstances can this threshold exceed the dollar value established in the FAR (48 CFR part 2, subpart 2.1) for the simplified acquisition threshold. Recipients should determine if local government laws on purchasing apply.

Special purpose equipment means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. 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 are administered by the U.S. Department of Education, 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 carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding 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.

Supplies means all tangible personal property other than those described in the definition of *equipment* in this section. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or $5,000, regardless of the length of its useful life. See also the definitions of *computing devices* and *equipment* in this section.

Telecommunications cost means the cost of using communication and telephony technologies such as mobile phones, land lines, and internet.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance. A lack of available funds is not a termination.

Third-party in-kind contributions means the value of non-cash contributions (*i.e.*, property or services) that—

(1) Benefit a federally-assisted project or program; and

(2) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.

Unliquidated financial obligations means, for financial reports prepared on a cash basis, financial obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are financial obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

Unobligated balance means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated financial obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal's

budget on the part of the non-Federal entity and that becomes a binding requirement of Federal award. See also § 200.306.

[85 FR 49529, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

Subpart B—General Provisions

§ 200.100 Purpose.

(a) *Purpose.* (1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in § 200.101. Federal awarding agencies must not impose additional or inconsistent requirements, except as provided in §§ 200.102 and 200.211, or unless specifically required by Federal statute, regulation, or Executive order.

(2) This part provides the basis for a systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to the Office of Management and Budget (OMB). It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It prescribes the manner in which General Services Administration (GSA), OMB, and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act (31 U.S.C. 6101–6106).

(b) *Administrative requirements.* Subparts B through D of this part set forth the uniform administrative requirements for grant and cooperative agreements, including the requirements for Federal awarding agency management of Federal grant programs before the Federal award has been made, and the requirements Federal awarding agencies may impose on non-Federal entities in the Federal award.

(c) *Cost principles.* Subpart E of this part establishes principles for determining the allowable costs incurred by non-Federal entities under Federal awards. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal Government participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute.

(d) *Single Audit Requirements and Audit Follow-up.* Subpart F of this part is issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507). It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards. These provisions also provide the policies and procedures for Federal awarding agencies and pass-through entities when using the results of these audits.

(e) *Guidance on challenges and prizes.* For OMB guidance to Federal awarding agencies on challenges and prizes, please see memo M–10–11 Guidance on the Use of Challenges and Prizes to Promote Open Government, issued March 8, 2010, or its successor.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49536, Aug. 13, 2020]

§ 200.101 Applicability.

(a) *General applicability to Federal agencies.* (1) The requirements established in this part apply to Federal agencies that make Federal awards to non-Federal entities. These requirements are applicable to all costs related to Federal awards.

(2) Federal awarding agencies may apply subparts A through E of this part to Federal agencies, for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international responsibilities of the United States or the statutes or regulations of a foreign government.

(b) *Applicability to different types of Federal awards.* (1) Throughout this part when the word ''must'' is used it indicates a requirement. Whereas, use of the word ''should'' or ''may'' indicates a best practice or recommended approach rather than a requirement and permits discretion.

(2) The following table describes what portions of this part apply to which types of Federal awards. 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. This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. Pass-through entities must comply with the requirements described in subpart D of this part, §§ 200.331 through 200.333, but not any requirements in this part directed towards Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award indicate otherwise.

TABLE 1 TO PARAGRAPH (b)

The following portions of this Part	Are applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts (except as noted in paragraphs (d) and (e) of this section):	Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:
Subpart A—Acronyms and Definitions	—All.	
Subpart B—General Provisions, except for §§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures.	—All.	
§§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures.	—Grant Agreements and cooperative agreements.	—Agreements for loans, loan guarantees, interest subsidies and insurance. —Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
Subparts C–D, except for §§ 200.203 Requirement to provide public notice of Federal financial assistance programs, 200.303 Internal controls, 200.331–333 Subrecipient Monitoring and Management.	—Grant Agreements and cooperative agreements.	—Agreements for loans, loan guarantees, interest subsidies and insurance. —Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
§ 200.203 Requirement to provide public notice of Federal financial assistance programs.	—Grant Agreements and cooperative agreements. —Agreements for loans, loan guarantees, interest subsidies and insurance.	—Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
§§ 200.303 Internal controls, 200.331–333 Subrecipient Monitoring and Management.	—All.	
Subpart E—Cost Principles	—Grant Agreements and cooperative agreements, except those providing food commodities. —All procurement contracts under the Federal Acquisition Regulations except those that are not negotiated.	—Grant agreements and cooperative agreements providing foods commodities. —Fixed amount awards. —Agreements for loans, loans guarantees, interest subsidies and insurance. —Federal awards to hospitals (see Appendix IX Hospital Cost Principles).
Subpart F—Audit Requirements	—Grant Agreements and cooperative agreements. —Contracts and subcontracts, except for fixed price contacts and subcontracts, awarded under the Federal Acquisition Regulation. —Agreements for loans, loans guarantees, interest subsidies and insurance and other forms of Federal Financial Assistance as defined by the Single Audit Act Amendment of 1996.	—Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation.

(c) *Federal award of cost-reimbursement contract under the FAR to a non-Federal entity*. When a non-Federal entity is awarded a cost-reimbursement contract, only subpart D, §§ 200.331 through 200.333, and subparts E and F of this part are incorporated by reference into the contract, but the requirements of subparts D, E, and F are supplementary to the FAR and the contract. When the Cost Accounting Standards (CAS) are applicable to the contract, they take precedence over the requirements of this part, including subpart F of this

part, which are supplementary to the CAS requirements. In addition, costs that are made unallowable under 10 U.S.C. 2324(e) and 41 U.S.C. 4304(a) as described in the FAR 48 CFR part 31, subpart 31.2, and 48 CFR 31.603 are always unallowable. For requirements other than those covered in subpart D, §§ 200.331 through 200.333, and subparts E and F of this part, the terms of the contract and the FAR apply. Note that when a non-Federal entity is awarded a FAR contract, the FAR applies, and the terms and conditions of the contract shall prevail over the requirements of this part.

(d) *Governing provisions.* With the exception of subpart F of this part, which is required by the Single Audit Act, in any circumstances where the provisions of Federal statutes or regulations differ from the provisions of this part, the provision of the Federal statutes or regulations govern. This includes, for agreements with Indian tribes, the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, 25 U.S.C 450–458ddd–2.

(e) *Program applicability.* Except for §§ 200.203, 200.216, and 200.331 through 200.333, the requirements in subparts C, D, and E of this part 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 of this part 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 of this part 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) Foster Care and Adoption Assistance (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.

[85 FR 49536, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

§ 200.102 Exceptions.

(a) With the exception of subpart F of this part, 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. In the interest of maximum uniformity, exceptions from the requirements of this part will be permitted as described in this section.

(b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the Federal awarding agency or cognizant agency for indirect costs, except where otherwise required by law or where OMB or other approval is expressly required by this part.

(c) The Federal awarding agency may adjust requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when required by Federal statutes or regulations, except for the requirements in subpart F of this part. A Federal awarding agency may apply less restrictive requirements when making fixed amount awards as defined in subpart A of this part, except for those requirements imposed by statute or in subpart F of this part.

(d) Federal awarding 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.

[85 FR 49538, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

§ 200.103 Authorities.

This part is issued under the following authorities.

(a) Subparts B through D of this part are authorized under 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management), 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''), the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507), as well as The Federal Program Information Act (Pub. L. 95–220 and Pub. L. 98–169, as amended, codified at 31 U.S.C. 6101–6106).

(b) Subpart E of this part 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. 1101–1125); 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.''

(c) Subpart F of this part is authorized under the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507).

[85 FR 49538, Aug. 13, 2020]

§ 200.104 Supersession.

As described in § 200.110, this part supersedes the following OMB guidance documents and regulations under title 2 of the Code of Federal Regulations:

(a) A–21, ''Cost Principles for Educational Institutions'' (2 CFR part 220);

(b) A–87, ''Cost Principles for State, Local and Indian Tribal Governments'' (2 CFR part 225) and also FEDERAL REGISTER notice 51 FR 552 (January 6, 1986);

(c) A–89, ''Federal Domestic Assistance Program Information'';

(d) A–102, ''Grant Awards and Cooperative Agreements with State and Local Governments'';

(e) A–110, ''Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations'' (codified at 2 CFR 215);

(f) A–122, ''Cost Principles for Non-Profit Organizations'' (2 CFR part 230);

(g) A–133, ''Audits of States, Local Governments and Non-Profit Organizations''; and

(h) Those sections of A–50 related to audits performed under subpart F of this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75882, Dec. 19, 2014; 85 FR 49538, Aug. 13, 2020]

§ 200.105 Effect on other issuances.

(a) *Superseding inconsistent requirements.* For Federal awards subject to this part, all administrative requirements, program manuals, handbooks and other non-regulatory materials that are inconsistent with the requirements of this part must be superseded upon implementation of this part by the Federal agency, except to the extent they are required by statute or authorized in accordance with the provisions in § 200.102.

(b) *Imposition of requirements on recipients.* Agencies may impose legally binding requirements on recipients only through the notice and public comment process through an approved agency process, including as authorized by this part, other statutes or regulations, or as incorporated into the terms of a Federal award.

[85 FR 49538, Aug. 13, 2020]

§ 200.106 Agency implementation.

The specific requirements and responsibilities of Federal agencies and non-Federal entities 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.

[85 FR 49538, Aug. 13, 2020]

§ 200.107 OMB responsibilities.

OMB will review Federal agency regulations and 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 OMB. Exceptions will only be made in particular cases where adequate justification is presented.

§ 200.108 Inquiries.

Inquiries concerning this part may be directed to the Office of Federal Financial Management Office of Management and Budget, in Washington, DC. Non-Federal entities' inquiries should be addressed to the Federal awarding agency, cognizant agency for indirect costs, cognizant or oversight agency for audit, or pass-through entity as appropriate.

§ 200.109 Review date.

OMB will review this part at least every five years after December 26, 2013.

§ 200.110 Effective/applicability date.

(a) The standards set forth in this part that affect the administration of Federal awards issued by Federal awarding agencies become effective once implemented by Federal awarding agencies or when any future amendment to this part becomes final.

(b) Existing negotiated indirect cost rates (as of the publication date of the revisions to the guidance) will remain in place until they expire. The effective date of changes to indirect cost rates must be based upon the date that a newly re-negotiated rate goes into effect for a specific non-Federal entity's fiscal year. Therefore, for indirect cost rates and cost allocation plans, the revised Uniform Guidance (as of the publication date for revisions to the guidance) become effective in generating

proposals and negotiating a new rate (when the rate is re-negotiated).

[85 FR 49538, Aug. 13, 2020]

§ 200.111 English language.

(a) All Federal financial assistance announcements and Federal award information must be in the English language. Applications must be submitted in the English language and must be in the terms of U.S. dollars. If the Federal awarding agency receives applications in another currency, the Federal awarding agency will evaluate the application by converting the foreign currency to United States currency using the date specified for receipt of the application.

(b) Non-Federal entities may translate the Federal award and other documents into another language. In the event of inconsistency between any terms and conditions of the Federal award and any translation into another language, the English language meaning will control. Where a significant portion of the non-Federal entity's employees who are working on the Federal award are not fluent in English, the non-Federal entity must provide the Federal award in English and the language(s) with which employees are more familiar.

§ 200.112 Conflict of interest.

The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

§ 200.113 Mandatory disclosures.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII to this part are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). 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.)

[85 FR 49539, Aug. 13, 2020]

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

SOURCE: 85 FR 49539, Aug. 13, 2020, unless otherwise noted.

§ 200.200 Purpose.

Sections 200.201 through 200.216 prescribe instructions and other pre-award matters to be used by Federal awarding agencies in the program planning, announcement, application and award processes.

§ 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(a) *Federal award instrument.* The Federal awarding agency or pass-through entity must decide on the appropriate instrument for the Federal award (*i.e.*, grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08).

(b) *Fixed amount awards.* In addition to the options described in paragraph (a) of this section, Federal awarding agencies, or pass-through entities as permitted in § 200.333, may use fixed amount awards (see *Fixed amount awards* in § 200.1) to which the following conditions apply:

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal awarding agency or pass-through entity may use fixed amount awards if the project scope has measurable goals and objectives and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there

is no governmental review of the actual costs incurred by the non-Federal entity in performance of the 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 agreed upon in advance, and the ''milestone'' or event triggering the payment also agreed upon in advance, and set forth in the Federal award;

(ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; or,

(iii) In one payment at Federal award completion.

(2) A fixed amount award cannot be used in programs which require mandatory cost sharing or match.

(3) The non-Federal entity must certify in writing to the Federal awarding agency or pass-through entity at the end of the Federal award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.

(4) Periodic reports may be established for each Federal award.

(5) Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the Federal awarding agency or pass-through entity.

§ 200.202 Program planning and design.

The Federal awarding agency must design a program and create an Assistance Listing before announcing the Notice of Funding Opportunity. The program must be designed with clear goals and objectives that facilitate the delivery of meaningful results consistent with the Federal authorizing legislation of the program. Program performance shall be measured based on the goals and objectives developed during program planning and design. See § 200.301 for more information on performance measurement. Performance measures may differ depending on the type of program. The program must align with the strategic goals and objectives within the Federal awarding agency's performance plan and should support the Federal awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A–11 (Preparation, Submission, and Execution of the Budget). The program must also be designed to align with the Program Management Improvement Accountability Act (Pub. L. 114–264).

§ 200.203 Requirement to provide public notice of Federal financial assistance programs.

(a) The Federal awarding agency must notify the public of Federal programs in the Federal Assistance Listings maintained by the General Services Administration (GSA).

(1) The Federal Assistance Listings is the single, authoritative, government-wide comprehensive source of Federal financial assistance program information produced by the executive branch of the Federal Government.

(2) The information that the Federal awarding agency must submit to GSA for approval by OMB is listed in paragraph (b) of this section. GSA must prescribe the format for the submission in coordination with OMB.

(3) The Federal awarding agency may not award Federal financial assistance without assigning it to a program that has been included in the Federal Assistance Listings as required in this section unless there are exigent circumstances requiring otherwise, such as timing requirements imposed by statute.

(b) For each program that awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance, the Federal awarding agency must, to the extent practicable, create, update, and manage Assistance Listings entries based on the authorizing statute for the program and comply with additional guidance provided by GSA in consultation with OMB to ensure consistent, accurate information is available to prospective applicants. Accordingly, Federal awarding agencies must submit the following information to GSA:

(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 Measurement should align with the strategic goals and objectives within the Federal awarding agency's performance plan and should support the Federal awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A–11;

(2) *Identification.* Identification of whether the program makes Federal awards on a discretionary basis or the Federal awards are prescribed by Federal statute, such as in the case of formula grants.

(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, to the extent possible, agency, sub-agency, or, if known, the specific program unit that will issue the Federal awards, and associated funding identifier (*e.g.*, 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 (*e.g.*, type of non-Federal entity); and

(6) *Applicability of Single Audit Requirements.* Applicability of Single Audit Requirements as required by subpart F of this part.

§ 200.204 Notices of funding opportunities.

For discretionary grants and cooperative agreements that are competed, the Federal awarding agency must announce specific funding opportunities by providing the following information in a public notice:

(a) *Summary information in notices of funding opportunities.* The Federal awarding agency must display the following information posted on the OMB-designated governmentwide website for funding and applying for Federal financial assistance, in a location preceding the full text of the announcement:

(1) Federal Awarding Agency Name;

(2) Funding Opportunity Title;

(3) Announcement Type (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity);

(4) Funding Opportunity Number (required, if applicable). If the Federal awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided;

(5) Assistance Listings Number(s);

(6) Key Dates. Key dates include due dates for applications or Executive Order 12372 submissions, as well as for any letters of intent or pre-applications. 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 relevant Federal awarding agency.

(b) *Availability period.* The Federal awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. The Federal awarding agency may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days unless exigent circumstances require as determined by the Federal awarding agency head or delegate.

(c) *Full text of funding opportunities.* The Federal awarding agency must include the following information in the full text of each funding opportunity. For specific instructions on the content required in this section, refer to appendix I to this part.

(1) Full programmatic description of the funding opportunity.

(2) Federal award information, including sufficient information to help an applicant make an informed decision about whether to submit an application. (See also § 200.414(c)(4)).

(3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.

(4) Application Preparation and Submission Information, including the applicable submission dates and time.

(5) Application Review Information including the criteria and process to be used to evaluate applications. See also §§ 200.205 and 200.206.

(6) Federal Award Administration Information. See also § 200.211.

(7) Applicable terms and conditions for resulting awards, including any exceptions from these standard terms.

§ 200.205 Federal awarding agency review of merit of proposals.

For discretionary Federal awards, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications, with the objective of selecting recipients most likely to be successful in delivering results based on the program objectives outlined in section § 200.202. A merit review is an objective process of evaluating Federal award applications in accordance with written standards set forth by the Federal awarding agency. This process must be described or incorporated by reference in the applicable funding opportunity (see appendix I to this part.). See also § 200.204. The Federal awarding agency must also periodically review its merit review process.

§ 200.206 Federal awarding agency review of risk posed by applicants.

(a) *Review of OMB-designated repositories of governmentwide data.* (1) Prior to making a Federal award, the Federal awarding agency is required by the Payment Integrity Information Act of 2019, 31 U.S.C. 3301 note, and 41 U.S.C. 2313 to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information as appropriate. See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.

(2) In accordance 41 U.S.C. 2313, the Federal awarding agency is required to review the non-public segment of the OMB-designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) prior to making a Federal award where the Federal share is expected to exceed the simplified acquisition threshold, defined in 41 U.S.C. 134, over the period of performance. As required by Public Law 112–239, National Defense Authorization Act for Fiscal Year 2013, prior to making a Federal award, the Federal awarding agency must consider all of the information available through FAPIIS with regard to the applicant and any immediate highest level owner, predecessor (*i.e.;* a non-Federal entity that is replaced by a successor), or subsidiary, identified for that applicant in FAPIIS, if applicable. At a minimum, the information in the system for a prior Federal award recipient must demonstrate a satisfactory record of executing programs or activities under Federal grants, cooperative agreements, or procurement awards; and integrity and business ethics. The Federal awarding agency may make a Federal award to a recipient who does not fully meet these standards, if it is determined that the information is not relevant to the current Federal award under consideration or there are specific conditions that can appropriately mitigate the effects of the non-Federal entity's risk in accordance with § 200.208.

(b) *Risk evaluation.* (1) The Federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the Federal awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in § 200.204.

(2) In evaluating risks posed by applicants, the Federal awarding agency may use a risk-based approach and may consider any items such as the following:

(i) *Financial stability.* Financial stability;

(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 in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;

(iv) *Audit reports and findings.* Reports and findings from audits performed under subpart F of this part or the reports and findings of any other available audits; and

(v) *Ability to effectively implement requirements.* The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.

(c) *Risk-based requirements adjustment.* The Federal awarding agency may adjust requirements when a risk-evaluation indicates that it may be merited either pre-award or post-award.

(d) *Suspension and debarment compliance.* (1) The Federal awarding agency must comply with the guidelines on governmentwide suspension and debarment in 2 CFR part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

[85 FR 49539, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

§ 200.207 Standard application requirements.

(a) *Paperwork clearances.* The Federal awarding 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, governmentwide data elements available from the OMB-designated standards lead. Consistent with these requirements, OMB will authorize additional information collections only on a limited basis.

(b) *Information collection.* If applicable, the Federal awarding agency may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.

§ 200.208 Specific conditions.

(a) Federal awarding agencies are responsible for ensuring that specific Federal award conditions are consistent with the program design reflected in § 200.202 and include clear performance expectations of recipients as required in § 200.301.

(b) The Federal awarding agency or pass-through entity may adjust specific Federal award conditions as needed, in accordance with this section, based on an analysis of the following factors:

(1) Based on the criteria set forth in § 200.206;

(2) The applicant or recipient's history of compliance with the general or specific terms and conditions of a Federal award;

(3) The applicant or recipient's ability to meet expected performance goals as described in § 200.211; or

(4) A responsibility determination of an applicant or recipient.

(c) Additional Federal award conditions may include items such as 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 within a given performance period;

(3) Requiring additional, more detailed financial reports;

(4) Requiring additional project monitoring;

(5) Requiring the non-Federal entity to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(d) If the Federal awarding agency or pass-through entity is imposing additional requirements, they must notify the applicant or non-Federal entity as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the action needed to remove the additional requirement, if applicable;

(4) The time allowed for completing the actions if applicable; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(e) Any additional requirements 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, each Federal awarding agency or pass-through entity is authorized to require the non-Federal entity to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the non-Federal entity fails to meet a requirement of a Federal award.

§ 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.

A Federal award must include the following information:

(a) *Federal award performance goals.* Performance goals, indicators, targets, and baseline data must be included in the Federal award, where applicable. The Federal awarding agency must also specify how performance will be assessed in the terms and conditions of the Federal award, 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 awarding agency must include the following general Federal award information in each Federal award:

(1) Recipient name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.315);

(2) Recipient's unique entity identifier;

(3) Unique Federal Award Identification Number (FAIN);

(4) Federal Award Date (see Federal award date in § 200.201);

(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 or Matching, where applicable;

(10) Total Amount of the Federal Award including approved Cost Sharing or Matching;

(11) Budget Approved by the Federal Awarding Agency;

(11) Federal award description, (to comply with statutory requirements (*e.g.*, FFATA));

(12) Name of Federal awarding agency and contact information for awarding official,

(13) Assistance Listings Number and Title;

(14) Identification of whether the award is R&D; and

(15) 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 awarding 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 awarding 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.* If the total Federal share of the Federal award may include more than $500,000 over the period of performance, the Federal awarding agency must include the term and condition available in appendix XII of this part. See also § 200.113.

(iv) *Future budget periods.* If it is anticipated that the period of performance will include multiple budget periods, the Federal awarding 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 awarding agencies must make recipients aware, in a clear and unambiguous manner, of the termination provisions in § 200.340, including the applicable termination provisions in the Federal awarding agency's regulations or in each Federal award.

(2) The Federal award must incorporate, by reference, all general terms and conditions of the award, which must be maintained on the agency's website.

(3) If a non-Federal entity requests a copy of the full text of the general terms and conditions, the Federal awarding agency must provide it.

(4) Wherever the general terms and conditions are publicly available, the Federal awarding agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the non-Federal entity, auditors, or others.

(d) *Federal awarding agency, program, or Federal award specific terms and conditions.* The Federal awarding agency must include with each Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the Federal awarding agency's general terms and conditions. See also § 200.208. Whenever practicable, these specific terms and conditions also should be shared on the agency's website and in notices of funding opportunities (as outlined in § 200.204) in addition to being included in a Federal award. See also § 200.207.

(e) *Federal awarding agency requirements.* Any other information required by the Federal awarding agency.

§ 200.212 Public access to Federal award information.

(a) In accordance with statutory requirements for Federal spending transparency (*e.g.*, FFATA), except as noted in this section, for applicable Federal awards the Federal awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated governmentwide website.

(b) All information posted in the designated integrity and performance system accessible through SAM (currently FAPIIS) on or after April 15, 2011 will be publicly available after a waiting period of 14 calendar days, except for:

(1) Past performance reviews required by Federal Government contractors in accordance with the 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 the Federal Government official.

(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 a non-Federal entity is not qualified for a Federal award.

(a) If a Federal awarding agency does not make a Federal award to a non-Federal entity because the official determines that the non-Federal entity does not meet either or both of the minimum qualification standards as described in § 200.206(a)(2), the Federal awarding agency must report that determination to the designated integrity and performance system accessible through SAM (currently FAPIIS), only if all of the following apply:

(1) The only basis for the determination described in this paragraph (a) is the non-Federal entity's prior record of executing programs or activities under Federal awards or its record of integrity and business ethics, as described in § 200.206(a)(2) (*i.e.*, the entity was determined to be qualified based on all factors other than those two standards); and

(2) The total Federal share of the Federal award that otherwise would be

made to the non-Federal entity is expected to exceed the simplified acquisition threshold over the period of performance.

(b) The Federal awarding agency is not required to report a determination that a non-Federal entity is not qualified for a Federal award if they make the Federal award to the non-Federal entity and include specific award terms and conditions, as described in § 200.208.

(c) If a Federal awarding agency reports a determination that a non-Federal entity is not qualified for a Federal award, as described in paragraph (a) of this section, the Federal awarding agency also must notify the non-Federal entity that—

(1) The determination was made and reported to the designated integrity and performance system accessible through SAM, and include with the notification an explanation of the basis for the determination;

(2) The information will be kept in the system for a period of five years from the date of the determination, as required by section 872 of Public Law 110–417, as amended (41 U.S.C. 2313), then archived;

(3) Each Federal awarding agency that considers making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award when the total Federal share of the Federal award is expected to include an amount of Federal funding in excess of the simplified acquisition threshold over the period of performance;

(4) The non-Federal entity may go to the awardee integrity and performance portal accessible through SAM (currently the Contractor Performance Assessment Reporting System (CPARS)) and comment on any information the system contains about the non-Federal entity itself; and

(5) Federal awarding agencies will consider that non-Federal entity's comments in determining whether the non-Federal entity is qualified for a future Federal award.

(d) If a Federal awarding agency enters information into the designated integrity and performance system accessible through SAM about a determination that a non-Federal entity is not qualified for a Federal award and subsequently:

(1) Learns that any of that information is erroneous, the Federal awarding 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 awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(e) Federal awarding agencies must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the recipient asserts within seven calendar days to the Federal awarding agency that posted the information that some or all of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding 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 awarding agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

§ 200.214 Suspension and debarment.

Non-Federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. The regulations in 2 CFR part 180 restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 200.215 Never contract with the enemy.

Federal awarding agencies and recipients are subject to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative

agreements that are expected to exceed $50,000 within 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 services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) 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).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) 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.

(b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall 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 communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115–232, section 889 for additional information.

(d) See also § 200.471.

Subpart D—Post Federal Award Requirements

SOURCE: 85 FR 49543, Aug. 13, 2020, unless otherwise noted.

§ 200.300 Statutory and national policy requirements.

(a) The Federal awarding agency 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, Federal Law, and public policy requirements: Including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must 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 FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR parts 25 and 170. 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.

§ 200.301 Performance measurement.

(a) The Federal awarding agency must measure the recipient's performance to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster adoption of promising practices. Program goals and objectives should be derived from program planning and design. See § 200.202 for more information. Where appropriate, the Federal award may include specific program goals, indicators, targets, baseline data, data collection, or expected outcomes (such as outputs, or services performance or public impacts of any of these) with an expected timeline for accomplishment. Where applicable, this should also include any performance measures or independent sources of data that may be used to measure progress. The Federal awarding agency will determine how performance progress is measured, which may differ by program. Performance measurement progress must be both measured and reported. See § 200.329 for more information on monitoring program performance. The Federal awarding agency may include program-specific requirements, as applicable. These requirements must be aligned, to the extent permitted by law, with the Federal awarding agency strategic goals, strategic objectives or performance goals that are relevant to the program. See also OMB Circular A–11, Preparation, Submission, and Execution of the Budget Part 6.

(b) The Federal awarding agency should provide recipients with clear performance goals, indicators, targets, and baseline data as described in § 200.211. Performance reporting frequency and content should be established to not only allow the Federal awarding agency to understand the recipient progress but also to facilitate identification of promising practices among recipients and build the evidence upon which the Federal awarding agency's program and performance decisions are made. See § 200.328 for more information on reporting program performance.

(c) This provision is designed to operate in tandem with evidence-related statutes (*e.g.;* The Foundations for Evidence-Based Policymaking Act of 2018, which emphasizes collaboration and coordination to advance data and evidence-building functions in the Federal government). The Federal awarding agency should also specify any requirements of award recipients' participation in a federally funded evaluation, and any evaluation activities required to be conducted by the Federal award.

§ 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 own funds. In addition, the state's and the other non-Federal entity's 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 general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also § 200.450.

(b) The financial management system of each non-Federal entity must provide for the following (see also §§ 200.334, 200.335, 200.336, and 200.337):

(1) Identification, in its accounts, 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 and year, name of the Federal agency, and name of the pass-through entity, if any.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§ 200.328 and 200.329. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis

of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

(3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, financial obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

(4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that 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 of this part and the terms and conditions of the Federal award.

§ 200.303 Internal controls.

The non-Federal entity must:

(a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with 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 awards.

(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

§ 200.304 Bonds.

The Federal awarding agency may include a provision on bonding, insurance, or both in the following circumstances:

(a) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the non-Federal entity are not deemed adequate to protect the interest of the Federal Government.

(b) The Federal awarding agency may require adequate fidelity bond coverage where the non-Federal entity lacks sufficient coverage to protect the Federal Government's interest.

(c) Where bonds are required in the situations described above, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223.

§ 200.305 Federal payment.

(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 Treasury Financial Manual (TFM) 4A–2000, ''Overall Disbursing Rules for All Federal Agencies''.

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the

non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also §200.302(b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved, governmentwide information collection requests to request payment.

(1) The non-Federal entity 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 non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity 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 non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.

(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(3) Reimbursement is the preferred method when the requirements in this paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per §200.208, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major 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 awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.

(4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity 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) 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.

(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of § 200.208, subpart D of this part, including § 200.339, or one or more of the following applies:

(i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.

(ii) The non-Federal entity 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 awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for financial obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with § 200.343.

(iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.

(i) The Federal awarding agency and pass-through entity must 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 funds received, obligated, and expended.

(ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:

(i) The non-Federal entity receives less than $250,000 in Federal awards per year.

(ii) The best reasonably available interest-bearing account would not 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 within the expected Federal and non-Federal cash resources.

(iv) A foreign government or banking system prohibits or precludes interest-bearing accounts.

(9) Interest earned amounts up to $500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.

(i) For returning interest on Federal awards paid through PMS, the refund should:

(A) Provide an explanation stating that the refund is for interest;

(B) List the PMS Payee Account Number(s) (PANs);

(C) List the Federal award number(s) for which the interest was earned; and

(D) Make returns payable to: Department of Health and Human Services.

(ii) For returning interest on Federal awards not paid through PMS, the refund should:

(A) Provide an explanation stating that the refund is for interest;

(B) Include the name of the awarding agency;

(C) List the Federal award number(s) for which the interest was earned; and

(D) Make returns payable to: Department of Health and Human Services.

(10) Funds, principal, and excess cash returns must be directed to the original Federal agency payment system. The non-Federal entity should review instructions from the original Federal agency payment system. Returns should include the following information:

(i) Payee Account Number (PAN), if the payment originated from PMS, or Agency information to indicate whom to credit the funding if the payment originated from ASAP, NSF, or another Federal agency payment system.

(ii) PMS document number and subaccount(s), if the payment originated from PMS, or relevant account numbers if the payment originated from another Federal agency payment system.

(iii) The reason for the return (*e.g.*, excess cash, funds not spent, interest, part interest part other, etc.)

(11) When returning funds or interest to PMS you must include the following as applicable:

(i) For ACH Returns:

Routing Number: 051036706
Account number: 303000
Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN

(ii) For Fedwire Returns[1]:

Routing Number: 021030004
Account number: 75010501
Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY

[1]Please note that the organization initiating payment is likely to incur a charge from their Financial Institution for this type of payment.

(iii) For International ACH Returns:

Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)
Bank: Citibank N.A. (New York)
Swift Code: CITIUS33
Account Number: 36838868
Bank Address: 388 Greenwich Street, New York, NY 10013 USA
Payment Details (Line 70): Agency Locator Code (ALC): 75010501
Name (abbreviated when possible) and ALC Agency POC

(iv) For recipients that do not have electronic remittance capability, please make check[2] payable to: ''The Department of Health and Human Services.''

Mail Check to Treasury approved lockbox:
HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353–0231

[2]Please allow 4–6 weeks for processing of a payment by check to be applied to the appropriate PMS account.

(v) Questions can be directed to PMS at 877–614–5533 or *PMSSupport@psc.hhs.gov*.

§ 200.306 Cost sharing or matching.

(a) Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. See also §§ 200.414 and 200.204 and appendix I to this part.

(b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third-party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the non-Federal entity's records;

(2) Are not included as contributions for any other Federal award;

(3) Are necessary and reasonable for accomplishment of project or program objectives;

(4) Are allowable under subpart E of this part;

(5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;

(6) Are provided for in the approved budget when required by the Federal awarding agency; and

(7) Conform to other provisions of this part, as applicable.

(c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency. 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 non-Federal entity's approved negotiated indirect cost rate.

(d) Values for non-Federal entity contributions of services and property must be established in accordance with the cost principles in subpart E of this part. If a Federal awarding agency authorizes the non-Federal entity to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of paragraph (d)(1) or (2) of this section.

(1) The value of the remaining life of the property recorded in the non-Federal entity's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the value described in paragraph (d)(1) of this section at the time of donation.

(e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for third-party volunteer services must be consistent with those paid for similar work by the non-Federal entity. In those instances in which the required skills are not found in the non-Federal entity, rates must be consistent with those paid for similar work in the labor market in which the non-Federal entity competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable 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 such items as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cost sharing or matching share must not exceed the fair market value of the property at the time of the donation.

(h) The method used for determining cost sharing or matching for third-party-donated equipment, buildings and land for which title passes to the non-Federal entity may differ according to the purpose of the Federal award, if paragraph (h)(1) or (2) of this section applies.

(1) If the purpose of the Federal award is to assist the non-Federal entity in the acquisition of equipment, buildings or land, the aggregate value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings or land, normally 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, provided that the Federal awarding agency has approved the charges. See also § 200.420.

(i) The value of donated property must be determined in accordance with the usual accounting policies of the non-Federal entity, 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 non-Federal entity as established by an independent appraiser (*e.g.*, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the non-Federal entity as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601–4655) (Uniform Act) 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 of equipment of the same age and condition 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) For third-party in-kind contributions, the fair market value of goods and services must be documented and to the extent feasible supported by the same methods used internally by the non-Federal entity.

(k) For IHEs, see also 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.* Non-Federal entities are encouraged to earn income to defray program costs where appropriate.

(b) *Cost of generating program income.* If authorized by Federal regulations or the Federal award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.

(c) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program income.

(d) *Property.* Proceeds from the sale of real property, equipment, or supplies are not program income; such proceeds will be handled in accordance with the requirements of the Property Standards §§ 200.311, 200.313, and 200.314, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

(e) *Use of program income.* If the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award, or give prior approval for how program income is to be used, paragraph (e)(1) of this section must apply. For Federal awards made to IHEs and nonprofit research institutions, if the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award how program income is to be used, paragraph (e)(2) of this section must apply. In specifying alternatives to paragraphs (e)(1) and (2) of this section, the Federal awarding agency may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of income. When the Federal awarding agency authorizes the approaches in paragraphs (e)(2) and (3) of this section, program income in excess of any amounts specified must also be deducted from expenditures.

(1) *Deduction.* Ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless the Federal awarding agency authorizes otherwise. Program income that the non-Federal entity did not anticipate at the time of the Federal award must be used to reduce the Federal award and non-Federal entity contributions rather than to increase the funds committed to the project.

(2) *Addition.* With prior approval of the Federal awarding agency (except for IHEs and nonprofit research institutions, as described in this paragraph (e)) program income may be added to

the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award.

(3) *Cost sharing or matching.* With prior approval of the Federal awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same.

(f) *Income after the period of performance.* There are no Federal requirements governing the disposition of income earned after the end of the period of performance for the Federal award, unless the Federal awarding agency regulations or the terms and conditions of the Federal award provide otherwise. The Federal awarding agency may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process. See also § 200.344.

(g) *License fees and royalties.* Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity is not accountable to the Federal awarding agency with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401 is applicable.

§ 200.308 Revision of budget and program plans.

(a) 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 either the Federal and non-Federal share (see definition for *Federal share* in § 200.1) or only the Federal share, depending upon Federal awarding agency requirements. The budget and program plans include considerations for performance and program evaluation purposes whenever required in accordance with the terms and conditions of the award.

(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section.

(c) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for the following program or 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 a key person specified in the application or the Federal award.

(3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with subpart E of this part as applicable.

(5) The transfer of funds budgeted for participant support costs to other categories of expense.

(6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in § 200.333. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(7) Changes in the approved cost-sharing or matching provided by the non-Federal entity.

(8) The need arises for additional Federal funds to complete the project.

(d) No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§ 200.102 and 200.407.

(e) Except for requirements listed in paragraphs (c)(1) through (8) of this section, the Federal awarding agency is authorized, at its option, to waive other cost-related and administrative prior written approvals contained in subparts D and E of this part. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur 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 the Federal awarding agency. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient's risk (*i.e.*, the Federal awarding agency is not required 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). See also § 200.458.

(2) 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 (e)(2)(i) through (iii) of this section apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension must not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior Federal awarding agency approval when:

(i) The terms and conditions of the Federal award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent budget periods.

(4) For Federal awards that support research, unless the Federal awarding agency provides otherwise in the Federal award or in the Federal awarding agency's regulations, the prior approval requirements described in this paragraph (e) are automatically waived (*i.e.*, recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the simplified acquisition threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. The Federal awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.

(g) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also § 200.407).

(h) For construction Federal awards, the recipient must request prior written approval promptly from the Federal awarding agency for budget revisions whenever paragraph (h)(1), (2), or (3) of this section applies:

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in subpart E.

(4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.

(5) When a Federal awarding agency makes a Federal award that provides support for construction and non-construction work, the Federal awarding agency may require the recipient to obtain prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(i) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the Federal awarding agency indicates a letter of request suffices.

(j) Within 30 calendar days from the date of receipt of the request for budget revisions, the Federal awarding agency must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.

§ 200.309 Modifications to Period of Performance.

If a Federal awarding agency or pass-through entity approves an extension, or if a recipient extends under § 200.308(e)(2), the Period of Performance will be amended to end at the completion of the extension. If a termination occurs, the Period of Performance will be amended to end upon the effective date of termination. If a renewal award is issued, a distinct Period of Performance will begin.

PROPERTY STANDARDS

§ 200.310 Insurance coverage.

The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally-owned property need not be insured 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 a Federal award will vest upon acquisition in the non-Federal entity.

(b) *Use*. Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.

(c) *Disposition*. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:

(1) Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or improved with a 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 awarding agency. The amount due to the Federal awarding agency will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to 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 non-Federal entity must submit annually an inventory listing of federally-owned property in its custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the Federal awarding agency for further Federal agency utilization.

(b) If the Federal awarding 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 awarding agency has statutory authority to dispose of the property by

alternative methods (*e.g.*, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and nonprofit organizations in accordance with Executive Order 12999, ''Educational Technology: Ensuring Opportunity for All Children in the Next Century.''). The Federal awarding agency must issue appropriate instructions to the non-Federal entity.

(c) Exempt property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further responsibility to the Federal Government, based upon the explicit terms and conditions of the Federal award. The Federal awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt property acquired under the Federal award remains with the Federal Government.

§ 200.313 Equipment.

See also § 200.439.

(a) *Title.* Subject to the requirements and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further responsibility to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity 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) Not encumber the property without approval of the Federal awarding 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 by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. The Federal awarding agency may require the submission of the applicable common form for equipment. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

(i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then

(ii) Activities under Federal awards from other Federal awarding agencies. This includes 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 non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 200.307 to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless

specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

(1) Items of equipment with a current per unit fair market value of $5,000 or less may be retained, sold or otherwise disposed of with no further responsibility to the Federal awarding agency.

(2) Except as provided in § 200.312(b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair market value in excess of $5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

§ 200.314 Supplies.

See also § 200.453.

(a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The

amount of compensation must be computed in the same manner as for equipment. See §200.313 (e)(2) for the calculation methodology.

(b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

§ 200.315 Intangible property.

(a) Title to intangible property (see definition for *Intangible property* in §200.1) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. 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) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding 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.

(c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements.''

(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 such data for Federal purposes.

(e)(1) In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the Federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings means when:

(i) Research findings are published in a peer-reviewed scientific or technical journal; or

(ii) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. ''Used by the Federal Government in developing an agency action that has the force and effect of law'' is defined as when an agency publicly and officially cites the research findings in support of 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, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This ''recorded'' material excludes physical objects (*e.g.*, laboratory samples). Research data also do not include:

(i) 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

(ii) Personnel and medical information and similar information the disclosure of which would constitute a

clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

§ 200.316 Property trust relationship.

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal awarding agency may require the non-Federal entity 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.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

§ 200.318 General procurement standards.

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity 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, or agent may participate in the selection, award, or administration of a contract supported by 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 a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities 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 non-Federal entity.

(2) If the non-Federal entity 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 relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity 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 non-Federal entity 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) Since 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 non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

§ 200.319 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order 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.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equivalent'' description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or subaward.

(a) *Informal procurement methods.* When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) *Micro-purchases*—(i) *Distribution.* The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum

extent practicable, the non-Federal entity 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 non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) *Micro-purchase thresholds.* The non-Federal entity 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 non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities 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) *Non-Federal entity increase to the micro-purchase threshold up to $50,000.* Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to $50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency 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 consistent with State law.

(v) *Non-Federal entity 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 non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) *Small purchases*—(i) *Small purchase procedures.* The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) *Simplified acquisition thresholds.* The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) *Formal procurement methods.* When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) *Sealed bids.* A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the

preferred method for procuring construction, if the conditions.

(i) In order 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 are 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 on the basis of 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 sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) *Proposals*. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) *Noncompetitive procurement*. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§ 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, 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 including all contracts and purchase orders for work or products under this award.

(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.

§ 200.323 Procurement of recovered materials.

A non-Federal entity 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. The requirements of Section 6002 include procuring only items designated in 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.

§ 200.324 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the

complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 200.325 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity'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 or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a ''brand name'' product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; 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 non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the

non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination 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 such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§ 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

Performance and Financial Monitoring and Reporting

§ 200.328 Financial reporting.

Unless otherwise approved by OMB, the Federal awarding agency must solicit only the OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future, OMB-approved, governmentwide data elements available from the OMB-designated standards lead. This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting. The Federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information.

§ 200.329 Monitoring and reporting program performance.

(a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 200.332.

(b) *Reporting program performance.* The Federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency must require the recipient to relate financial data and accomplishments to performance goals and objectives of the Federal award. Also, in accordance with above mentioned common information collections, and when required by the terms and conditions of the Federal award, recipients must provide cost information to demonstrate cost effective practices (*e.g.*, through unit cost data). In some instances (*e.g.*, discretionary research awards), this will be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy). Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured.

(c) *Non-construction performance reports.* The Federal awarding agency must use standard, governmentwide

OMB-approved data elements for collection of performance information including performance progress reports, Research Performance Progress Reports.

(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Reports submitted annually by the non-Federal entity and/or pass-through entity must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semi-annually must be due no later than 30 calendar days after the reporting period. Alternatively, the Federal awarding 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 non-Federal entity and/or pass-through entity must be due no later than 120 calendar days after the period of performance end date. A subrecipient must submit to the pass-through entity, no later than 90 calendar days after the period of performance end date, all final performance reports as required by the terms and conditions of the Federal award. See also § 200.344. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

(2) As appropriate in accordance with above mentioned performance reporting, these reports will contain, for each Federal award, brief information on the following unless other data elements are approved by OMB in the agency information collection request:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(d) *Construction performance reports.* For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.

(e) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal 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 enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(f) *Site visits.* The Federal awarding agency may make site visits as warranted by program needs.

(g) *Performance report requirement waiver.* The Federal awarding agency may waive any performance report required by this part if not needed.

§ 200.330 Reporting on real property.

The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property

in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

SUBRECIPIENT MONITORING AND MANAGEMENT

§ 200.331 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See definition for *Subaward* in §200.1 of this part. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

(1) Determines who is eligible to receive what Federal assistance;

(2) Has its performance measured in relation to whether 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) In accordance with its agreement, uses the Federal funds to carry out 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 non-Federal entity's own use and creates a procurement relationship with the contractor. See the definition of *contract* in §200.1 of this part. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are 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 operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) *Use of judgment in making determination.* In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

§ 200.332 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity

must provide the best information available to describe the Federal award and subaward. Required information includes:

(1) Federal award identification.

(i) Subrecipient name (which 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 (see the definition of *Federal award date* in § 200.1 of this part) of award to the recipient by the Federal agency;

(v) Subaward Period of Performance Start and End Date;

(vi) Subaward Budget Period Start and End Date;

(vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;

(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 to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

(xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;

(xii) Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement;

(xiii) Identification of whether the award is R&D; and

(xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged) per § 200.414.

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with 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 in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

(4)(i) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, the pass-through entity must determine the appropriate rate in collaboration with the subrecipient, which is either:

(A) The negotiated indirect cost rate between the pass-through entity and the subrecipient; which can be based on a prior negotiated rate between a different PTE and the same subrecipient. If basing the rate on a previously negotiated rate, the pass-through entity is not required to collect information justifying this rate, but may elect to do so;

(B) The de minimis indirect cost rate.

(ii) The pass-through entity must not require use of a de minimis indirect cost rate if the subrecipient has a Federally approved rate. Subrecipients can 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 have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F of this part, and the extent to which the same or similar subaward has 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 Federal awarding agency monitoring (*e.g.,* if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.208.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and written confirmation from the subrecipient, highlighting the status of actions planned or taken to address Single Audit findings related to the particular subaward.

(3) Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) The pass-through entity is responsible for resolving audit findings specifically related to the subaward and not responsible for resolving cross-cutting findings. If a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (*e.g.,* has been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section § 200.513(a)(3)(vii). 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.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) 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; and

(2) Performing on-site reviews of the subrecipient's program operations;

(3) Arranging for agreed-upon-procedures engagements as described in § 200.425.

(f) Verify that every subrecipient is audited as required by Subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in § 200.339 of this part and in program regulations.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

§ 200.333 Fixed amount subawards.

With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 200.201.

RECORD RETENTION AND ACCESS

§ 200.334 Retention requirements for records.

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: 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).

(1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and 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 awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the Federal awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.

§ 200.336 Methods for collection, transmission, and storage of information.

The Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system. The Federal awarding agency or pass-

through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

§ 200.337 Access to records.

(a) *Records of non-Federal entities.* The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

(b) *Extraordinary and rare circumstances.* Only under extraordinary and rare circumstances would such access include 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. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.

(c) *Expiration of right of access.* The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

§ 200.338 Restrictions on public access to records.

No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding 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 awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under § 200.315. Unless required by Federal, state, local, and tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

Remedies for Noncompliance

§ 200.339 Remedies for noncompliance.

If a non-Federal entity fails to comply with the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in § 200.208. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the

Federal awarding agency or pass-through entity.

(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(c) Wholly or partly suspend or terminate the Federal award.

(d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).

(e) Withhold further Federal awards for the project or program.

(f) Take other remedies that may be legally available.

§ 200.340 Termination.

(a) The Federal award may be terminated in whole or in part as follows:

(1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;

(2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

(3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;

(4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or

(5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

(b) A Federal awarding agency should clearly and unambiguously specify termination provisions applicable to each Federal award, in applicable regulations or in the award, consistent with this section.

(c) When a Federal awarding agency terminates a Federal award prior to the end of the period of performance due to the non-Federal entity's material failure to comply with the Federal award terms and conditions, the Federal awarding agency must report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS).

(1) The information required under paragraph (c) of this section is not to be reported to designated integrity and performance system until the non-Federal entity either—

(i) Has 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 awarding agency that it intends to appeal the Federal awarding agency's decision to terminate.

(2) If a Federal awarding agency, after entering information into the designated integrity and performance system about a termination, subsequently:

(i) Learns that any of that information is erroneous, the Federal awarding 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 awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(3) Federal awarding agencies, must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the non-Federal entity asserts within seven calendar days to the Federal

awarding agency who posted the information, that some of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency who 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.

(d) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity 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 to the non-Federal entity a notice of termination.

(b) If the Federal award is terminated for the non-Federal entity's material failure to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that—

(1) The termination decision will be reported to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS);

(2) The information will be available in the OMB-designated integrity and performance system for a period of five years from the date of the termination, then archived;

(3) Federal awarding agencies that consider making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity 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 non-Federal entity may comment on any information the OMB-designated integrity and performance system contains about the non-Federal entity for future consideration by Federal awarding agencies. The non-Federal entity may submit comments to the awardee integrity and performance portal accessible through SAM (currently (CPARS).

(5) Federal awarding agencies will consider non-Federal entity comments when determining whether the non-Federal entity is qualified for a future Federal award.

(c) Upon termination of a Federal award, the Federal awarding agency must provide the information required under FFATA to the Federal website established to fulfill the requirements of FFATA, and update or notify any other relevant governmentwide systems or entities of any indications of poor performance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR part 77 (forthcoming at time of publication). See also the requirements for Suspension and Debarment at 2 CFR part 180.

§ 200.342 Opportunities to object, hearings, and appeals.

Upon taking any remedy for non-compliance, the Federal awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the Federal awarding agency. The Federal awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.

§ 200.343 Effects of suspension and termination.

Costs to the non-Federal entity resulting from financial obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the Federal awarding 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 non-Federal entity before the effective date of suspension or termination, are 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.

The Federal awarding agency or pass-through entity will close out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. If the non-Federal entity fails to complete the requirements, the Federal awarding agency or pass-through entity will proceed to close out the Federal award with the information available. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

(a) The recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. A subrecipient must submit to the pass-through entity, no later than 90 calendar days (or an earlier date as agreed upon by the pass-through entity and subrecipient) after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested and justified by the non-Federal entity, as applicable.

(b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for costs meeting the requirements in Subpart E of this part under the Federal award being closed out.

(d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A–129 and see § 200.346, for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 200.310 through 200.316 and 200.330.

(g) When a recipient or subrecipient completes all closeout requirements, the Federal awarding agency or pass-through entity must promptly complete all closeout actions for Federal awards. The Federal awarding agency must make every effort to complete closeout actions no later than one year after the end of the period of performance unless otherwise directed by authorizing statutes. Closeout actions include Federal awarding agency actions in the grants management and payment systems.

(h) If the non-Federal entity does not submit all reports in accordance with this section and the terms and conditions of the Federal Award, the Federal awarding agency must proceed to close out with the information available within one year of the period of performance end date.

(i) If the non-Federal entity does not submit all reports in accordance with this section within one year of the period of performance end date, the Federal awarding agency must report the

non-Federal entity's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS). Federal awarding agencies may also pursue other enforcement actions per § 200.339.

POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES

§ 200.345 Post-closeout adjustments and continuing responsibilities.

(a) The closeout of a Federal award does not affect any of the following:

(1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

(2) The requirement for the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(3) The ability of the Federal awarding agency to make financial adjustments to a previously closed 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 of this subpart.

(6) Records retention as required in §§ 200.334 through 200.337 of this subpart.

(b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

COLLECTION OF AMOUNTS DUE

§ 200.346 Collection of amounts due.

(a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the Federal awarding agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the non-Federal entity; or

(3) Other action permitted by Federal statute.

(b) Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

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 non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.

(b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal award.

(d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award.

(e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered. See the definition of *indirect (facilities & administrative (F&A)) costs* in § 200.1 of this part.

(f) For non-Federal entities 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 non-Federal entity may 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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49561, Aug. 13, 2020]

§ 200.401 Application.

(a) *General.* These principles must be used in determining the allowable costs of work performed by the non-Federal entity under Federal awards. These principles also must be used by the non-Federal entity as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The 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 such items as education allowance or published tuition rates and fees.

(2) For IHEs, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the Federal award.

(3) Fixed amount awards. See also § 200.1 Definitions and 200.201.

(4) Federal awards to hospitals (see appendix IX to this part).

(5) Other awards under which the non-Federal entity is not required to account to the Federal Government for actual costs incurred.

(b) *Federal contract.* Where a Federal contract awarded to a non-Federal entity is subject to the Cost Accounting Standards (CAS), it incorporates the applicable CAS clauses, Standards, and CAS administration requirements per the 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). CAS applies directly to the CAS-covered contract and the Cost Accounting Standards at 48 CFR parts 9904 or 9905 takes precedence over the cost principles in this subpart E with respect to the allocation of costs. When a contract with a non-Federal entity 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 (*e.g.*, 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 rather the allowability provisions of § 200.449. In complying with those requirements, the non-Federal entity's application of cost accounting practices for estimating, accumulating, and reporting costs for other Federal awards and other cost objectives under the CAS-covered contract still must be consistent with its cost accounting practices for the CAS-covered contracts. In all cases, only one set of accounting records needs to be maintained for the allocation of costs by the non-Federal entity.

(c) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to

be similar to for-profit entities for purpose of applicability of cost principles. Such nonprofit organizations must operate under Federal cost principles applicable to for-profit entities located at 48 CFR 31.2. A listing of these organizations is contained in appendix VIII to this part. Other organizations, as approved by the cognizant agency for indirect costs, may be added from time to time.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49562, Aug. 13, 2020]

BASIC CONSIDERATIONS

§ 200.402 Composition of costs.

Total cost. The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

§ 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order 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 non-Federal entity.

(d) Be accorded consistent treatment. A cost may 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 or matching requirements of any other federally-financed program in either the current or a prior period. See also § 200.306(b).

(g) Be adequately documented. See also §§ 200.300 through 200.309 of this part.

(h) Cost must be incurred during the approved budget period. The Federal awarding agency is authorized, at its discretion, to waive prior written approvals to carry forward unobligated balances to subsequent budget periods pursuant to § 200.308(e)(3).

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49562, Aug. 13, 2020]

§ 200.404 Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity 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 goods or services for the geographic area.

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.

(e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.405 Allocable costs.

(a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:

(1) Is incurred specifically for the Federal award;

(2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and

(3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.

(b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.

(c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity 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. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, 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) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

§ 200.406 Applicable credits.

(a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. 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 non-Federal entity 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 non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. (See §§ 200.436 and 200.468, for areas of potential application in the matter of Federal financing of activities.)

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

§ 200.407 Prior written approval (prior approval).

Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to

determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part:

(a) § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);

(b) § 200.306 Cost sharing or matching;

(c) § 200.307 Program income;

(d) § 200.308 Revision of budget and program plans;

(e) § 200.311 Real property;

(f) § 200.313 Equipment;

(g) § 200.333 Fixed amount subawards;

(h) § 200.413 Direct costs, paragraph (c);

(i) § 200.430 Compensation—personal services, paragraph (h);

(j) § 200.431 Compensation—fringe benefits;

(k) § 200.438 Entertainment costs;

(l) § 200.439 Equipment and other capital expenditures;

(m) § 200.440 Exchange rates;

(n) § 200.441 Fines, penalties, damages and other settlements;

(o) § 200.442 Fund raising and investment management costs;

(p) § 200.445 Goods or services for personal use;

(q) § 200.447 Insurance and indemnification;

(r) § 200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);

(s) § 200.455 Organization costs;

(t) § 200.456 Participant support costs;

(u) § 200.458 Pre-award costs;

(v) § 200.462 Rearrangement and reconversion costs;

(w) § 200.467 Selling and marketing costs;

(x) § 200.470 Taxes (including Value Added Tax); and

(y) § 200.475 Travel costs.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

§ 200.408 Limitation on allowance of costs.

The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award.

§ 200.409 Special considerations.

In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles 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 non-Federal entities, as specified in the following sections:

(a) Direct and Indirect (F&A) Costs (§§ 200.412–200.415) of this subpart;

(b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 and 200.417) of this subpart; and

(c) Special Considerations for Institutions of Higher Education (§§ 200.418 and 200.419) of this subpart.

[85 FR 49562, Aug. 13, 2020]

§ 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also §§ 200.300 through 200.309 in subpart D of this part.

[85 FR 49562, Aug. 13, 2020]

§ 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

(a) Negotiated indirect (F&A) 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 designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.

(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 (F&A) COSTS

§ 200.412 Classification of costs.

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) 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 either direct or indirect (F&A) costs. See also § 200.405.

(b) *Application to Federal awards.* Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also be considered direct costs. Examples include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities, program evaluation costs, or other institutional service operations.

(c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct

charging of these costs may be appropriate only if all of the following conditions are met:

(1) Administrative or clerical services are integral to a project or activity;

(2) Individuals involved can be specifically identified with the project or activity;

(3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and

(4) The costs are not also recovered as indirect costs.

(d) *Minor items.* Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives.

(e) The costs of certain activities are not allowable as charges to Federal awards. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the non-Federal entity's indirect costs if they represent activities which:

(1) Include the salaries of personnel,

(2) Occupy space, and

(3) Benefit from the non-Federal entity's indirect (F&A) costs.

(f) For nonprofit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also § 200.454.

(2) Providing services and information to members, legislative or administrative bodies, or the public. See also §§ 200.454 and 200.450.

(3) Promotion, lobbying, and other forms of public relations. See also §§ 200.421 and 200.450.

(4) Conferences except those held to conduct the general administration of the non-Federal entity. See also § 200.432.

(5) Maintenance, protection, and investment of special funds not used in operation of the non-Federal entity. 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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

§ 200.414 Indirect (F&A) costs.

(a) *Facilities and administration classification.* For major Institutions of Higher Education (IHE) and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: ''Facilities'' and ''Administration.'' ''Facilities'' is defined as depreciation on buildings, equipment and capital improvement, 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 to this part, and Rate Determination for Institutions of Higher Education paragraph C. 11. Major nonprofit organizations are those which receive more than $10 million dollars in direct Federal funding.

(b) *Diversity of nonprofit organizations.* Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a Federal award rather than the nature of

the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However, typical examples of indirect (F&A) 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 also § 200.306.)

(1) The negotiated rates must be accepted by all Federal awarding agencies. A Federal awarding agency may use a rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification as described in paragraph (c)(3) of this section.

(2) The Federal awarding agency head or delegate must notify OMB of any approved deviations.

(3) The Federal awarding 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) As required under § 200.204, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

(d) Pass-through entities are subject to the requirements in § 200.332(a)(4).

(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III–VII and Appendix IX as follows:

(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 Governmentwide 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) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that does not have a current negotiated (including provisional) rate, except for those non-Federal entities described in appendix VII to this part, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. No documentation is required to justify the 10% de minimis indirect cost rate. As described in § 200.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(g) Any non-Federal entity that has a current federally-negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

(h) The federally negotiated indirect rate, distribution base, and rate type for a non-Federal entity (except for the Indian tribes or tribal organizations, as defined in the Indian Self Determination, Education and Assistance Act, 25 U.S.C. 450b(1)) must be available publicly on an OMB-designated Federal website.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49563, Aug. 13, 2020]

§ 200.415 Required certifications.

Required certifications include:

(a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, 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) Certification of cost allocation plan or indirect (F&A) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following:

(1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity 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 non-Federal entity by an individual at a level no lower than vice president or chief financial officer of the non-Federal entity that submits the proposal.

(2) Unless the non-Federal entity has elected the option under § 200.414(f), the Federal Government may either disallow all indirect (F&A) costs or unilaterally establish such a plan or rate when the non-Federal entity fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate 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 a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

(c) Certifications by nonprofit organizations as appropriate that they did not meet the definition of a major nonprofit organization as defined in § 200.414(a).

(d) See also § 200.450 for another required certification.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49563, Aug. 13, 2020]

Special Considerations for States, Local Governments and Indian Tribes

§ 200.416 Cost allocation plans and indirect cost proposals.

(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. 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 provides that process.

(b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost

rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

(1) The indirect costs originating in each department or agency of the governmental unit 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 development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices V, VI and VII to this part.

[78 FR 78608, Dec. 26, 2013, as amended at 86 FR 10440, Feb. 22, 2021]

§ 200.417 Interagency service.

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a prorated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200.

[85 FR 49564, Aug. 13, 2020]

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 its IHEs for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable costs of such IHEs whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

(a) The costs meet the requirements of § 200.402–411 of this subpart;

(b) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles in this part; and

(c) The costs are not otherwise borne directly or indirectly by the Federal Government.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49564, Aug. 13, 2020]

§ 200.419 Cost accounting standards and disclosure statement.

(a) 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).

(b) *Disclosure statement.* An IHE that receives an aggregate total $50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) during its most recently completed fiscal year must disclose their cost accounting practices by filing a Disclosure Statement (DS–2), which is reproduced in Appendix III to Part 200. With the approval of the cognizant agency for indirect costs, an IHE may meet the DS–2 submission by submitting the DS–2 for each business unit that received $50 million or more in Federal awards and instruments.

(1) The DS–2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit. The initial DS–2 and revisions to the DS–2 must be submitted in coordination with the IHE's indirect (F&A) rate proposal, unless an earlier submission is requested by the cognizant agency for indirect costs. IHEs with CAS-covered contracts or subcontracts meeting the dollar threshold in 48 CFR 9903.202–1(f) must submit their initial DS–2 or revisions no later than prior to the award of a CAS-covered contract or subcontract.

(2) An IHE must maintain an accurate DS–2 and comply with disclosed cost accounting practices. An IHE must file amendments to the DS–2 to the cognizant agency for indirect costs

in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. An IHE may proceed with implementing the change after it has notified the Federal cognizant agency for indirect costs. If the change represents a variation from 2 CFR part 200, the change may require approval by the Federal cognizant agency for indirect costs, in accordance with §200.102(b). Amendments of a DS–2 may be submitted at any time. Resubmission of a complete, updated DS–2 is discouraged except when there are extensive changes to disclosed practices.

(3) *Cost and funding adjustments.* Cost adjustments must be made by the cognizant agency for indirect costs if an IHE fails to comply with the cost policies in this part or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of Federal awards, and the aggregate cost impact on Federal awards is material. The cost adjustment must normally be made on an aggregate basis for all affected Federal awards through an adjustment of the IHE's future F&A costs rates or other means considered appropriate by the cognizant agency for indirect costs. Under the terms of CAS covered contracts, adjustments in the amount of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.

(4) *Overpayments.* Excess amounts paid in the aggregate by the Federal Government under Federal awards due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs must be credited or refunded, as deemed appropriate by the cognizant agency for indirect costs. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance must also be determined and collected in accordance with applicable Federal agency regulations.

(5) *Compliant cost accounting practice changes.* Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency for indirect costs may require cost adjustments if the change has a material effect on Federal awards and the changes are deemed appropriate by the cognizant agency for indirect costs.

(6) *Responsibilities.* The cognizant agency for indirect cost must:

(i) Determine cost adjustments for all Federal awards in the aggregate on behalf of the Federal Government. Actions of the cognizant agency for indirect cost in making cost adjustment determinations must be coordinated with all affected Federal awarding agencies to the extent necessary.

(ii) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS–2 adequately discloses the IHE's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of this part.

(iii) Distribute to all affected Federal awarding agencies any DS–2 determination of adequacy or noncompliance.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49564, Aug. 13, 2020]

GENERAL PROVISIONS FOR SELECTED ITEMS OF COST

§200.420 Considerations for selected items of cost.

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of Subtitle II of this subpart. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in 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. See also §200.102.

[85 FR 49564, Aug. 13, 2020]

§ 200.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the non-Federal entity for 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 non-Federal entities are reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award.

(c) The term ''public relations'' includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity 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 pertaining to specific activities or accomplishments which result from 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, financial matters, etc.

(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, convocations, 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, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the non-Federal entity.

[78 FR 76808, Dec. 26, 2013, as amended at 85 FR 49564, Aug. 13, 2020]

§ 200.422 Advisory councils.

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the Federal awarding agency or as an indirect cost where allocable to Federal awards. See § 200.444, applicable to States, local governments, and Indian tribes.

[85 FR 49564, Aug. 13, 2020]

§ 200.423 Alcoholic beverages.

Costs of alcoholic beverages are unallowable.

§ 200.424 Alumni/ae activities.

Costs incurred by IHEs for, or in support of, alumni/ae 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), as implemented by 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 therewith; and

(2) 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 $750,000 during the non-Federal entity's fiscal year.

(b) The costs of a financial statement audit of a non-Federal entity 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 subpart D, §§ 200.331–333) who are exempted from the requirements of the Single Audit Act and subpart F of this part. This cost is allowable only if the agreed-upon-procedures engagements are:

(1) Conducted in accordance with GAGAS attestation standards;

(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.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49564, Aug. 13, 2020]

§ 200.426 Bad debts.

Bad debts (debts which have been 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 after they have been determined to be uncollectable are also unallowable. See also § 200.428.

[85 FR 49565, Aug. 13, 2020]

§ 200.427 Bonding costs.

(a) Bonding costs arise when the Federal awarding agency requires assurance against financial loss to itself or others by reason of the act or default of the non-Federal entity. They arise also in instances where the non-Federal entity requires similar assurance, including: bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) Costs of bonding required pursuant to the terms and conditions of the Federal award are allowable.

(c) Costs of bonding required by the non-Federal entity 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 non-Federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-Federal entity in accordance with cash management standards set forth in § 200.305.

[85 FR 49565, Aug. 13, 2020]

§ 200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as provided for in (B)(9) Student Administration and Services, in appendix III to this part, as activity costs.

[85 FR 49565, Aug. 13, 2020]

§ 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 which are 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 non-Federal entity consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (i) of this section, when applicable.

(b) *Reasonableness.* Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity, 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 non-Federal entity competes for the kind of employees involved.

(c) *Professional activities outside the non-Federal entity.* Unless an arrangement is specifically authorized by a Federal awarding agency, a non-Federal entity must follow its written non-Federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-Federal entity for non-organizational compensation. Where such non-Federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on Federal awards be allocated between:

(1) Non-Federal entity activities, and

(2) Non-organizational professional activities. If the Federal awarding agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) *Unallowable costs.* (1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other types of Federal awards, other statutory ceilings may apply.

(e) *Special considerations.* Special considerations in determining allowability of compensation will be given to any change in a non-Federal entity'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, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

(g) *Nonprofit organizations.* For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination must be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director's and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) *Institutions of Higher Education (IHEs).* (1) 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, etc.), 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 written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (i) of this section to directly charge payments of incidental activities, such activities must either be specifically provided for in the Federal award budget or receive prior written approval by the Federal awarding agency.

(2) *Salary basis.* Charges for work performed on Federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, 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 faculty at an institution. IBS is defined as 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 that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal awarding agency, charges of a faculty member's salary to a Federal award must not exceed the proportionate share of the IBS for the period during which the faculty member worked on the 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 member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the Federal awarding agency.

(4) Extra Service Pay normally represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay is a result of Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The non-Federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The non-Federal entity 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 may be described in appointment letters or other documentations.

(iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(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 non-Federal entity.

(v) The total salaries charged to Federal awards including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.

(5) *Periods outside the academic year.* (i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on Federal awards

during periods not included in the base salary period will be at a rate not in excess of the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period will be based on the normal 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 will be determined at a rate not in excess of that regularly paid for part-time assignments.

(7) *Sabbatical leave costs.* Rules for sabbatical leave are as follow:

(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. Such costs will be allocated on an equitable basis 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 non-Federal entity's written policy and consistent with paragraph (h)(1)(i) of this section.

(i) *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 which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the non-Federal entity;

(iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);

(iv) Encompass federally-assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;

(v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.); and

(vi) [Reserved]

(vii) 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 which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(viii) Budget estimates (i.e., 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 actually performed;

(B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal award based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

(ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect

categories of activities expressed as a percentage distribution of total activities.

(x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.

(2) For records which meet the standards required in paragraph (i)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(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 or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) 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 which 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 (i)(5)(iii) of this section;

(B) The entire time period involved must be covered by the sample; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in subsection (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity 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 where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a non-Federal entity may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved Federal awarding agencies. In these instances, the non-Federal entity 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 non-Federal entity where the records do not meet the standards described in this section, the Federal

Government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49565, Aug. 13, 2020]

§ 200.431 Compensation—fringe benefits.

(a) *General.* Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. 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, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

(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 non-Federal entity or specified grouping of employees.

(i) When a non-Federal entity 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.

(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 non-Federal entity 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 (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated 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 in accordance with the non-Federal entity's accounting practices.

(d) *Cost objectives.* Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of 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 non-Federal entity 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, 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) Costs of insurance 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 costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (*e.g.*, post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.

(f) *Automobiles.* That portion of automobile costs furnished by the non-Federal entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) *Pension plan costs.* Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) Except for State and Local Governments, the cost assigned to each fiscal year should be determined in accordance with GAAP.

(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. Non-Federal entity may elect to follow the ''Cost Accounting Standard for Composition and Measurement of Pension Costs'' (48 CFR 9904.412).

(5) Pension plan termination insurance premiums paid pursuant 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 acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(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-based 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 the six-month period (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 of the six-month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the non-Federal entity'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 non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity 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) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(h) *Post-retirement health.* Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan

covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(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 if they are funded for that year within six months after the end of that year. Costs funded after the six-month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six-month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in 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 in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity contribution in a future period.

(4) When a non-Federal entity converts to an acceptable 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) 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 to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of 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 non-Federal entities to workers whose employment is being terminated. Costs of severance pay are 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 non-Federal entity's part; or

(iv) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its responsibility to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in

management control over, or ownership of, the non-Federal entity's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(5) Severance payments to foreign nationals employed by the non-Federal entity 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 non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(j) *For IHEs only.* (1) Fringe benefits in the form of undergraduate and graduate tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition 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.* For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

(1) The costs meet the requirements of Basic Considerations in §§200.402 through 200.411;

(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(3) The costs are not otherwise borne directly or indirectly by the Federal Government.

[85 FR 49565, Aug. 13, 2020]

§200.432 Conferences.

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' 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. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The Federal awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§200.438, 200.456, and 200.475.

[85 FR 49567, Aug. 13, 2020]

§200.433 Contingency provisions.

(a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the Federal awarding agency) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at

the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.

(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 they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal awarding 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 in this part (see also §§ 200.300 and 200.403 of this part); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the non-Federal entity's records.

(c) Payments made by the Federal awarding agency to the non-Federal entity'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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49567, Aug. 13, 2020]

§ 200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.

(b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see § 200.306). Depreciation on donated assets is permitted in accordance with § 200.436, as long as the donated property is not counted towards cost sharing or matching requirements.

(c) Services donated or volunteered to the non-Federal entity may be furnished to a non-Federal entity 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 either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of § 200.306.

(d) To the extent feasible, services donated to the non-Federal entity 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 the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the non-Federal entity'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 non-Federal entity;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity 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 total costs of the project. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing or matching 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 non-Federal entity. 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 may be used to meet cost sharing or matching share requirements under the conditions described in §200.300 of this part. The value of the donations must be determined in accordance with §200.300. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49567, Aug. 13, 2020]

§200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(a) *Definitions for the purposes of 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 of in-house or private counsel, accountants, consultants, or others engaged to assist the non-Federal entity before, during, and after commencement of a judicial or administrative proceeding, that bear a direct relationship to the 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 which violate the False Claims Act (31 U.S.C. 3729–3732) or the Anti-kickback Act (41 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 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 non-Federal entity, (or commenced by third parties or a current or former employee of the non-Federal entity who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 2409 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 non-Federal entity (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 non-Federal entity liability.

(C) In the case of any civil or administrative proceeding, the disallowance of costs or the imposition of a monetary penalty, or an order issued by the Federal awarding agency head or delegate to the non-Federal entity to take corrective action under 10 U.S.C. 2409 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the non-Federal entity, to rescind or void a Federal award, or to terminate a Federal award by reason 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) 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 non-Federal entity and the Federal Government, then the costs incurred may be allowed to the extent specifically provided in such agreement.

(d) If a proceeding referred to in paragraph (b) of this section is commenced by a state, local or foreign government, the authorized Federal official may allow the costs incurred if such authorized 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 awarding agency.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this section, which are not made unallowable by that subsection, may be allowed but only to the extent that:

(1) The costs are reasonable and necessary in relation to 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 must determine 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 such other factors as may be appropriate. Such percentage must not exceed 80 percent. However, if an agreement reached under paragraph (c) of this section has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement are allowable.

(f) Costs incurred by the non-Federal entity 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 such employee whole, where the non-Federal entity was found liable or settled, are unallowable.

(g) Costs of prosecution of claims against the Federal Government, including appeals of final Federal agency decisions, are unallowable.

(h) 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) Costs which 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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards. Such compensation must be made by computing depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices III through IX.

(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 non-Federal entity 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 matching but not both. For the computation of depreciation, 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 title was originally vested or where it is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity that are already claimed as matching or where law or agreement prohibits recovery;

(4) Any asset acquired solely for the performance of a non-Federal award; and

(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 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. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency. The depreciation methods used to calculate the depreciation amounts for indirect (F&A) rate purposes must be the same methods used by the non-Federal entity 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 item may then be depreciated over its estimated useful life. The building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a cognizant agency may authorize a non-Federal entity to use more than these three groupings. When a non-Federal entity elects to depreciate its buildings by its components, the same depreciation methods must be used for indirect (F&A) purposes and financial statements purposes, as described in paragraphs (d)(1) and (2) of this section.

(4) No depreciation may be allowed on any 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 (i.e., 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 prior to the conversion from the use allowance method as well as depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation must be maintained.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 200.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the non-Federal entity's documented

policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) Such costs will be equitably apportioned to all activities of the non-Federal entity. Income generated from any of these activities will 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 non-Federal entity's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only:

(1) Where the non-Federal entity can demonstrate unusual circumstances; and

(2) With the approval of the cognizant agency for indirect costs.

§ 200.438 Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.

§ 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 unallowable as direct charges, except with the prior written approval of the Federal awarding 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 $5,000 or more have the prior written approval of the Federal awarding agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See § 200.436, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 200.465.

(4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the Federal awarding agency.

(5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered 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 Federal cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the non-Federal entity is instructed by the Federal awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 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. The Federal awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

(b) The non-Federal entity 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 non-Federal entity provides the Federal awarding 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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.441 Fines, penalties, damages and other settlements.

Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the Federal awarding agency. See also § 200.435.

[85 FR 49568, Aug. 13, 2020]

§ 200.442 Fund raising and investment management costs.

(a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in § 200.460.

(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 fund-raising and investment activities must be allocated as an appropriate share of indirect costs under the conditions described in § 200.413.

[85 FR 49568, Aug. 13, 2020]

§ 200.443 Gains and losses on disposition of depreciable assets.

(a) Gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) 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 the failure to maintain permissible insurance, except as otherwise provided in § 200.447.

(4) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

(5) Gains and losses arising from mass or extraordinary 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, e.g., land, 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 of this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 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, school board, etc., 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 for as a direct cost under a program statute or regulation.

(b) For Indian tribes and Councils of Governments (COGs) (see definition for *Local government* in § 200.1 of this part), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 200.445 Goods or services for personal use.

(a) Costs of goods or services for personal use of the non-Federal entity's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, to be allowable direct costs must be approved in advance by a Federal awarding agency.

§ 200.446 Idle facilities and idle capacity.

(a) As used in this section the following terms have the meanings set forth in 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 non-Federal entity.

(2) Idle facilities means completely unused facilities that are excess to the non-Federal entity'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 costs such as maintenance, repair, housing, rent, and other related costs, e.g., 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, e.g., 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 the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, 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. Such 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, pursuant to 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) Types and extent and cost of coverage are in accordance with the non-Federal entity's policy and sound business practice.

(2) Costs of insurance or of 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 awarding agency has specifically required or approved such costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see § 200.431). The cost of such insurance when the non-Federal entity is identified as the beneficiary is unallowable.

(5) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the non-Federal entity's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and must be assigned to individual projects based on the manner in which 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 provided for 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 certain self-insurance programs including workers' compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, 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 giving consideration to such factors as the non-Federal entity'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, etc. Reserve levels related to employee-related coverages will 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 levels in excess of the amounts based on the above 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 types of insured risk and losses generated by the various insured activities or agencies of the non-Federal entity. If individual departments or agencies of the non-Federal entity experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., 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 applicable Federal cognizant agency for indirect cost, claims collection regulations.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

(f) Indemnification includes securing the non-Federal entity against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the non-Federal entity only to the extent expressly provided for in the Federal award, except as provided in paragraph (c) of this section.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49568, Aug. 13, 2020]

§ 200.448 Intellectual property.

(a) *Patent 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 title or royalty-free license is required by the Federal Government to 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 also § 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 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 has been 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 where the royalties may have been arrived at as a

result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the non-Federal entity.

(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 non-Federal entity.

(3) In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed must not exceed the cost which would have been allowed had the non-Federal entity retained title thereto.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49569, Aug. 13, 2020]

§ 200.449 Interest.

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.

(b) *Capital assets.* (1) Capital assets is defined as noted in § 200.1 of this part. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For non-Federal entity 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) *Conditions for all non-Federal entities.* (1) The non-Federal entity 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 non-Federal entity from an unrelated (arm's length) third party.

(3) The non-Federal entity obtains the financing via an arm's-length transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The non-Federal entity limits 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 non-Federal entity 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 non-Federal entity 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 non-Federal entity for the acquisition of facilities prior to occupancy.

(i) The non-Federal entity 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 non-Federal entity must impute interest on excess cash flow as follows:

(A) Annually, the non-Federal entity must prepare a cumulative (from the inception of the project) 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 non-Federal entity must divide the annual amounts determined in step (i) by the number of 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 rate of interest 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 conditions for states, local governments and Indian tribes. For costs to be allowable, the non-Federal entity must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.

(1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5), above) also applies to earnings on debt service reserve funds.

(2) The non-Federal entity will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of $1 million or more, as outlined in paragraph (c)(7) of this section. For this purpose, a non-Federal entity must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) Additional conditions for IHEs. For 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 condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) 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 non-Federal entity'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''.

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54409, Sept. 10, 2015; 85 FR 49569, Aug. 13, 2020]

§ 200.450 Lobbying.

(a) The cost of certain influencing activities associated with obtaining grants, contracts, or cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, 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 ''Governmentwide 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 merits of the matter.

(c) In addition to the above, the following restrictions are applicable 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 for the purpose of influencing 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, fund raising 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 non-Federal entity's member of congress, legislative body or a 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 in order to directly reduce the cost, or to avoid material impairment of the non-Federal entity's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.

(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 in order to retain their charitable deduction status and avoid punitive excise taxes, 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)–(c)(3).

(v) When a non-Federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of § 200.413.

(vi) The non-Federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with. (See also § 200.415.)

(vii)(A) 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 any particular calendar month when:

(*1*) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(*2*) Within the preceding five-year period, the non-Federal entity has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(*1*) and (*2*) of this section are met, non-Federal entities 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)(2)(vii)(A)(*1*) and (*2*) 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.

(viii) The Federal awarding agency must establish procedures for resolving in advance, in consultation with OMB, 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 non-Federal entity from contesting the lawfulness of such a determination.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.451 Losses on other awards or contracts.

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the non-Federal entity's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of 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 which 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.

[85 FR 49569, Aug. 13, 2020]

§ 200.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out 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 a proper part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging 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, such materials will be used without charge.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the non-Federal entity's membership in business, technical, and professional organizations are allowable.

(b) Costs of the non-Federal entity's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable with prior approval by the Federal awarding agency or pass-through entity.

(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 also § 200.450.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.455 Organization costs.

Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-Federal entity in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the Federal awarding agency.

§ 200.456 Participant support costs.

Participant support costs as defined in § 200.1 are allowable with the prior approval of the Federal awarding agency.

[85 FR 49569, Aug. 13, 2020]

§ 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for 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.

[85 FR 49569, Aug. 13, 2020]

§ 200.458 Pre-award costs.

Pre-award costs are those incurred prior to the effective 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. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. If charged to the award, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency or pass-through entity.

[85 FR 49569, Aug. 13, 2020]

§ 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 non-Federal entity, 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 special 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 non-Federal entity's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the non-Federal entity's business (i.e., what new problems have arisen).

(5) Whether the proportion of Federal work to the non-Federal entity's total business is such as to influence the non-Federal entity 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 concern rendering the service and the customary fees charged, especially on non-federally funded activities.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

(c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 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 the development of data necessary to support the non-Federal entity'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 (F&A) costs and allocated currently to all activities of the non-Federal entity. No proposal costs of past accounting periods will be allocable 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. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-Federal entity.

(b) Page charges for professional journal publications 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 non-Federal entity may charge the Federal award during closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award. If charged to the award, these costs must be charged to the final budget period of the award, unless otherwise specified by the Federal awarding agency.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 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 costs incurred specifically for a Federal award are allowable as a direct cost with the prior approval of the Federal awarding agency or pass-through entity.

(b) Costs incurred in the restoration or rehabilitation of the non-Federal entity's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, 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 an 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 non-Federal entity's standard recruitment program. Where the non-Federal entity 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 non-Federal entity, are unallowable.

(c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part to a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal Government. See also § 200.464.

(d) Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, they 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 non-Federal entity's cost accounting practices and non-Federal entity policy; and

(4) Meet the definition of ''direct cost'' as described in the applicable cost principles.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49569, Aug. 13, 2020]

§ 200.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for 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 his or her immediate family and his 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 maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent 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 the costs of 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. When relocation costs incurred incident to the recruitment of new employees have been charged to a Federal award and the employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity must refund or credit the Federal Government for its share of the cost. If dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods, the costs of travel to an overseas location must be considered travel costs in accordance with § 200.474 Travel costs,

and not this relocations costs of employees (See also § 200.464).

(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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49570, Aug. 13, 2020]

§ 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: rental costs of comparable property, if any; 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 other options are available.

(b) Rental costs under ''sale and lease back'' arrangements are allowable only up to the amount that would be allowed had the non-Federal entity 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 (as explained 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 is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:

(1) Divisions of the non-Federal entity;

(2) The non-Federal entity under common control through common officers, directors, or members; and

(3) The non-Federal entity and a director, trustee, officer, or key employee of the non-Federal entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the non-Federal entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-Federal entity.

(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.

(5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in § 200.449 Interest. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(6) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

(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 under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. Interest costs related to these leases

are allowable to the extent they meet the criteria in §200.449. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(e) Rental or lease payments are allowable under lease contracts where the non-Federal entity is required to recognize an intangible right-to-use lease asset (per GASB) or right of use operating lease asset (per FASB) for purposes of financial reporting in accordance with GAAP.

(f) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§200.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the purpose of the Federal award is to provide training to selected participants and the charge is approved by the Federal awarding agency. However, tuition remission and other forms of compensation paid as, or in lieu 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 established 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) During the academic period, the student is enrolled in an advanced degree program at a non-Federal entity or affiliated institution and the activities of the student in relation to the Federal award are related to the 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) It is the IHE's practice to similarly compensate students under Federal awards as well as other activities.

(b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages must be subject to the reporting requirements in §200.430, and must be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis. See also §200.431.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under §200.421) are unallowable, except as direct costs, with prior approval by the Federal awarding agency when necessary for the performance of the Federal award.

[85 FR 49570, Aug. 13, 2020]

§200.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities operated by the non-Federal entity, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraph (b) or (c) of this section, and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under §200.406.

(b) The costs of such services, when material, must be charged directly to applicable 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 non-Federal entity, including usage by the non-Federal entity for internal purposes, and

(2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/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 (F&A) costs.

(d) Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the non-Federal entity to establish alternative costing arrangements, such arrangements may be worked out with the Federal cognizant agency for indirect costs.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for 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 awarding agency to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

(b) For nonprofit organizations and IHEs:

(1) In general, taxes which the non-Federal entity is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:

(i) Taxes from which exemptions are available to the non-Federal entity directly or which are available to the non-Federal entity based on an exemption afforded the Federal Government and, in the latter case, when the Federal awarding 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 any payment to the non-Federal entity of interest thereon, which were allowed as Federal award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government. However, any interest actually paid or credited to an non-Federal entity 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 non-Federal entity has been reimbursed by the Federal Government for the taxes, interest, and penalties.

(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-Federal entity is legally required to pay in country is an allowable expense under Federal awards. 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 non-Federal entity relate to allowable cost, these costs must be credited to the Federal awarding agency either as costs or cash refunds. If the costs are credited back to the Federal award, the non-Federal entity may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, use the foreign government tax refund for approved activities under the Federal award with prior approval of the Federal awarding agency.

§ 200.471 Telecommunication costs and video surveillance costs.

(a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, 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.

[85 FR 49570, Aug. 13, 2020]

§ 200.472 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 are to be used in conjunction with the other provisions of this part in termination situations.

(a) The cost of items reasonably usable on the non-Federal entity's other work must not be allowable unless the non-Federal entity submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-Federal entity, the Federal awarding agency should consider the non-Federal entity's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-Federal entity must be regarded as evidence that such items are reasonably usable on the non-Federal entity'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 are in excess of the reasonable quantitative requirements of other work.

(b) If in a particular case, despite all reasonable efforts by the non-Federal entity, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this part, except that any such costs continuing after termination due to the negligent or willful failure of the non-Federal entity to discontinue such costs must be unallowable.

(c) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-Federal entity,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the Federal awarding agency (see also § 200.313 (d)), and

(3) The loss of useful value for any one terminated Federal award is limited to that 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.

(d) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The non-Federal entity makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

(e) Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(i) The preparation and presentation to the Federal awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see subpart D, including §§ 200.339–200.343); and

(ii) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.

(f) Claims under subawards, including the allocable portion of claims which are common to the Federal award and to other work of the non-Federal entity, are generally allowable. An appropriate share of the non-Federal entity's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in § 200.414. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

[78 FR 78608, Dec. 26, 2013. Redesignated and amended at 85 FR 49570, Aug. 13, 2020]

§ 200.473 Training and education costs.

The cost of training and education provided for employee development is allowable.

[78 FR 78608, Dec. 26, 2013. Redesignated at 85 FR 49570, Aug. 13, 2020]

§ 200.474 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the non-Federal entity follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the Federal award, should be treated as a direct cost.

[78 FR 78608, Dec. 26, 2013. Redesignated at 85 FR 49570, Aug. 13, 2020]

§ 200.475 Travel costs.

(a) *General*. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, 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, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement 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 awarding 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 non-Federal entity in its regular operations as the result of the non-Federal entity's written travel policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

(1) Participation of the individual is necessary to the Federal award; and

(2) The costs are reasonable and consistent with non-Federal entity's established travel policy.

(c)(1) Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

(i) The costs are a direct result of the individual's travel for the Federal award;

(ii) The costs are consistent with the non-Federal entity's documented travel policy for all entity travel; and

(iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the Federal awarding agency. See also § 200.432.

(d) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701–11, (''Travel and Subsistence Expenses; Mileage Allowances''), or by the Administrator of General Services, or by the President (or his or her 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 non-Federal entity must justify and document these conditions on a case-by-case basis in order 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 non-Federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014. Redesignated and amended at 85 FR 49570, Aug. 13, 2020]

§ 200.476 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also § 200.475.

[85 FR 49571, Aug. 13, 2020]

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 $750,000 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 $750,000 or more during the non-Federal entity's fiscal year in Federal awards 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) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 200.507. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than $750,000.* A non-Federal entity that expends less than $750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in § 200.503, 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 or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section § 200.331 sets forth the considerations 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. The agreement with the 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 during the agreement, and post-award audits. See also § 200.332.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49571, Aug. 13, 2020]

§ 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 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: 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 non-Federal entity to an interest subsidy; and the period when insurance is in force.

(b) *Loan and loan guarantees (loans).* Since the Federal Government is at risk for loans until the debt is repaid, 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) of this section:

(1) Value of new loans made or received during the audit period; plus

(2) Beginning of the audit period balance of loans from previous years 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 IHEs.* When loans are made to students of an IHE but the IHE does not make the loans, then only the value of loans made during the audit period must be 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 the 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 are 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 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, must be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(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 made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured non-Federal entities are not considered Federal awards expended.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.503 Relation to other audit requirements.

(a) 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 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) Notwithstanding subsection (a), a Federal agency, 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 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 to not 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) 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 official. 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 awarding agency may request that an auditee have a particular Federal program audited as a major program in lieu of the Federal awarding agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such a request by informing the Federal awarding 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 awarding 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 awarding agency request, and the Federal awarding agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49570, Aug. 13, 2020]

§ 200.504 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part must be performed annually. Any biennial audit must cover both 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 its audits pursuant to this part biennially. 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 its audits pursuant to this part biennially.

§ 200.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in § 200.339.

[85 FR 49571, Aug. 13, 2020]

§ 200.506 Audit costs.

See § 200.425.

[85 FR 49571, Aug. 13, 2020]

§ 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 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 in the compliance supplement, 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 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, at a minimum, 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 of § 200.514(c) for a major program;

(iii) Perform procedures to 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 of § 200.514(d) for a major program;

(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 § 200.511, 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 § 200.516.

(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) 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 which 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) The audit must be completed and the reporting required by paragraph (c)(2) or (c)(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 auditee must electronically submit to the FAC the data collection form prepared in accordance with § 200.512(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit must consist of the financial statement(s) of the Federal program, 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 data collection form prepared in accordance with § 200.512(b), as applicable to a program-specific audit, and one copy of this reporting package must be electronically submitted to the FAC.

(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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49571, Aug. 13, 2020]

AUDITEES

§ 200.508 Auditee responsibilities.

The auditee must:
(a) Procure or otherwise arrange for the audit required by this part in accordance with § 200.509, and ensure it is properly performed and submitted when due in accordance with § 200.512.
(b) Prepare appropriate 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, including preparation of 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 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.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49572, Aug. 13, 2020]

§ 200.509 Auditor selection.

(a) *Auditor procurement.* In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in §§ 200.317 through 200.327 of subpart D of this part or the FAR (48 CFR part 42), as applicable. In 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 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 § 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 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.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49572, Aug. 13, 2020; 86 FR 10440, Feb. 22, 2021]

§ 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 that is chosen to meet the requirements of this part. However, non-Federal entity-wide financial statements 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 which must include the total Federal awards expended as determined in accordance with §200.502. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may list the amount of Federal awards expended for each Federal award year separately. At a minimum, the schedule must:

(1) List individual Federal programs by Federal agency. For a cluster of programs, provide the cluster name, list individual Federal programs within the cluster of programs, and provide the applicable Federal agency name. For R&D, 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 in 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 not available. For a cluster of programs 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 is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.

(6) Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the auditee elected to use the 10% de minimis cost rate as covered in §200.414.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49572, Aug. 13, 2020]

§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 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 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, in a document separate from the auditor's findings described in § 200.516, 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.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49572, Aug. 13, 2020]

§ 200.512 Report submission.

(a) *General.* (1) The audit must be completed and the data collection form described in paragraph (b) of this section and 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.* The FAC is the repository of record for subpart F of this part 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 required data elements described in Appendix X to Part 200, which state whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package described in paragraph (c) of this section. A senior level representative of the auditee (*e.g.*, 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 that says that the auditee complied with the requirements of this part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a website.

(2) *Exception for Indian Tribes and Tribal Organizations.* 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 Web site, by excluding the authorization for the FAC publication in the statement described in paragraph (b)(1) of this section. If this option is

exercised, the auditee becomes 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 Federal awards that the pass-through entity provided. Unless restricted by Federal statute or regulation, if the auditee opts not to authorize publication, it must make copies of the reporting package available for public inspection.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor must complete the applicable data elements of the data collection form. The auditor must sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the collection of information prescribed by OMB.

(c) *Reporting package.* The reporting package must include the:

(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 to the FAC the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section.

(e) *Requests for management letters issued by the auditor.* In response to requests by a Federal agency or pass-through entity, auditees must submit a copy of any management letters issued by the auditor.

(f) *Report retention requirements.* Auditees must keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the FAC.

(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 (b)(2) of this section, and maintain a data base 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 manner as may be approved by OMB.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49573, Aug. 13, 2020]

FEDERAL AGENCIES

§ 200.513 Responsibilities.

(a)(1) *Cognizant agency for audit responsibilities.* A non-Federal entity expending more than $50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding 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 non-Federal entity 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 thereafter.

(3) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign

cognizance to another Federal awarding agency that provides substantial funding and 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 provide notice of the change to the FAC, the auditee, and, if known, the auditor. 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. Cooperate and provide support to the Federal agency designated by OMB to lead a governmentwide project to determine the quality of single audits by providing a reliable estimate of the extent that single audits conform to applicable requirements, standards, and procedures; and to make recommendations to address noted audit quality issues, including recommendations for any changes to applicable requirements, standards and procedures indicated by the results of the project. The governmentwide project can rely on the current and on-going quality control review work performed by the agencies, State auditors, and professional audit associations. This governmentwide audit quality project must be performed once every 6 years (or at such other interval as determined by OMB), and the results must be public.

(iii) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor required by GAGAS or statutes and regulations.

(iv) 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.

(v) 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.

(vi) 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.

(vii) Coordinate a management decision for cross-cutting audit findings (see in § 200.1 of this part) that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.

(viii) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(ix) Provide advice to auditees as to how to handle changes in fiscal years.

(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 to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) *Federal awarding agency responsibilities.* The Federal awarding agency must perform the following for the Federal awards it makes (See also the requirements of § 200.211):

(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 Federal awarding agency must:

(i) Issue a management decision as prescribed in § 200.521;

(ii) Monitor the recipient taking appropriate and timely corrective action;

(iii) Use cooperative audit resolution mechanisms (see the definition of *cooperative audit resolution* in § 200.1 of this part) to improve Federal 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 Federal agency's process to follow-up on audit findings and on the effectiveness of Single Audits in improving non-Federal entity accountability and their use by Federal awarding agencies in making award decisions.

(4) Provide OMB annual updates to the compliance supplement and work with OMB to ensure that the compliance supplement focuses the auditor to test the compliance requirements most likely to cause improper payments, fraud, waste, abuse or generate audit finding for which the Federal awarding agency will take sanctions.

(5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the Federal awarding agency who must be:

(i) Responsible for ensuring that the agency fulfills all the requirements of paragraph (c) of this section and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.

(ii) Held accountable to improve the effectiveness of the single audit process based upon metrics as described in paragraph (c)(3)(iv) of this section.

(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 who must:

(i) Serve as the Federal awarding agency's management point of contact for the single audit process both within and outside the Federal Government.

(ii) Promote interagency coordination, consistency, and sharing in areas such as 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 studying ways to use single audit results to improve Federal award accountability and best practices.

(iii) Oversee training for the Federal awarding agency's program management personnel related to the single audit process.

(iv) Promote the Federal awarding agency's use of cooperative audit resolution mechanisms.

(v) Coordinate the Federal awarding agency's activities to ensure appropriate and timely follow-up and corrective action on audit findings.

(vi) Organize the Federal cognizant agency for audit's follow-up on cross-cutting audit findings that affect the Federal programs of more than one Federal awarding agency.

(vii) Ensure the Federal awarding agency provides annual updates of the compliance supplement to OMB.

(viii) Support the Federal awarding agency's single audit accountable official's mission.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49573, Aug. 13, 2020]

AUDITORS

§ 200.514 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 Federal awards during such audit period, provided that each such

audit must encompass 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 financial statements of the auditee are presented fairly in all material respects in accordance with generally accepted accounting principles. 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 the 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 in the supplement.

(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

(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 § 200.511(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 regardless of whether a prior audit finding relates to a major program in the current year.

(f) *Data collection form.* As required in §200.512(b)(3), the auditor must complete and sign specified sections of the data collection form.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49574, Aug. 13, 2020; 86 FR 10440, Feb. 22, 2021]

§200.515 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) *Financial statements.* The auditor must determine and provide an opinion (or disclaimer of opinion) whether the financial statements of the auditee are presented fairly in all materials 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 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 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, 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 which 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 on whether the financial statements 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;

(iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements 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 for major programs (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 §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 which are 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).

(i) Audit findings (e.g., 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 and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, must 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 § 200.512(b) when allowed by GAGAS and appendix X to this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49574, Aug. 13, 2020]

§ 200.516 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 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 a 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 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 Federal 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 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 (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) The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known or likely fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal 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 §200.511(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 Federal agencies and pass-through entities 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 Assistance Listings title and number, Federal award identification number and year, name of 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 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 Federal 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 Federal agency, or pass-through entity in the case of a subrecipient, 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 Assistance Listings number(s) and applicable Federal 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 §200.512(b) to allow for easy referencing of the audit findings during follow-up.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49574, Aug. 13, 2020]

§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, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. 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 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 include consideration of: current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (h) of this section must be followed.

(b) *Step one*. (1) The auditor must identify the larger Federal programs, which must be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the table in this paragraph (b)(1):

Total Federal awards expended	Type A/B threshold
Equal to or exceed $750,000 but less than or equal to $25 million.	$750,000.
Exceed $25 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) The inclusion of large loan and loan guarantees (loans) must not result in the exclusion of other programs as Type A programs. When a Federal program providing loans exceeds four times the largest non-loan program it is considered a large loan program, and the auditor must consider this Federal 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 the purposes of this paragraph a program is only considered to be a Federal program providing loans if the value of Federal awards expended for loans within the program comprises fifty 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 permitted under § 200.504, the determination of Type A and Type B programs must be based upon the Federal awards expended during the two-year period.

(c) *Step two*. (1) The auditor must identify Type A programs which 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 have not had:

(i) Internal control deficiencies which 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 awarding agency's request that a Type A program may not be considered low risk for a certain recipient. For example, it may be necessary for a large Type A program to be audited as a major program each year at a particular recipient to allow the Federal awarding agency to comply with 31 U.S.C. 3515. The Federal awarding agency must notify the recipient 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 Type B programs which are high-risk 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 the number of low-risk Type A programs identified as low-risk under Step 2 (paragraph (c) of this section). Except for known material weakness in internal control or compliance problems as discussed in §200.519(b)(1) and (2) and (c)(1), a single criterion in risk would seldom cause a Type B program to be considered high-risk. When identifying which Type B programs to risk assess, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major 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 twenty-five percent (0.25) of the Type A threshold determined in Step 1 (paragraph (b) of this section).

(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 (paragraph (c)(1) of this section).

(2) All Type B programs identified as high-risk under step three (paragraph (d) of this section).

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This may require the auditor to audit more programs as major programs than the number of Type A programs.

(f) *Percentage of coverage rule.* If the auditee meets the criteria in §200.520, the auditor need only audit the major programs identified in Step 4 (paragraphs (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in 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 Step 4 (paragraphs (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in 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 process used in determining major programs.

(h) *Auditor's judgment.* When the major program determination was performed and documented in accordance with this Subpart, the auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct. Challenges by Federal agencies and pass-through entities must only be for clearly improper use of the requirements in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor must consider this guidance in determining major programs in audits not yet completed.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49574, Aug. 13, 2020]

§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 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. Consideration should be given to the control environment over Federal programs and such factors 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 (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal 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 Federal program or have not been corrected.

(3) Federal 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 Federal agencies and pass-through entities.* (1) Oversight exercised by Federal agencies or pass-through entities 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 § 200.430, 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) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49575, Aug. 13, 2020]

§ 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 GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of Federal 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 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 of the total Federal awards expended for a Type A program during the audit period.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49575, Aug. 13, 2020]

MANAGEMENT DECISIONS

§ 200.521 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 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.* As provided in § 200.513(a)(3)(vii), the cognizant agency for audit must be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § 200.513(c)(3)(i), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to non-Federal entities.

(c) *Pass-through entity.* As provided in § 200.332(d), the pass-through entity must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) *Time requirements.* The Federal awarding agency or pass-through entity responsible for issuing a management decision must do so within six months of acceptance of the audit report by the FAC. 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).

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49575, Aug. 13, 2020]

APPENDIX I TO PART 200—FULL TEXT OF NOTICE OF FUNDING OPPORTUNITY

The full text of the notice of funding opportunity is organized in sections. The required format outlined in this appendix indicates immediately following the title of each section whether that section is required in every announcement or is a Federal awarding agency option. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the following sections to describe the types of information that a Federal awarding agency would include in that section of an actual announcement.

A Federal awarding agency that wishes to include information that the format does not

specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if a Federal awarding agency chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, or the reporting requirements.

Similarly, when this format calls for a type of information to be in a particular section, a Federal awarding agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections (there should be hyperlinks for cross-references in any electronic versions of the announcement). For example, a Federal awarding agency may want to include Section A information about the types of non-Federal entities who are eligible to apply. The format specifies a standard location for that information in Section C.1 but does not preclude repeating the information in Section A or creating a cross reference between Section A and C.1, as long as a potential applicant can find the information quickly and easily from the standard location.

The sections of the full text of the announcement are described in the following paragraphs.

A. PROGRAM DESCRIPTION—REQUIRED

This section contains the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the Federal awarding agency's funding priorities or the technical or focus areas in which the Federal awarding agency intends to provide assistance. As appropriate, it may include any program history (*e.g.*, whether this is a new program or a new or changed area of program emphasis). This section must include program goals and objectives, a reference to the relevant Assistance Listings, a description of how the award will contribute to the achievement of the program's goals and objectives, and the expected performance goals, indicators, targets, baseline data, data collection, and other outcomes such Federal awarding agency expects to achieve, and may include examples of successful projects that have been funded previously. This section also may include other information the Federal awarding agency deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.

B. FEDERAL AWARD INFORMATION—REQUIRED

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that the Federal awarding agency expects to award through the announcement; the expected performance indicators, targets, baseline data, and data collection; the anticipated number of Federal awards; the expected amounts of individual Federal awards (which may be a range); the amount of funding per Federal award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new Federal awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.

This section also must indicate the type(s) of assistance instrument (*e.g.*, grant, cooperative agreement) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the ''substantial involvement'' that the Federal awarding agency expects to have or should reference where the potential applicant can find that information (*e.g.*, in the funding opportunity description in Section A. or Federal award administration information in Section D. If procurement contracts also may be awarded, this must be stated.

C. ELIGIBILITY INFORMATION

This section addresses the considerations or factors that determine applicant or application eligibility. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. Federal agencies should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in the Federal awarding agency returning the application without review or, even though an application may be reviewed, will preclude the Federal awarding agency from making a Federal award. Key elements to be addressed are:

1. *Eligible Applicants—Required.* Announcements must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if the program is limited to nonprofit organizations subject to 26 U.S.C. 501(c)(3) of the tax code (26 U.S.C. 501(c)(3)), the announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that nonprofit organizations may apply. Eligibility also can be expressed by exception, (e.g., open to all

types of domestic applicants other than individuals). This section should refer to any portion of Section D specifying documentation that must be submitted to support an eligibility determination (e.g., proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in Section D.6 could affect the eligibility of an applicant or project, the announcement must either restate that restriction in this section or provide a cross-reference to its description in Section D.6.

2. *Cost Sharing or Matching—Required.* Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (*e.g.*, provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (*e.g.*, in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as described in §200.306 of this Part. This section should refer to the appropriate portion(s) of section D. stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.

3. *Other—Required, if applicable.* If there are other eligibility criteria (i.e., criteria that have the effect of making an application or project ineligible for Federal awards, whether referred to as ''responsiveness'' criteria, ''go-no go'' criteria, ''threshold'' criteria, or in other ways), must be clearly stated and must include a reference to the regulation of requirement that describes the restriction, as applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. This section must also state any limit on the number of applications an applicant may submit under the announcement and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both. This section should also address any eligibility criteria for beneficiaries or for program participants other than Federal award recipients.

D. APPLICATION AND SUBMISSION INFORMATION

1. *Address to Request Application Package—Required.* Potential applicants must be told how to get application forms, kits, or other materials needed to apply (if this announcement contains everything needed, this section need only say so). An Internet address where the materials can be accessed is acceptable. However, since high-speed Internet access is not yet universally available for downloading documents, and applicants may have additional accessibility requirements, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.

2. *Content and Form of Application Submission—Required.* This section must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, 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.

This section should specifically address content and form or format requirements for:

i. Pre-applications, letters of intent, or white papers required or encouraged (see Section D.4), including any limitations on the number of pages or other formatting requirements similar to those for full applications.

ii. The application as a whole. For all submissions, this would include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required, this could include special requirements for formatting or signatures.

iii. Component pieces of the application (e.g., if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (e.g., references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).

iv. Information that successful applicants must submit after notification of intent to make a Federal award, but prior to a Federal award. 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. 4321–4370h).

3. *Unique entity identifier and System for Award Management (SAM)—Required.* This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR

25.110(d)) is required to: (i) Be registered in SAM before submitting its application; (ii) Provide a valid unique entity identifier in its application; and (iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. It also must state that the Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times—Required.* Announcements must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (*e.g.*, letters of intent, white papers, or pre-applications). It also includes any other submissions of information before Federal award that are separate from the full application. 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. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see §200.204 of this part).

5. *Intergovernmental Review—Required, if applicable.* If the funding opportunity is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' the notice must say so and applicants must contact their state's Single Point of Contact (SPOC) to find out about and comply with the state's process under Executive Order 12372, it may be useful to inform potential applicants that the names and addresses of the SPOCs are listed in the Office of Management and Budget's website.

6. *Funding Restrictions—Required.* Notices must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs). Applicants must be advised if Federal awards will not allow reimbursement of pre-Federal award costs.

7. *Other Submission Requirements— Required.* This section must address any other submission requirements not included in the other paragraphs of this section. This might include the format of submission, i.e., paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and this section should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this must include the name of an office, official, individual or function (e.g., application receipt center) and a complete mailing address. For electronic submission, this must include the URL or email address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact who will be available in the event the applicant experiences technical difficulties.[1]

E. Application Review Information

1. *Criteria—Required.* This section must address the criteria that the Federal awarding agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (e.g., minority status or Native American tribal 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 fairness of the process. The announcement should clearly describe all criteria, including any subcriteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned).

[1] With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section C.2), the announcement must specifically address how it will be considered (e.g., 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, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing.

2. *Review and Selection Process—Required.* This section may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for Federal award (e.g., geographical dispersion, program balance, or diversity). The Federal awarding agency may also include other appropriate details. For example, this section may indicate who is responsible for evaluation against the merit criteria (e.g., peers external to the Federal awarding agency or Federal awarding agency personnel) and/or who makes the final selections for Federal awards. If there is a multi-phase review process (e.g., an external panel advising internal Federal awarding agency personnel who make final recommendations to the deciding official), the announcement may describe the phases. It also may include: the number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

In addition, if the Federal awarding agency permits applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

3. For any Federal award under a notice of funding opportunity, if the Federal awarding agency anticipates that the total Federal share will be greater than the simplified acquisition threshold on any Federal award under a notice of funding opportunity may include, over the period of performance, this section must also inform applicants:

i. That the Federal awarding agency, prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313);

ii. That an applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM;

iii. That the Federal awarding agency will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in §200.206.

4. *Anticipated Announcement and Federal Award Dates—Optional.* This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the Federal awarding agency can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Federal awards in place. If applications are received and evaluated on a ''rolling'' basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the Federal awarding agency's decision.

F. Federal Award Administration Information

1. Federal Award Notices—Required. This section must address what a successful applicant can expect to receive following selection. If the Federal awarding agency's practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that it allows charging to Federal awards of pre-award costs at the non-Federal entity's own risk). This section should indicate that the notice of Federal award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants. See also §200.211.

2. Administrative and National Policy Requirements—Required. This section must identify the usual administrative and national policy requirements the Federal awarding agency's Federal awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the terms and conditions of the Federal award, but may refer to a document (with information about how to obtain it) or Internet site where applicants can see the terms and conditions. If this funding opportunity will lead to Federal awards with some special terms and conditions that differ from the Federal awarding agency's usual (sometimes called ''general'') terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants that have received Federal awards from the Federal awarding agency previously and might not otherwise expect different terms and conditions. For the same reason, the announcement should inform potential applicants about special requirements that could apply to particular Federal awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

3. *Reporting—Required.* This section must include general information about the type (*e.g.*, financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (*e.g.*, by report type, frequency, form/format, or circumstances for use) from what the Federal awarding agency's Federal awards usually require. Federal awarding agencies must also describe in this section all relevant requirements such as those at 2 CFR 180.335 and 180.350.

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.

G. FEDERAL AWARDING AGENCY CONTACT(S)—REQUIRED

The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so the Federal awarding agency should consider approaches such as giving:

i. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or email, as well as regular mail).

ii. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.

iii. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

H. OTHER INFORMATION—OPTIONAL

This section may include any additional information that will assist a potential applicant. For example, the section might:

i. Indicate whether this is a new program or a one-time initiative.

ii. Mention related programs or other upcoming or ongoing Federal awarding agency funding opportunities for similar activities.

iii. Include current Internet addresses for Federal awarding agency Web sites that may be useful to an applicant in understanding the program.

iv. Alert applicants to the need to identify proprietary information and inform them about the way the Federal awarding agency will handle it.

v. Include certain routine notices to applicants (e.g., that the Federal Government is not obligated to make any Federal award as a result of the announcement or that only grants officers can bind the Federal Government to the expenditure of funds).

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 43310, July 22, 2015; 85 FR 49575, Aug. 13, 2020]

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 of an Institution

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 $25,000 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]

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 $25,000 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, 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]

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 $25,000, participant support costs, etc.), (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 $25,000, participant support costs, etc.), (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 unit that receives more than $35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs. Other governmental department or agency must develop an indirect cost proposal in accordance with the requirements of this Part and maintain the proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs. 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]

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 (FORM SF–SAC)

The Data Collection Form SF–SAC is available on the FAC Web site.

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

A. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. 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 the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required 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 five-year period; and

c. Is one of the following:

(1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(2) 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;

(3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, 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

(4) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

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 or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, 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—

(1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

B. [Reserved]

[80 FR 43310, July 22, 2015, as amended at 85 FR 49582, Aug. 13, 2020]

PARTS 201–299 [RESERVED]

Subtitle B—Federal Agency Regulations for Grants and Agreements

CHAPTER III—DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 300—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

AUTHORITY: 5 U.S.C. 301, 2 CFR part 200.

SOURCE: 79 FR 75889, Dec. 19, 2014, unless otherwise noted.

§ 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. Thus, this part gives regulatory effect to the OMB guidance and supplements the guidance as needed for the Department.

PARTS 301–375 [RESERVED]

PART 376—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

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.

Subpart A [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

Subpart C—Requirements for Recipients Who Are Individuals

Subpart D—Responsibilities of Agency Awarding Officials

Subpart E—Violations of This Part and Consequences

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

PART 400—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

AUTHORITY: 31 U.S.C. 503.

SOURCE: 79 FR 75982, Dec. 19, 2014, unless otherwise noted.

§ 400.1 What does this part do?

This part adopts the OMB guidance in subparts A through F of 2 CFR part 200, as supplemented by this part, 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 part.

§ 400.2 Conflict of interest.

(a) Each USDA awarding agency must establish conflict of interest policies for its Federal awards.

(b) Non-Federal entities must disclose in writing any potential conflicts of interest to the USDA awarding agency or pass-through entity.

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its 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 a non-Federal entity considered for a Federal award. The non-Federal entity 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 non-Federal entity.

(2) If the non-Federal entity 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, is unable or appears to be unable to be impartial in conducting a Federal award action involving a related organization.

PARTS 401–414 [RESERVED]

PART 415—GENERAL PROGRAM ADMINISTRATIVE REGULATIONS

Subpart A—Application for Federal Assistance

Sec.

Subpart B—Miscellaneous

Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 901–903; 7 CFR 2.28.

SOURCE: 79 FR 75982, Dec. 19, 2014, unless otherwise noted.

Subpart A—Application for Federal Assistance

§ 415.1 Competition in the awarding of discretionary grants and cooperative agreements.

(a) *Standards for competition.* Except as provided in paragraph (d) of this section, awarding agencies shall enter into discretionary grants and cooperative agreements only after competition. An awarding agency's competitive award process shall adhere to the following standards:

(1) Potential applicants must be invited to submit proposals through publications such as the FEDERAL REGISTER, OMB-designated government-wide website as described in 2 CFR 200.204, professional trade journals, agency or program handbooks, the Assistance Listings, or any other appropriate means of solicitation. In so doing, awarding agencies should consider the broadest dissemination of project solicitations in order to reach the highest number of potential applicants.

(2) Proposals are to be evaluated objectively by independent reviewers in accordance with written criteria set forth by the awarding agency. Reviewers should make written comments, as appropriate, on each application. Independent reviewers may be from the private sector, another agency, or within the awarding agency, as long as they do not include anyone who has approval authority for the applications being reviewed or anyone who might appear to have a conflict of interest in the role of reviewer of applications. A conflict of interest might arise when the reviewer or the reviewer's immediate family members 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 interest in the applicant or applicant organization; or is negotiating for, or has any arrangement, concerning prospective employment.

(3) An unsolicited application, which is not unique and innovative, shall be competed under the project solicitation it comes closest to fitting. Awarding agency officials will determine the solicitation under which the application is to be evaluated. When the awarding agency official decides that the unsolicited application does not fall under a recent, current, or planned solicitation, a noncompetitive award may be made, if appropriate to do so under the criteria of this section. Otherwise, the application should be returned to the applicant.

(b) *Project solicitations.* A project solicitation by the awarding agency shall include or reference the following, as appropriate:

(1) A description of the eligible activities which the awarding agency proposes to support and the program priorities;

(2) Eligible applicants;

(3) The dates and amounts of funds expected to be available for awards;

(4) Evaluation criteria and weights, if appropriate, assigned to each;

(5) Methods for evaluating and ranking applications;

(6) Name and address where proposals should be mailed or emailed and submission deadline(s);

(7) Any required forms and how to obtain them;

(8) Applicable cost principles and administrative requirements;

(9) Type of funding instrument intended to be used (grant or cooperative agreement); and

(10) The Assistance Listings number and title.

(c) *Approval of applications.* The final decision to award is at the discretion of the awarding/approving official in each agency. The awarding/approving official shall consider the ranking, comments, and recommendations from the independent review group, and any other pertinent information before deciding which applications to approve and their order of approval. Any appeals by applicants regarding the award decision shall be handled by the awarding agency using existing agency appeal procedures or good administrative practice and sound business judgment.

(d) *Exceptions.* The awarding/approving official may make a determination in writing that competition is not deemed appropriate for a particular transaction. Such determination shall 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 the program. Reasons for considering noncompetitive awards may include, but are not necessarily limited to, the following:

(1) Nonmonetary awards of property or services;

(2) Awards of less than $75,000;

(3) Awards to fund continuing work already started under a previous award;

(4) Awards which cannot be delayed due to an emergency or a substantial danger to health or safety;

(5) Awards when it is impracticable to secure competition; or

(6) Awards to fund unique and innovative unsolicited applications.

[79 FR 75982, Dec. 19, 2014, as amended at 85 FR 72912, Nov. 16, 2020]

Subpart B—Miscellaneous

§415.2 Acknowledgement of USDA Support on Publications and Audiovisuals.

(a) *Definitions.* (1) ''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.

(2) ''Production of an audiovisual'' means any of the steps that lead to a finished audiovisual, including design, layout, script-writing, filming, editing, fabrication, sound recording or taping. The term does not include the placing of captions for the hearing impaired on films or videotapes not originally produced for use with the hearing impaired.

(3) ''Publication'' means a published book, periodical, pamphlet, brochure, flier, or similar item. It does not include any audiovisuals.

(b) *Publications.* Recipients shall have an acknowledgement of USDA awarding agency support placed on any publications written or published with grant support and, if feasible, on any publication reporting the results of, or describing, a grant-supported activity.

(c) *Audiovisuals.* Recipients shall have an acknowledgement of USDA awarding agency support placed on any audiovisual which is produced with grant support and which has a direct production cost to the recipient of over $5,000. Unless the other provisions of the grant 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 general public.

(2) [Reserved]

(d) *Waivers.* USDA awarding agencies may waive any requirement of this section.

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:

Department means the U.S. Department of Agriculture.

Order means Executive Order 12372, issued July 14, 1982, and amended April

8, 1983, and titled Intergovernmental Review of Federal Programs.

Secretary means the Secretary of the U.S. Department of Agriculture or an official or employee of the Department acting for the Secretary under a delegation of authority.

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 publishes in the FEDERAL REGISTER 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.

§ 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 in accordance with § 415.5 for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall 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 shall 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. All communications should be sent to the Office of the Chief Financial Officer, Room 143–W, 1400 Independence Avenue SW., Washington, DC 20250, Attention: E.O. 12372.

§ 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 noncompeting 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 noncompeting 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 shall 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 the Secretary in his or her discretion deems appropriate. 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

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 901–903; 7 CFR 2.28.

SOURCE: 79 FR 75985, Dec. 19, 2014, 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 (6) shall 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 (6) 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 (6) shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences except as provided for in 2 CFR 200.319(c).

[79 FR 75985, Dec. 19, 2014, as amended at 85 FR 72912, Nov. 16, 2020]

PART 417—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

AUTHORITY: 5 U.S.C. 301; Pub. L. 101–576, 104 Stat. 2838; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); 7 U.S.C. 2209j; E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12698 (3 CFR, Comp., p. 235); 7 CFR 2.28.

SOURCE: 75 FR 29185, May 25, 2010, 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. 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 of this part);

(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 section 220 of the OMB guidance (*i.e.*, 2 CFR 180.220) as supplemented by section 220 in this part (*i.e.*, § 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 §417.970, 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 EPLS.* 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 the EPLS prior to entering into any transaction with a person at the first lower tier and shall not enter into such a transaction if the person is excluded or disqualified under the EPLS.

(c) *Exception.* A cause for suspension or debarment under §180.700 or §180.800 of this title (as supplemented by §417.800) 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?

(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 (*see* appendix to this part).

(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 §417.210, and the amount of the contract is expected to equal or exceed $25,000.

(2) The contract requires the consent of a USDA official. 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 this part.

(3) The contract is for federally-required audit services.

(c) 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 paragraphs (a) and (b) of this section.

(d) 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 paragraphs (a) and (b) of this section.

(e) 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 paragraphs (c) and (d) of this section, primary tier participants under these programs must check the EPLS 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 shall not enter into such a procurement contract if the person is excluded or disqualified under the EPLS.

§ 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 the EPLS 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(c), this procurement contract would not be a covered transaction. However, pursuant to §§417.215(b) and 417.220(e), 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 on the EPLS as excluded or disqualified.

§ 417.222 How would the exclusions from coverage for 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 EPLS 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(d), this procurement contract would not be a covered transaction. However, pursuant to §§417.215(b) and 417.220(e), 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 EPLS 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 transaction may contemplate a payment obligation of a U.S. or foreign bank to make the required payments. USDA would have to check the EPLS 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(d), this procurement contract would not be a covered transaction. However, pursuant to §§417.215(b) and 417.220(e), 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 on the EPLS 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—System for Award Management Exclusions

SOURCE: 84 FR 52994, Oct. 4, 2019, unless otherwise noted.

§ 417.500 What is the purpose of the System for Award Management Exclusions (SAM Exclusions)?

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

§ 417.505 Who uses SAM Exclusions?

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

(b) Participants also may, but are not required to, use SAM Exclusions to determine if—

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

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

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

§ 417.510 Who maintains SAM Exclusions?

The General Services Administration (GSA) maintains SAM 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 Exclusions.

§ 417.515 What specific information is in SAM Exclusions?

(a) At a minimum, SAM Exclusions indicates—

(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 database for SAM Exclusions includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.

(2) Agencies disclose the SSN of an individual to verify the identity of an individual, 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).

§ 417.520 Who places the information into SAM 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 Exclusions:

(a) Information required by § 180.515(a) of this title;

(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 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.

§ 417.525 Whom do I ask if I have questions about a person in SAM Exclusions?

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

§ 417.530 Where can I find SAM Exclusions?

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

Subpart F—General Principles Relating to Suspension and Debarment Actions

SOURCE: 84 FR 52994, Oct. 4, 2019, unless otherwise noted.

§ 417.600 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.

§ 417.605 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 proceedings.	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.

§ 417.610 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 of this part.

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

§ 417.615 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.

§ 417.620 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 agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

§ 417.625 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.

§ 417.630 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 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.

§ 417.635 May a Federal agency settle a debarment or suspension action?

Yes, a Federal agency may settle a debarment or suspension action at any time if it is in the best interest of the Federal Government.

§ 417.640 May a settlement include a voluntary exclusion?

Yes, if a Federal agency enters into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

§ 417.645 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 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.

§ 417.650 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.

§ 417.655 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 to the designated integrity and performance system within three business days after entering into the agreement. This information is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (41 U.S.C. 2313).

§ 417.660 Will administrative agreement information about me in the designated integrity and performance system accessible through SAM be corrected or updated?

Yes, the suspending or debarring official who entered information into the designated integrity and performance system about an administrative agreement with you:

(a) Must correct the information within three business days if he or she subsequently learns that any of the information is erroneous.

(b) Must correct in the designated integrity and performance system, 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 to the designated integrity and performance system, within three business days, any other modification to the administrative agreement.

(d) Is strongly encouraged to amend the information in the designated integrity and performance system in a timely way to incorporate any update that he or she obtains that could be helpful to Federal awarding agencies who must use the system.

Subpart G—Suspension

§ 417.755 When will I know whether the USDA 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. However, the record will remain open for the full 30 days, as called for in § 180.725, even when you make a submission before the 30 days expire.

Subpart H—Debarment

§ 417.800 What are the USDA 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, tax evasion, 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 an 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 March 1, 1989, 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 settlement of 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 of so serious or compelling a nature that it affects your present responsibility.

§ 417.865 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 3 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 2 CFR 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 5 years.

(d) The Secretary shall 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.

(1) *Reduction.* If the Secretary considers it appropriate s/he may reduce a debarment under this subsection to a period of not less than 10 years.

(2) *Exemption.* A debarment under this subsection shall 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:

(i) Special Nutrition Assistance Program, 7 U.S.C. 2011, *et seq.;*

(ii) Food Distribution Program on Indian Reservations, 7 U.S.C. 2013(b);

(iii) National School Lunch Program, 42 U.S.C. 1751, *et seq.;*

(iv) Summer Food Service Program for Children, 42 U.S.C. 1761; Child and Adult Care Food Program, 42 U.S.C. 1766;

(v) Special Milk Program for Children, 42 U.S.C. 1772; School Breakfast Program, 42 U.S.C. 1773;

(vi) Special Supplemental Nutrition Program for Women, Infants, and Children, 42 U.S.C. 1786;

(vii) Commodity Supplemental Food Program, 42 U.S.C. 612c note;

(viii) WIC Farmers Market Nutrition Program, 42 U.S.C. 1786;

(ix) Senior Farmers' Market Nutrition Program, 7 U.S.C. 3007; and

(x) Emergency Food Assistance Program, 7 U.S.C. 7501, *et. seq.*

§ 417.870 When do I know if the USDA 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. However, the record will remain open for the full 30 days, as called for in §180.820, even when you make a submission before the 30 days expire.

(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 Regulation (48 CFR chapter 1), throughout the Executive Branch of the Federal Government unless an agency head or an authorized designee grants an exception.

Subpart I—Definitions

§ 417.930 Debarring official (USDA supplement to governmentwide definition at 2 CFR 180.930).

(a) Debarring official means an agency official who is authorized to impose debarment. The debarring official is either:

(1) The agency head; or

(2) An official designated by the agency head.

(b) 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 governmentwide 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. 276(a));

(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 (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).

[84 FR 52996, Oct. 4, 2019]

§ 417.970 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.

(11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

[84 FR 52996, Oct. 4, 2019]

§ 417.1010 Suspending official (USDA supplement to governmentwide definition at 2 CFR 180.1010).

(a) Suspending official means an agency official who is authorized to impose suspension. The suspending official is either:

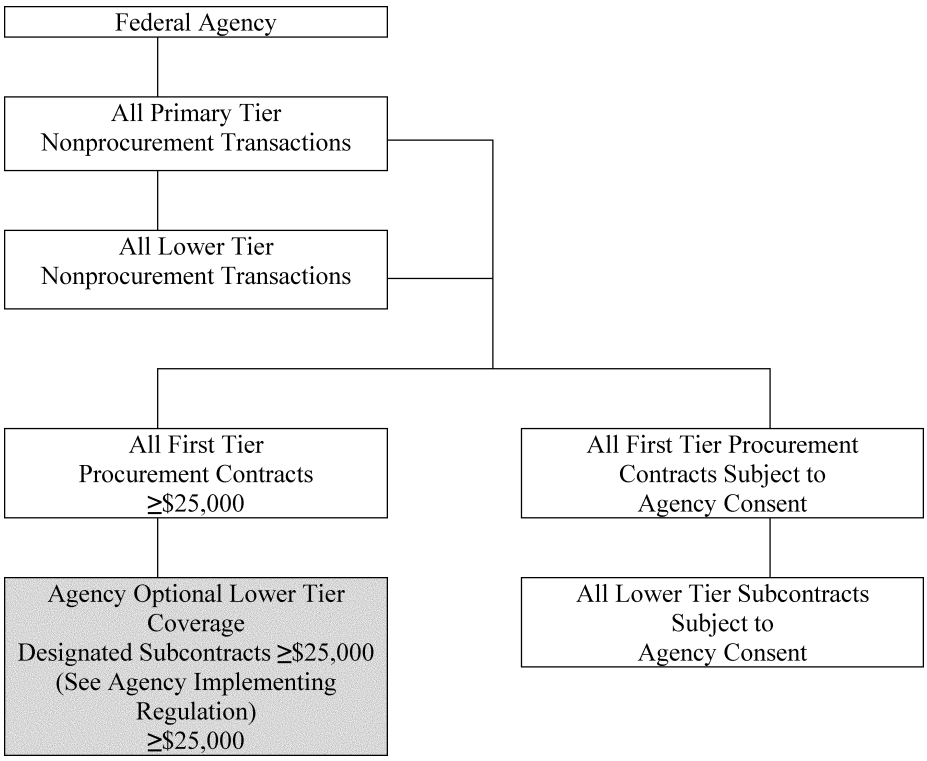
(1) The agency head; or

(2) An official designated by the agency head.

(b) 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 of this title 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.

APPENDIX 1 TO PART 417—COVERED TRANSACTIONS

COVERED TRANSACTIONS



[84 FR 52996, Oct. 4, 2019]

Subpart J [Reserved]

PART 418—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Sec.

Subpart B—Activities by Own Employees

Subpart C—Activities by Other Than Own Employees

Subpart D—Penalties and Enforcement

Subpart E—Exemptions

Subpart F—Agency Reports

AUTHORITY: 31 U.S.C. 1352; 5 U.S.C. 301.

SOURCE: 79 FR 75985, Dec. 19, 2014, 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 shall 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 shall file with that agency a disclosure form, set forth in Appendix B, 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 shall 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 shall file with that agency a disclosure form, set forth in Appendix B, 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*. (1) Covered Federal action means 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. 450B). 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 title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code 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 shall 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 shall 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 shall 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 shall 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 shall 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, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall 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 section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) 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'' shall 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, shall 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'' shall 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 shall 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 (see Appendix B) to be filed or amended if required herein, shall 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 shall 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 shall be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall 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 shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C.s 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

§ 418.410 Enforcement.

The head of each agency shall 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 shall 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.

Subpart F—Agency Reports

§ 418.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures

agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§ 418.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

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 shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall 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 shall 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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall 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 shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' 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 shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

APPENDIX B TO PART 418—DISCLOSURE FORM TO REPORT LOBBYING

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount,** *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
(attach Continuation Sheet(s) SF-LLLA, if necessary)	
11. Amount of Payment (*check all that apply*): $ _____ ☐ actual ☐ planned	**13. Type of Payment** (*check all that apply*): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: *(attach Continuation Sheet(s) SF-LLLA, if necessary)*	
15. Continuation Sheet(s) SF-LLLA attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Use the SF-LLLA Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLLA Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Approved by OMB
0348-0046

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

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PART 421—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

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. 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 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. 705 for Governmentwide implementing regulations.

§ 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.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(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. 701–707).

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 MISCONDUCTS

Sec.

AUTHORITY: 5 U.S.C. 301; Office of Science and Technology Policy (65 FR 76260); USDA Secretary's Memorandum (SM) 2400–007; and USDA OIG, 7 CFR 2610.1(c)(4)(ix).

SOURCE: 79 FR 75992, Dec. 19, 2014, 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 a headquarters office and the six regional 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 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.

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 informants 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 informants (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 Web site address where such policies and procedures can be accessed. The ARIO to whom the policies and procedures were made available shall 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, in his or her 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 shall 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 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 may be notified using any of the following methods:

(i) Via the OIG Hotline: Telephone: (202) 690–1622, (800) 424–9121, (202) 690–1202 (TDD).

(ii) Email: *usda_hotline@oig.usda.gov*.

(iii) U.S. Mail: 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: 202–720–5923; 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 informants 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 informants to an inquiry or an investigation without suffering retribution. Safeguards include protection against retaliation for informants 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 informants 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 staffs 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 shall be inventoried and stored in a secure place and manner. Research records involving raw data shall 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 shall 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 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.

PARTS 423–499 [RESERVED]

CHAPTER VI—DEPARTMENT OF STATE

PART 600—THE UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

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

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

PART 700—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A—Acronyms and Definitions

Subpart B—General Provisions

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

Subpart D—Post Federal Award Requirements

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: 80 FR 55722, Sept. 17, 2015, unless otherwise noted.

Subpart A—Acronyms and Definitions

§ 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.

Activity means a set of actions through which inputs—such as commodities, technical assistance, training, or resource transfers—are mobilized to produce specific outputs, such as vaccinations given, schools built, microenterprise loans issued, or policies changed. Activities are undertaken to achieve objectives that have been formally approved and notified to Congress.

Agreement Officer means a person with the authority to enter into, administer, terminate and/or 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.'' It also includes certain authorized representatives of the Agreement Officer acting within the limits of their authority as delegated by the Agreement Officer.

Apparently successful applicant(s) means the applicant(s) for USAID funding recommended for an award after merit review, but who has not yet been awarded a grant, cooperative agreement or other assistance award by the Agreement Officer. 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 means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants, cooperative agreements, and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: Technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; contracts which are required to be entered into and administered under procurement laws and regulations.

Branding strategy means a strategy the apparently successful applicant submits at the specific request of an USAID Agreement Officer after merit review of an application for USAID funding, describing how the program,

project, or activity is named and positioned, as well as how it is promoted and communicated to beneficiaries and cooperating country citizens. It identifies all donors and explains how they will be acknowledged. A Branding Strategy is required even if a Presumptive Exception is approved in the Marking Plan.

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 subagreement.

Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment, on which USAID sponsorship ends.

Marking plan means a plan that the apparently successful applicant submits at the specific request of a USAID Agreement Officer 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. Recipients may request approval of Presumptive Exceptions to marking requirements in the Marking Plan.

Principal officer means the most senior officer in an USAID Operating Unit in the field, *e.g.*, USAID Mission Director or USAID Representative. For global programs managed from Washington but executed across many countries such as disaster relief and assistance to internally displaced persons, humanitarian emergencies or immediate post conflict and political crisis response, 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 Principle U.S Diplomatic Officer in the non-presence country exercising delegated authority from USAID.

Program means an organized set of activities and allocation of resources directed toward a common purpose, objective, or goal undertaken or proposed by an organization to carry out the responsibilities assigned to it. Projects include all the marginal costs of inputs (including the proposed investment) technically required to produce a discrete marketable output or a desired result (for example, services from a fully functional water/sewage treatment facility).

Public communications are documents and messages intended for distribution to audiences external to the recipient's organization. They include, but are not limited to, correspondence, publications, studies, reports, audio visual 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; Web sites/Internet activities; and events such as training courses, conferences, seminars, press conferences and the like.

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 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.

Unrecovered indirect cost means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

USAID means the United States Agency for International Development.

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.'' In exceptional circumstances, upon a written determination by the USAID Administrator, 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 presidential initiative or related identity) is available on the USAID Web site at *http://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.

Subpart B—General Provisions

§ 700.2 Adoption of 2 CFR Part 200.

Under the authority listed above the Agency for International Development 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 Agency for International Development (USAID) 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.

§ 700.3 Applicability.

(a) Subparts A through D of 2 CFR part 200 apply to for-profit entities. 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 for-profit entities.

(b) Subpart E applies to foreign organizations and foreign public 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.

§ 700.4 Exceptions.

Consistent with 2 CFR 200.102(b):

(a) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by USAID's Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy, 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, is also authorized to approve 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 awarding 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. A Federal awarding 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, they must be made, computed, and recorded in metric system units of measurement, unless otherwise authorized by the Agreement Officer in writing when it has

been found 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, measurements may be expressed 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) Advance payments of Federal funds must be deposited and maintained 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 or matching.

Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which would have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

§ 700.11 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises. 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 must to the maximum extent possible 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 non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

(b) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by the non-Federal entity must include a provision to the effect that the non-Federal Entity, 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. No funds will be paid 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 200.22, 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]

[80 FR 55722, Sept. 17, 2015, as amended at 87 FR 60059, Oct. 4, 2022]

Termination and Disputes

§ 700.14 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) Any dispute under or relating to a grant or agreement will be decided by the USAID Agreement Officer. 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.

USAID—Specific Requirements

§ 700.16 Marking.

(a) USAID policy is that all programs, projects, activities, public communications, and commodities, specified further at paragraphs (c) through (f) of this section, partially or fully funded by a USAID grant or cooperative agreement or other assistance award or subaward must be marked appropriately overseas 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) To ensure that the marking requirements ''flow down'' to subrecipients of subawards, recipients of USAID funded grants and cooperative agreements or other assistance awards are required to 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.

(b) Subject to §700.16(a), (h), and (j), 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), must be marked with the USAID Identity. Temporary signs or plaques should be erected early in the construction or implementation phase. When construction or implementation is complete, a permanent, durable sign, plaque or other marking must be installed.

(c) Subject to §700.16(a), (h), and (j), technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities and other promotional, informational, media, or communications products funded by USAID must be marked 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.

(d) Subject to §700.16(a), (h), and (j), events financed by USAID such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities, must be marked appropriately 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 are encouraged otherwise to acknowledge USAID and the American people's support.

(e) Subject to §700.16(a), (h), and (j), 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, must be marked with the USAID Identity.

(f) 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 for adequacy the proposed Branding Strategy, and

will negotiate, approve and include the Branding Strategy in the 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.

(g) 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 (h) of this section. All estimated costs associated with branding and marking USAID programs, such as plaques, labels, banners, press events, promotional materials, and the like, must be included in the total cost estimate of the grant or cooperative agreement or other assistance award, and 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 for adequacy the proposed Marking Plan, and will negotiate, approve and include the Marking Plan in the 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 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. Agreement Officer's Representatives will be assigned responsibility to monitor marking requirements on the basis of the approved Marking Plan.

(h) Presumptive exceptions:

(1) The above marking requirements in §700.16(a) through (e) 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) These exceptions are presumptive, not automatic and must be approved by the Agreement Officer. 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.

(i) In cases where the Marking Plan has not been complied with, 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 200.338 through 2 CFR 200.342, and 2 CFR 700.14.

(j)(1) *Waivers.* USAID Principal Officers, defined for purposes of this provision at §700.1, 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 waiver determination on safety or security grounds must be made 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 as defined in 2 CFR 200.77 but before closeout as defined in 2 CFR 200.16., 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 date of completion of the affected programs, projects, activities, public communications or commodities.

(k) The USAID Identity and other guidance will be provided at no cost or fee to recipients of USAID grants, cooperative agreements or other assistance awards or subawards. Additional costs associated with marking requirements will be met by USAID if reasonable, allowable, and allocable under 2 CFR part 200, subpart E. The standard cost reimbursement provisions of the grant, cooperative agreement, other assistance award or subaward must be followed when applying for reimbursement of additional marking costs.

(End of award term)

PART 701—PARTNER VETTING IN USAID ASSISTANCE

Sec.

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.

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.

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

PART 800 [RESERVED]

PART 801—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

Subpart A—General

Subpart B—Covered Transactions

Subpart C—Responsibilities of Participants Regarding Transactions

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

Subparts E–H [Reserved]

Subpart I—Definitions

Subpart J—Limited Denial of Participation (Department of Veterans Affairs Optional Subpart for OMB Guidance at 2 CFR Part 180).

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

PART 900 [RESERVED]

PART 901—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

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.

Subpart A—Purpose and Coverage [Reserved]

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

Sec.

Subpart C [Reserved]

Subpart D—Post Award Federal Requirements for For-Profit Entities

Subpart E—Cost Principles

Subpart F—Audit Requirements for For-Profit Entities

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]

CHAPTER X—DEPARTMENT OF TREASURY

PART 1000—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

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]

CHAPTER XI—DEPARTMENT OF DEFENSE

SUBCHAPTER A—GENERAL MATTERS AND DEFINITIONS

SUBCHAPTER B [RESERVED]

SUBCHAPTER C—AWARD FORMAT AND NATIONAL POLICY TERMS AND CONDITIONS FOR ALL GRANTS AND COOPERATIVE AGREEMENTS

SUBCHAPTER D—ADMINISTRATIVE REQUIREMENTS TERMS AND CONDITIONS FOR COST-TYPE GRANTS AND COOPERATIVE AGREEMENTS TO NONPROFIT AND GOVERNMENTAL ENTITIES

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.

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

Sec.

Subpart B—Definitions

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.

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

Subpart B—Terms and Conditions

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.

Subpart A—General

Subpart B—Covered Transactions

Subpart C—Responsibilities of Participants Regarding Transactions

Subpart D—Responsibilities of DoD Officials Regarding Transactions

Subparts E–H [Reserved]

Subpart I—Definitions

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.

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): —FMS Article I—Financial management system standards. —FMS Article II—Payments. —FMS Article III—Allowable costs, period of availability of funds, and fee or profit. —FMS Article IV—Revision of budget and program plans. —FMS Article V—Non-Federal audits. —FMS Article VI—Cost sharing or matching. —FMS Article VII—Program income.
Part 1130	Property administration (designated as ''PROP'' when referring to articles prescribed by this part): —PROP Article I—Title to property. —PROP Article II—Property management system. —PROP Article III—Use and disposition of real property. —PROP Article IV—Use and disposition of equipment and supplies. —PROP Article V—Use and disposition of federally owned property. —PROP Article VI—Intangible property.
Part 1132	Recipient procurement procedures (designated as ''PROC'' when referring to articles prescribed by this part): —PROC Article I—Procurement standards for States. —PROC Article II—Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes. —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): —REP Article I—Performance management, monitoring, and reporting. —REP Article II—Financial reporting. —REP Article III—Reporting on property. —REP Article IV—Reporting on subawards and executive compensation. —REP Article V—Other reporting.
Part 1136	Other administrative requirements (designated as ''OAR'' when referring to articles prescribed by this part): —OAR Article I—Submitting and maintaining recipient information. —OAR Article II—Records retention and access. —OAR Article III—Remedies and termination. —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. —OAR Article VI—Closeout. —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): —SUB Article I—Distinguishing subawards and procurements. —SUB Article II—Pre-award and time of award responsibilities. —SUB Article III—Informational content of subawards. —SUB Article IV—Financial and program management requirements for subawards. —SUB Article V—Property requirements for subawards. —SUB Article VI—Procurement procedures to include in subawards. —SUB Article VII—Financial, programmatic, and property reporting requirements for subawards. —SUB Article VIII—Other administrative requirements for subawards. —SUB Article IX—National Policy Requirements for Subawards. —SUB Article X—Subrecipient monitoring and other post-award administration. —SUB Article XI—Requirements concerning subrecipients' lower-tier subawards. —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.

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

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.
Appendix C	Use and disposition of real property	III.
Appendix D	Use and disposition of equipment and supplies	IV.
Appendix E	Use and disposition of federally owned property	V.
Appendix F	Intangible property	VI.

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.

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

Sec.

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.
Appendix B	Financial reporting	II.
Appendix C	Reporting on property	III.
Appendix D	Reporting on subawards and executive compensation	IV.
Appendix E	Other reporting	V.

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

Sec.

Subpart A—Submitting and Maintaining Recipient Information (OAR Article I)

Subpart B—Records Retention and Access (OAR Article II)

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.
Appendix E	Collection of amounts due	V.
Appendix F	Closeout	VI.
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.

Subpart A–Distinguishing Subawards and Procurements (SUB Article I)

Subpart B–Pre-Award and Time of Award Responsibilities (SUB Article II)

Subpart C–Informational Content of Subawards (SUB Article III)

Subpart D–Financial and Program Management Requirements for Subawards (SUB Article IV)

Subpart E–Property Requirements for Subawards (SUB Article V)

Subpart F–Procurement Procedures to Include in Subawards (SUB Article VI)

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]

PARTS 1156–1170 [RESERVED]

Subchapter G [Reserved]

PARTS 1171–1199 [RESERVED]

CHAPTER XII—DEPARTMENT OF TRANSPORTATION

PART 1200—NONPROCUREMENT SUSPENSION AND DEBARMENT

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.

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 200.80, *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 200.77 Period of performance.) 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.

§ 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.

§ 1201.206 Standard application requirements.

The requirements of 2 CFR 200.206 do not apply to formula grant programs, which do not require applicants to apply for funds on a project basis.

§ 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.

§ 1201.327 Financial reporting.

Notwithstanding 2 CFR 200.327, recipients of FHWA and NHTSA financial assistance may use FHWA, NHTSA or State financial reports.

PARTS 1202–1299 [RESERVED]

CHAPTER XIII—DEPARTMENT OF COMMERCE

PARTS 1300–1325 [RESERVED]

PART 1326—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

Subpart A—General

Subpart B—Covered Transactions

Subpart C—Responsibilities of Participants Regarding Transactions

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

Subparts E–H [Reserved]

Subpart I—Definitions

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.

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

Subpart C—Requirements for Recipients Who Are Individuals

Subpart D—Responsibilities of Agency Awarding Officials

Subpart E—Violations of This Part and Consequences

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

PART 1400—NONPROCUREMENT DEBARMENT AND SUSPENSION

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

Subpart B—Definitions

Subpart C—Requirements for Recipients Other Than Individuals

Subpart D—Requirements for Recipients Who Are Individuals

Subpart E—Responsibilities of Department of the Interior Awarding Officials

Subpart F—Violations of this Part and Consequences

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

Subpart A—Definitions

Sec.

Subpart B—General Provisions

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

Subpart D—Post Federal Award Requirements

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

PART 1500—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

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 non-competitive 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 non-competitive 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

Sec.

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.

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 XVIII—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1800—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

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 of 2 CFR part 200, 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.

§ 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 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 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 of 2 CFR part 200 and as supplemented by this part. The Federal Acquisition Regulation (FAR) at 48 CFR parts 30 and 31 take precedence over the cost principles in subpart E of 2 CFR part 200 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 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 on a no-exchange-of-funds basis is set forth at NASA FAR Supplement (NFS) at 48

CFR 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 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 the Chief Financial Officer, Policy Division.

[85 FR 71816, Nov. 12, 2020]

§ 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, the NASA Grant and Cooperative Agreement Manual (GCAM), and other source information is on the internet at: *https://prod.nais.nasa.gov/pub/pub_library/srba/index.html*.

[85 FR 71816, Nov. 12, 2020]

§ 1800.6 [Reserved]

Subpart A—Acronyms and Definitions

§ 1800.10 Acronyms.

The following acronyms supplement the acronyms set forth at 2 CFR 200.0:

ACH Automated Clearing House
AO Announcement of Opportunity
CAN Cooperative Agreement Notice
CFR Code of Federal Regulations
CNSI Classified National Security Information
EPA Environmental Protection Agency
GCAM Grant and Cooperative Agreement Manual
HBCU Historically Black Colleges and Universities
LEP Limited English Proficiency
MSI Minority-serving Institutions
MYA Multiple Year Award
NASA National Aeronautics and Space Administration
NFS NASA FAR Supplement
NPR NASA Procedural Requirements
NRA NASA Research Announcement
NSPIRES NASA Solicitation and Proposal Integrated Review and Evaluation System
NSSC NASA Shared Services Center
OMB Office of Management and Budget
ONR Office of Naval Research
RPPR Research Performance Progress Report
STIP NASA Scientific and Technical Information Program

[85 FR 71816, Nov. 12, 2020]

§ 1800.11 Definitions.

The following definitions are a supplement to the definitions set forth at 2 CFR 200.1.

Administrative Grant Officer means a Federal employee delegated responsibility for award administration; e.g., a NASA Grant Officer who has retained award administration responsibilities, or an Office of Naval Research (ONR) Grant Officer delegated award administration by a NASA Grant Officer.

Effective date means the date work can begin under an awarded instrument. This date is the beginning of the period of performance and can be earlier or later than the date of signature on a basic award. Expenditures made prior to the effective date are incurred at the recipient's risk unless prior written permission has been given by the Grant Officer.

For-profit organization means any corporation, trust, or other organization that is organized primarily for profit.

Grant Officer means a Federal employee responsible for the signing of the Federal award documents.

Historically Black Colleges and Universities (HBCUs) means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein.

Minority-serving Institutions (MSIs) means an institution of higher education whose enrollment of a single minority or a combination of minorities (minority meaning American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander or other ethnic group

underrepresented in science and engineering) exceeds 50 percent of the total enrollment, as defined by the Higher Education Act (HEA) (20 U.S.C. 1067k(3)).

NASA Technical Officer means the NASA official responsible for the programmatic, scientific, and/or technical aspects of assigned applications and awards.

Original signature means an authorized signature as described in this definition. If the system (such as NSPIRES) used to submit required documents allows for electronic signatures, then the submission of the documents, by the authorized representative of the organization serves as the required original signature. If, however, a paper copy submission is required, all documents submitted shall be appropriately signed in ink with an actual signature by the authorized representative of the organization.

Prescription is defined as the written instructions, to the Grants Officer, for the application of terms and conditions.

Research misconduct is defined in 14 CFR 1275.101. NASA policies and procedures regarding research misconduct are set forth in 14 CFR part 1275.

Summary of research means a document summarizing the results of the entire project, which includes bibliographies, abstracts, and lists of other media in which the research was discussed.

[85 FR 71816, Nov. 12, 2020]

Subpart B—Pre-Federal Award Requirements and Contents of Federal Awards

§ 1800.209 Certifications and representations.

The certifications and representations for NASA may be found in Appendix C of the GCAM, at: *https://prod.nais.nasa.gov/pub/pub_library/srba/index.html*.

[85 FR 71817, Nov. 12, 2020]

§ 1800.210 Pre-award costs.

NASA waives the approval requirement for pre-award costs of 90 days or less.

[80 FR 54701, Sept. 11, 2015. Redesignated at 85 FR 71817, Nov. 12, 2020]

§ 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. The terms and conditions for NASA may be found in Appendix D of the GCAM at: *https://prod.nais.nasa.gov/pub/pub_library/srba/index.html*.

[85 FR 71817, Nov. 12, 2020]

Subpart C—Post Federal Award Requirements

STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT

§ 1800.305 Federal payment.

Payments under awards with for-profit organizations will be made based on incurred costs. Standard Form 425 is not required. For-profit organizations shall not submit invoices more frequently than quarterly. Payments to be made on a more frequent basis require the written approval of the Grant Officer.

[85 FR 71817, Nov. 12, 2020]

§ 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.

REMEDIES FOR NONCOMPLIANCE

§ 1800.339 Remedies for noncompliance.

NASA reserves the ability to impose additional conditions in response to award recipient noncompliance and terminate a Federal award in accordance with 2 CFR 200.339 through 200.343 and as set forth in the GCAM.

[85 FR 71817, Nov. 12, 2020]

§ 1800.400 Policy guide.

Payment of fee or profit is consistent with an activity whose principal purpose is the acquisition of goods and services for the direct benefit or use of the United States Government, rather than an activity whose principal purpose is Federal financial assistance to a recipient to carry out a public purpose. Therefore, the Grants Officer shall use a procurement contract, rather than a grant or cooperative agreement, in all cases where fee or profit is to be paid to the recipient of the instrument or the instrument is to be used to carry out a program where fee or profit is necessary to achieving program objectives. Grants and cooperative agreements shall not provide for the payment of any fee or profit to the recipient.

[85 FR 71817, Nov. 12, 2020]

PARTS 1801–1879 [RESERVED]

PART 1880—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

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.

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 XX—UNITED STATES NUCLEAR REGULATORY COMMISSION

PART 2000—NONPROCUREMENT DEBARMENT AND SUSPENSION

Subpart A—General

Subpart B—Covered Transactions

Subpart C—Responsibilities of Participants Regarding Transactions

Subparts D–H [Reserved]

Subpart I—Definitions

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

PART 2200—NONPROCUREMENT DEBARMENT AND SUSPENSION

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.

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.

Subpart A—Purpose and Coverage [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

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.

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.

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

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.

Subpart A—General

Subpart B—Covered Transactions

Subpart C—Responsibilities of Participants Regarding Transactions

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

Subparts E–F [Reserved]

Subpart G—Suspension

Subpart H—Debarment

Subpart I—Definitions

Subpart J—Limited Denial of Participation

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.

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

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.

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

PART 2600—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

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

PART 2700—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

Subpart A—General

Subpart B—Covered Transactions

Subpart C—Responsibilities of Participants Regarding Transactions

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

Subparts E–F [Reserved]

Subpart G—Suspension

Subpart H—Debarment

Subpart I—Definitions

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

PART 2800—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS BY THE DEPARTMENT OF JUSTICE

Sec.

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.

Subpart A—General

Subpart B—Covered Transactions

Subpart C—Responsibilities of Participants Regarding Transactions

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

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]

CHAPTER XXIX—DEPARTMENT OF LABOR

PART 2900—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A—Acronyms and Definitions

Subpart B—General Provisions

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

Subpart D—Post Federal Award Requirements

Subpart E—Cost Principles

Subpart F—Audit Requirements

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.

Subpart A—General

Subpart B—Covered Transactions

Subpart C—Responsibilities of Participants Regarding Transactions

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

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

PART 3000—NONPROCUREMENT DEBARMENT AND SUSPENSION

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.

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

PARTS 3100–3184 [RESERVED]

PART 3185—NONPROCUREMENT DEBARMENT AND SUSPENSION

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.

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

Subpart C—Requirements for Recipients Who Are Individuals

Subpart D—Responsibilities of Agency Awarding Officials

Subpart E—Violations of this Part and Consequences

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.

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

PARTS 3200–3253 [RESERVED]

PART 3254—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

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.

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

PARTS 3300–3368 [RESERVED]

PART 3369—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

Subpart A—General

Subpart B—Covered Transactions

Subpart C—Responsibilities of Participants Regarding Transactions

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

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.

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

PARTS 3400–3473 [RESERVED]

PART 3474—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

AUTHORITY: 20 U.S.C. 1221e–3, 3474; 42 U.S.C. 2000bb *et seq.*; 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, with respect to contracts for which such organizations are eligible and considering any permissible accommodation.

(2) In selecting providers of goods and services, grantees and subgrantees, including States, must not discriminate for or against a private organization on the basis of the organization's religious character, affiliation, or exercise, as defined in 34 CFR 75.52(c)(3) and 76.52(c)(3), and 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. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in appendices A and B, respectively, to 34 CFR part 75.

[1] C. Ref. 2 CFR 200.102.

[2] C. Ref. 2 CFR 200.205, 200.207.

(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 shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations that participate in Department programs or services, including organizations with religious character or affiliation, must carry out eligible activities in accordance with all program requirements, subject to any required or appropriate religious accommodation, and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities.

(4) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a grantee or subgrantee shall disqualify faith-based organizations from participating in Department-funded programs or services because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation, or on grounds that discriminate against organizations on the basis of the organizations' religious exercise, as defined in 34 CFR 75.52(c)(3) and 76.52(c)(3).

(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.

NOTE 1 TO PARAGRAPH (e)(1): Memorandum for All Executive Departments and Agencies, From the Attorney General, ''Federal Law Protections for Religious Liberty'' (Oct. 6, 2017) (describing Federal law protections for religious liberty).

(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 on the basis of religion or religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program and may require attendance at all activities that are fundamental to the 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. An organization qualifying for such an exemption may select its employees on the basis of their acceptance of or adherence to the religious tenets of the organization.

(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]

§ 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

Sec.

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

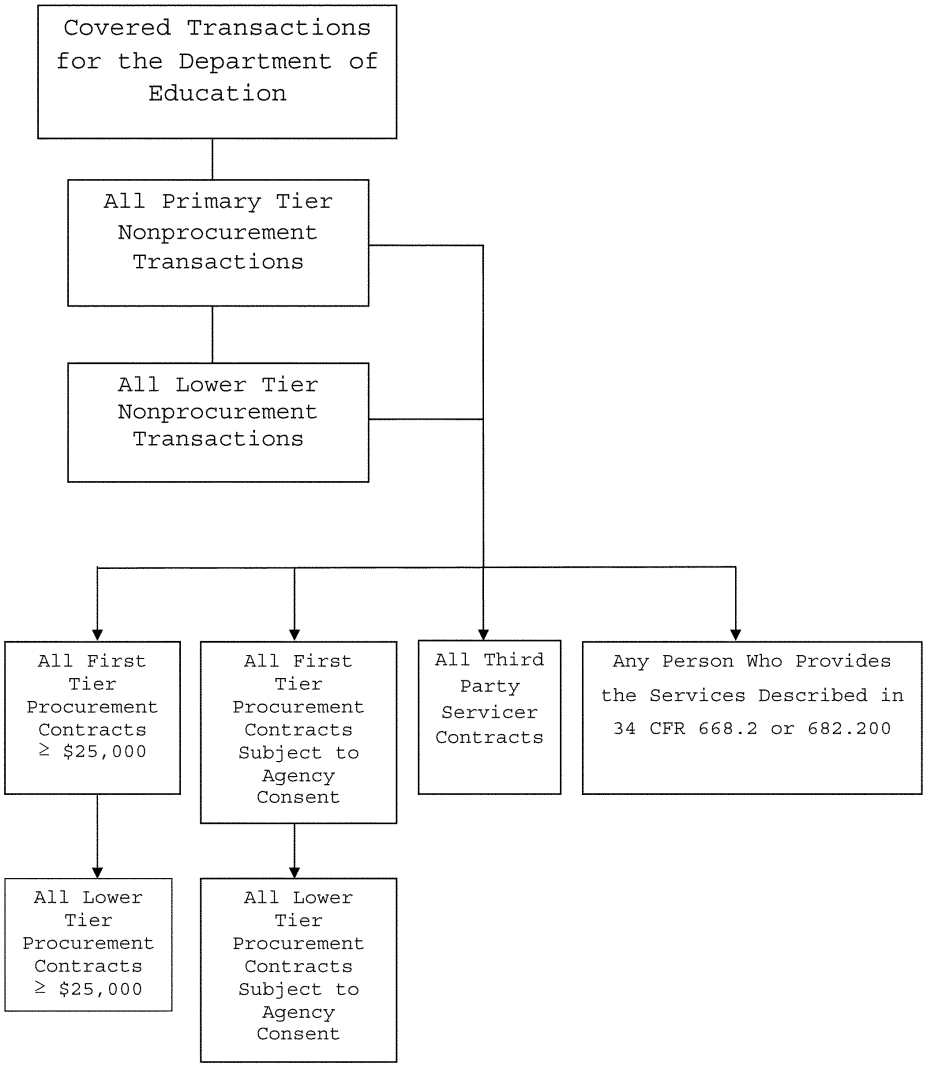
(d) The acquisition or exercise of any servicing responsibility for a grant, loan, or work study assistance under a title IV, HEA program.

(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

PARTS 3500–3512 [RESERVED]

PART 3513—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

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

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

PART 3700—NONPROCUREMENT DEBARMENT AND SUSPENSION

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

PART 5800—NONPROCUREMENT DEBARMENT AND SUSPENSION

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]

PARTS 5801–5899 [RESERVED]

CHAPTER LIX—GULF COAST ECOSYSTEM RESTORATION COUNCIL

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.

Under the above authority, the Gulf Coast Ecosystem Restoration Council (Council) adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200, as revised in part effective August 13, 2020 and in part effective November 12, 2020. This gives regulatory effect to the revised OMB guidance and supplements the guidance as needed for the Council.

[86 FR 1253, Jan. 8, 2021]

PARTS 5901–5999 [RESERVED]

CHAPTER LX—FEDERAL COMMUNICATIONS COMMISSION

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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1800.10 Amended 20240
1800.11 (a) amended 20240
1800.208 Revised 20240
1800.210 Revised 20240

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1800.339 Revised 20240
1800 Appendix A and Appendix B removed 20240
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3187.3 (a) introductory text amended 27704
3187.12 (a) table amended 22944

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25.100 Introductory text and (a) revised 49522
25.105 Revised 49522
25.110 Revised 49523
25.115 Removed 49523
25.200 Revised 49523
25.205 Revised 49523
25.210 Revised 49523
25.215 Revised 49524
25.220 Revised 49524
25.300 (Subpart C) Revised 49524
25.400—25.465 (Subpart D) Added 49524
25 Appendix A revised 49525
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170.110 Revised 49525
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170.210 Added 49526
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170.301 Added 49526
170.305 Revised 49526
170.307 Added 49526
170.308 Added 49526
170.310 Revised 49526
170.320 (b) paragraph following (j) correctly designated as (k); (k) introductory text and (2) revised 49526
170.322 Added 49526
170.325 Revised 49526
170 Appendix A revised 49526
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200.1 Revised 49529
200.100 (a)(1), (c) through (e) revised 49536
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200.401 (a)(3), (4), (b), and (c) revised 49562
200.403 (f) and (g) revised; (h) added 49562
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200.415 (b)(1), (2), (c), and (d) revised 49563
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200.419 (a), (b) introductory text, (1), and (2) revised 49564

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200.431 Revised 49565
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200.434 (b), (c), (f), and (g)(2) revised 49567
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1800.209 Redesignated as 1800.210; new section redesignated from 1800.208 and revised; eff. 1-11-21 71817
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1800.211 Redesignated from 1800.210 and revised; eff. 1-11-21 71817
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200.206 (a)(1) correctly revised 10439
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910.505 Amended 15321
910.507 Revised 15321
910.513 (c) introductory text and (3)(iii) amended 15321
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1500.12 (e) revised 30397
1500.14 (f) removed 30397
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State of New Jersey Standard Terms and Conditions

(Revised December 13, 2021)

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

1.0 STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT

The following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. The State's terms and conditions shall prevail over any conflicts set forth in a Contractor's Quote or Proposal.

2.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

The statutes, laws, regulations or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

2.1 BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the Contractor and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the Contractor who shall provide it to the State.

The contractor shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The contractor shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of $25 for each day of violation, not to exceed $50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at http://www.state.nj.us/treasury/revenue/busregcert.shtml.

2.2 OWNERSHIP DISCLOSURE

Pursuant to N.J.S.A. 52:25-24.2, in the event the Contractor is a corporation, partnership or limited liability company, the Contractor must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote. A Contractor's failure to submit the completed and signed form prior to or with its Quote will result in the Contractor being ineligible for a Contract award, unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote.

In the alternative, a Contractor with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

2.3 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

Pursuant to N.J.S.A. 52:32-58, the Contractor must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Contractor is unable to so certify, the Contractor shall provide a detailed and precise description of such activities as directed on the form. A Contractor's failure to submit the completed and signed form will preclude the award of a Contract to said Contractor.

2.4 ANTI-DISCRIMINATION

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Constructions

Contracts (Exhibit B and Exhibit C - Executive Order 151 Requirements) as appropriate.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

2.5 AFFIRMATIVE ACTION

In accordance with N.J.A.C. 17:27-1.1, prior to award, the Contractor and subcontractor must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Contractors or subcontractors not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at https://www.state.nj.us/treasury/contract_compliance/.

2.6 AMERICANS WITH DISABILITIES ACT

The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.

2.7 MACBRIDE PRINCIPLES

The Contractor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

2.8 PAY TO PLAY PROHIBITIONS

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), The State shall not enter into a Contract to procure services or any material, supplies or equipment, or to acquire, sell, or lease any land or building from any Business Entity, where the value of the transaction exceeds $17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership committee during certain specified time periods. It shall be a breach of the terms of the contract for the business entity to:

A. Make or solicit a contribution in violation of the statute;
B. Knowingly conceal or misrepresent a contribution given or received;
C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

Prior to awarding any Contract or agreement to any Business Entity, the Business Entity proposed as the intended Contractor of the Contract shall submit the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, certifying that no contributions prohibited by either Chapter 51 or Executive Order No. 117 have been made by the Business Entity and reporting all qualifying contributions made by the Business Entity or any person or entity whose contributions are attributable to the Business Entity. The required form and instructions, available for review on the Division's website at http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf, shall be provided to the intended Contractor for completion and submission to the Division with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended Contractor shall submit to the Division, in care of the Division Procurement Specialist, the Certification and Disclosure(s) within five (5) business days of the State's request. The Certification and Disclosure(s) may be executed electronically by typing the name of the authorized signatory in the "Signature" block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form. Failure to submit the required forms will preclude award of a Contract under this Bid Solicitation, as well as future Contract opportunities; and

Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the Contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Division's website at http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf, shall be provided to the intended Contractor with the Notice of Intent to Award.

2.9 POLITICAL CONTRIBUTION DISCLOSURE

The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor

receives one (1) or more contracts valued at $50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at http://www.elec.state.nj.us/.

2.10 STANDARDS PROHIBITING CONFLICTS OF INTEREST

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

A. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Departmentof the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

B. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards, now known as the State Ethics Commission;

C. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, now known as the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;

D. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

E. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and

F. The provisions cited above in paragraphs 2.8A through 2.8E shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards, now known as the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

2.11 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION

The Treasurer has established a business ethics guide to be followed by a Contractor in dealings with the State. The guide can be found at: https://www.nj.gov/treasury/purchase/pdf/BusinessEthicsGuide.pdf.

2.12 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

2.13 COMPLIANCE - LAWS

The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

2.14 COMPLIANCE - STATE LAWS

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

2.15 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

2.16 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS

The Contractor should submit the Disclosure of Investigations and Other Actions Form which provides a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If a Contractor does not submit the form with the Quote, the Contractor must comply within seven (7) business days of the State's request or the State may deem the Quote non-responsive.

3.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT

3.1 COMPLIANCE - CODES

The contractor must comply with New Jersey Uniform Construction Code and the latest National Electrical Code 70®, B.O.C.A. Basic Building code, Occupational Safety and Health Administration and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

3.2 PREVAILING WAGE ACT

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The Contractor 's signature on [the proposal] is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by [the proposal] has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the Contractor's signature on the proposal is also his/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by [the proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

3.3 PUBLIC WORKS CONTRACTOR REGISTRATION ACT

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance.

3.4 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

B. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged inthe performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

C. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of $50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

A. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion,

or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;

B. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:

1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

3.5 BUILDING SERVICE

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

3.6 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

3.7 SERVICE PERFORMANCE WITHIN U.S.

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

3.8 BUY AMERICAN

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States, whenever available, and the contractor shall be required to so certify.

3.9 DOMESTIC MATERIALS

Pursuant to N.J.S.A. 52:33-2 et seq., if the contract is for the construction, alteration or repair of any public work, the contractor and all subcontractors shall use only domestic materials in the performance of the work unless otherwise noted in the specifications.

3.10 DIANE B. ALLEN EQUAL PAY ACT

Pursuant to N.J.S.A. 34:11-56.14 and N.J.A.C. 12:10-1.1 et seq., a contractor performing “qualifying services” or “public work” to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see https://nj.gov/labor/equalpay/equalpay.html.

3.11 EMPLOYEE MISCLASSIFICATION

In accordance with Governor Murphy's Executive Order #25 and the Task Force's July 2019 Report, employers are required to properly classify their employees. Workers are presumed to be employees and not independent contractors, unless the employer can demonstrate all three factors of the "ABC Test" below:

A. Such individual has been and will continue to be free from control or direction of the performance of such service, but under his or her contract of service and in fact; and
B. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all places of business of the enterprise for which such service is performed; and
C. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

This test has been adopted by New Jersey under its Wage & Hour, Wage Payment and Unemployment Insurance Laws to determine whether a worker is properly classified. Under N.J.S.A. 34:1A-1.17-1.19, the Department of Labor and Workforce Development has the authority to investigate potential violations of these laws and issue penalties and stop work order to employers found to be in violation of the laws.

3.12 EXECUTIVE ORDER NO. 271 (MURPHY)

Pursuant to Governor Murphy's Executive Order No. 271 (EO 271) which was signed and went into effect on October 20, 2021, a covered contractor, must certify that it has a policy in place:

(1) that requires all covered workers to provide adequate proof, in accordance with EO 271, to the covered contractor that the covered worker has been fully vaccinated; or
(2) that requires that unvaccinated covered workers submit to COVID-19 screening testing at minimum one to two times weekly until such time as the covered worker is fully vaccinated; and
(3) that the covered contractor has a policy for tracking COVID-19 screening test results as required by EO 271 and must report the results to local public health departments.

The requirements of EO 271 apply to all covered contractors and subcontractors, at any tier, providing services, construction, demolition, remediation, removal of hazardous substances, alteration, custom fabrication, repair work, or maintenance work, or a leasehold interest in real property through which covered workers have access to State property.
These requirements shall automatically expire when EO 271 is rescinded.

4.0 INDEMNIFICATION AND INSURANCE

4.1 INDEMNIFICATION

The contractor's liability to the State and its employees in third party suits shall be as follows:

A. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;
B. The contractor's indemnification and liability under subsection (A) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and
C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

4.2 INSURANCE

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the contractor's insurer cannot provide 30 days written notice, then it will become the obligation of the contractor to provide the same. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services orgoods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to the State at: ccau.certificate@treas.nj.gov

The insurance to be provided by the contractor shall be as follows:

A. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be $1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New

Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;

B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than $1,000,000 per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;

C. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

1. $1,000,000 BODILY INJURY, EACH OCCURRENCE;
2. $1,000,000 DISEASE EACH EMPLOYEE; and
3. $1,000,000 DISEASE AGGREGATE LIMIT.

This $1,000,000 amount may be raised when deemed necessary by the Director;

In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections A, B, and B. above may be amended for certain commodities when deemed in the best interests of the State by the Director.

5.0 TERMS GOVERNING ALL CONTRACTS

5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR

The contractor's status shall be that of any independent contractor and not as an employee of the State.

5.2 RESERVED

5.3 CONTRACT TERM AND EXTENSION OPTION

If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions of the original contract shall apply unless more favorable terms for the State have been negotiated.

5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

A. If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and

B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

Any changes or modifications to the terms of this Contract shall be valid only when they have been reduced to writing and signed by the Contractor and the Director.

5.5 CHANGE IN LAW

If, after award, a change in applicable law or regulation occurs which affects the Contract, the parties may amend the Contract, including pricing, in order to provide equitable relief for the party disadvantaged by the change in law. The parties shall negotiate in good faith, however if agreement is not possible after reasonable efforts, the Director shall make a prompt decision as to an equitable adjustment, taking all relevant information into account, and shall notify the Contractor of the final adjusted contract price.

5.6 SUSPENSION OF WORK

The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is

required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

A. For Convenience:
Notwithstanding any provision or language in this contract to the contrary, the Directormay terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;

B. For Cause:
1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond; and
2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.

C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and

D. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

5.8 SUBCONTRACTING

The Contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws. Nothing contained in any of the contract documents, shall be construed as creating any contractual relationship between any subcontractor and the State.

5.9 RESERVED

5.10 MERGERS, ACQUISITIONS AND ASSIGNMENTS

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR

The contractor hereby certifies that:

A. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;

B. All equipment supplied to the State and operated by electrical current is UL listed where applicable;

C. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;

D. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;

E. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;

F. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and

G. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

5.12 DELIVERY REQUIREMENTS

A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
B. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice;
C. Items delivered must be strictly in accordance with the contract; and
D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

5.13 APPLICABLE LAW AND JURISDICTION

This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

5.14 CONTRACT AMENDMENT

Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.

5.15 MAINTENANCE OF RECORDS

Pursuant to N.J.A.C. 17:44-2.2, the contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)

The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalfof its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor:

A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
B. It shall advise the Attorney General of New Jersey:
    1. In advance of its intention to commence any action on its own behalf regarding anysuch claim or cause(s) of action; and
    2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

5.17 NEWS RELEASES

The Contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this Contract without the prior written consent of the Director.

5.18 ADVERTISING

The Contractor shall not use the State's name, logos, images, or any data or results arising from this Contract as a part of any commercial advertising without first obtaining the prior written consent of the Director.

5.19 ORGAN DONATION

As required by N.J.S.A. 52:32-33.1, the State encourages the contractor to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.

5.20 LICENSES AND PERMITS

The Contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this Contract. Notwithstanding the requirements of the Bid Solicitation, the Contractor shall supply the State Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to this Contract award. All costs associated with any such licenses, permits, and authorizations must be considered by the Contractor in its Quote.

5.21 CLAIMS AND REMEDIES

A. All claims asserted against the State by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

B. Nothing in this Contract shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.

C. In the event that the Contractor fails to comply with any material Contract requirements, the Director may take steps to terminate this Contract in accordance with the SSTC, authorize the delivery of Contract items by any available means, with the difference between the price paid and the defaulting Contractor's price either being deducted from any monies due the defaulting Contractor or being an obligation owed the State by the defaulting Contractor, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

5.22 ACCESSIBILITY COMPLIANCE

The Contractor acknowledges that the State may be required to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. The Contractor agrees that any information that it provides to the State in the form of a Voluntary Product Accessibility Template (VPAT) about the accessibility of the Software is accurate to a commercially reasonable standard and the Contractor agrees to provide the State with technical information available to support such VPAT documentation in the event that the State relied on any of Contractor's VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. In addition, Contractor shall defend any claims against the State that the Software does not meet the accessibility standards set forth in the VPAT provided by Provider in order to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794 and will indemnify the State with regard to any claim made against the State with regard to any judgment or settlement resulting from those claims to the extent the Provider's Software provided under this Contract was not accessible in the same manner as or to the degree set forth in the Contractor's statements or information about accessibility as set forth in the then-current version of an applicable VPAT.

5.23 CONFIDENTIALITY

A. The obligations of the State under this provision are subject to the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena;

B. By virtue of this Contract, the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this Contract. Contractor's Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure Vendor Intellectual Property ("Contractor Confidential Information"). Notwithstanding the previous sentence, the terms and pricing of this Contract are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena;

C. The State's Confidential Information shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not);

D. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;

E. The State agrees to hold Contractor's Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;

F. In the event that the State receives a request for Contractor Confidential Information related to this Contract pursuant to a court order, subpoena, or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such order of law. Contractor shall take any action it deems appropriate to protect its documents and/or information;

G. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such order of law. The State shall take any action it deems appropriate to protect its documents and/or information; and

H. Notwithstanding the requirements of nondisclosure described in this Section, either party may release the other party's Confidential Information:

   (i) if directed to do so by a court or arbitrator of competent jurisdiction; or

   (ii) pursuant to a lawfully issued subpoena or other lawful document request:

      (a) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in Section 5.23(F), or if Contractor is unsuccessful in defending its rights as described in Section 5.23(F); or

      (b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 5.23(G), or if the State is unsuccessful in defending its rights as described in Section 5.23(G).

6.0 TERMS RELATING TO PRICE AND PAYMENT

6.1 PRICE FLUCTUATION DURING CONTRACT

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract. In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

In an exceptional situation the State may consider a price adjustment. Requests for price adjustments must include justification and documentation.

6.2 TAX CHARGES

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

6.3 PAYMENT TO VENDORS

A. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price;

B. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the Bill of Lading, and/or other documentation to confirm shipment and receipt of contracted goods must be received by the using agency prior to payment. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work and must be in strict accordance with the firm, fixed prices submitted for each task or subtask. When applicable, invoices should reference the appropriate task or subtask or price line number from the contractor's proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;

C. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls; and

D. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Office of Diversity and Inclusion.

E. The Contractor shall have sole responsibility for all payments due any Subcontractor

6.4 OPTIONAL PAYMENT METHOD: P-CARD

The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 NEW JERSEY PROMPT PAYMENT ACT

The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds $5.00 per properly executed invoice. Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

6.6 AVAILABILITY OF FUNDS

The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

7.0 TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth in this Section of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

7.1 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made the Contractor shall:

(1) Include qualified small and minority businesses and women's business enterprises on solicitation lists;
(2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
(3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
(4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

7.2 DOMESTIC PREFERENCE FOR PROCUREMENTS

Pursuant to 2 CFR 200.322, where appropriate, the State has 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). If subawards are to be made the Contractor shall include 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). 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 nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7.3 PROCUREMENT OF RECOVERED MATERIALS

Where applicable, in the performance of contract, pursuant to 2 CFR 200.323, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in 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.

To the extent that the scope of work or specifications in the contract requires the contractor to provide recovered materials the scope of work or specifications are modified to require that as follows.

i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
    1. Competitively within a timeframe providing for compliance with the contract performance schedule;
    2. Meeting contract performance requirements; or
    3. At a reasonable price.
ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program.
iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

7.4 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 equalopportunity 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." See, 2 CFR Part 200, Appendix II, para. C.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous

places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

7.5 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

When required by Federal program legislation, all prime construction contracts in excess of $ 2,000 shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are 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.

Additionally, contractors are required to pay wages not less than once a week.

7.6 COPELAND ANTI-KICK-BACK ACT

Where applicable, the Contractor must comply with 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").

a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
c. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

7.7 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 comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
(3) Withholding for unpaid wages and liquidated damages. The unauthorized user shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7.8 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.

7.9 CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED

Where applicable, Contract and subgrants of amounts inexcess of $150,000, must comply with the following:

Clean Air Act

7.9.1.1 The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
7.9.1.2 The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
7.9.1.3 The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

7.10 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the State or authorized user. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or authorized user, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7.11 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. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

7.12 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
  (1) Procure or obtain;
  (2) Extend or renew a contract to procure or obtain; or
  (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in *Public Law 115–232*, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    (i) 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).
    (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
    (iii) 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.

EXHIBIT A - GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)
N.J.A.C. 17:27 et seq.

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- Letter of Federal Affirmative Action Plan Approval;
- Certificate of Employee Information Report; or
- Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at http://www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase an Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase an Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

EXHIBIT B - CONSTRUCTION CONTRACTS

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)
N.J.S.A. 10:5-39 et seq. (P.L. 1983, c. 197)
N.J.A.C. 17:27-1.1 et seq.

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of $250,000 toguarantee equal employment opportunity to veterans.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:
  (1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non- discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
    (i) The contactor or subcontractor shall interview the referred minority or women worker.
    (ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.
    (iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
    (iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.
(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXHIBIT C - EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at https://newjersey.usnlx.com/;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.

State of New Jersey Standard Terms and Conditions

(Revised December 13, 2021)

I HEREBY ACCEPT THE TERMS AND CONDITIONS OF THIS CONTRACT

DocuSigned by:
Cheryl Pierce
482F5F6D0446456...

Signature

03/29/2022

Date

Cheryl Pierce, Director of Contracts

Print Name and Title

Nava PBC

Print Name of Contractor

Federally-Based Contracts
Request for Quotation

For: Unemployment Insurance Modernization and Worker Experience
Agile Development Services

Event	Date	Time
Questions Regarding Request for Quote Round 1 Due Date	MARCH 15, 2022	2:00 PM ET
Questions Regarding Request for Quote Round 2 Due Date	MARCH 22, 2022	2:00 PM ET
Request for Quote Submission Due Date	MARCH 31, 2022	2:00 PM ET

Dates are subject to change. All times contained in the Request for Quote refer to Eastern Time. All changes will be reflected in Bid Amendments to the Request for Quote posted on Using Agency website.

Request For Quote Issued By:

State of New Jersey
New Jersey Department of Labor

Last Updated: ~~3/10/2022~~ 3/17/2022

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1.0 INFORMATION FOR BIDDERS

NOTICE: ***The Bidder is advised to thoroughly read all sections and follow all instructions contained in this Request for Quote (RFQ) before preparing and submitting its Quote.***

The Contract will be awarded in the State of New Jersey's eProcurement system, ***NJSTART*** (www.njstart.gov). The awarded Contractor is advised to read through all Quick Reference Guides (QRGs) located on the NJSTART Vendor Support Page for information.

This solicitation request and any amendments will be posted at https://www.nj.gov/labor/aboutlwd/.

Quote submissions and questions shall be filed at Agile-bid@dol.nj.gov in accordance with the deadlines specified. Email messages (including attachments) exceeding 25MB may not be received. Bidders may send multiple emails, if necessary. It is recommended that attached file(s) be sent as zipped attachment(s) due to file attachment limitations of the email system. As a convenience, the email address above has been configured to auto-respond to each email received with text confirming receipt. In the event this auto-response confirming receipt is not received by the sender, this may indicate the sender's email has not been received by the State.

1.1 PURPOSE AND INTENT

This RFQ is issued by the New Jersey Department of Labor (NJ DOL, Using Agency). The purpose of this RFQ is to solicit Quotes for agile development and human-centered design services for two discrete projects (Programs). NJ DOL intends to issue two awards (i.e., one for each project).

IMPORTANT: The bidder must indicate for which Program(s) it intends to be considered.

- **Program A – Unemployment Insurance Modernization Program (UI Program):** Designing, building, integrating, and maintaining reliable, scalable, modern, tested digital services and delivery programs using agile development, human-centered design, and the practices described in the scope of work in support of the State's UI Program. The goal of the UI Program is to improve the processes and experiences enabling New Jerseyans to receive unemployment insurance benefits and support, the State to administer the unemployment insurance program, and partners or entities such as employers and other State agencies to efficiently interact with the unemployment insurance system related to the delivery of benefits and services and/or meeting compliance requirements.

- **Program B – Worker Experience Program (WE Program):** Designing, building, integrating, and maintaining reliable, scalable, modern, tested digital services and delivery programs using agile development, human-centered design, and the practices described in the scope of work in support of the State's WE Program. The goal of the WE Program is to improve the processes and experiences enabling New Jerseyans to understand, navigate and access programs, benefits, and information that support them in their ability to find, obtain, and maintain meaningful employment and to advance their careers.

The intent of this RFQ is to award two Blanket P.O. Contracts to those responsible Bidders whose Quotes, conforming to this RFQ are most advantageous to the State, price and other factors considered. The State may award any and/or all price lines. The State, however, reserves the right to separately procure individual requirements that are the subject of the Contract during the Contract term, when deemed by the Director of the Division of Purchase and Property (Director) to be in the State's best interest.

Quotes will only be accepted from Bidders with an active GSA contract under SIN 54151S.

Details regarding evaluation criteria can be found in Section 6.4.4 (Technical and Price Evaluation). The Using Agency intends to issue two awards in response to this RFQ.

The State of NJ Standard Terms and Conditions (SSTC) accompanying this RFQ will apply to all Contracts made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in this RFQ and should be read in conjunction with them unless the RFQ specifically indicates otherwise.

1.1.1 SCOPE

The Contractor shall provide product, technical and design support for the awarded Program's development and sustainment, including project management, product management, technical implementation, DevOps, design, testing, rollout, and content management across multiple channels.

- **UI Program:** The Using Agency requests that Bidders submit a proposal to perform the scope of work with a total cost up to $4.0M during the two-year base period. This set of individuals and/or roles and associated hours provided will be referred to as the program's "base team".

- **WE Program:** The Using Agency requests that Bidders submit a proposal to perform the scope of work with a total cost up to $2.5M during the two-year base period. This set of individuals and/or roles and associated hours provided will be referred to as the program's "base team".

Although not guaranteed, the size of the team and hours per role, as well as the time and materials for the contract(s) may expand or decrease in the base and option periods at the discretion of the State. Additional funding to support the scope of work may become available and may be applied to the awarded contract(s). The contract(s) may be amended to enable the use of additional funding. However, the scope of services will remain the same.

The Contractor should specify a cross-functional team consisting of product management, design, engineering, content, and/or additional skillsets deemed appropriate to complete the scope of work within the budgets specified above. The Contractor should specifically include three Key Personnel roles (Product Management Lead, Technical Lead, Design Lead) as well as any additional base team roles deemed necessary to perform the scope of work, specific to each program that it seeks to be considered for. Key Personnel are expected to be assigned full-time to the program. The Using Agency anticipates that most of the team will consist of individuals assigned full-time to the program, however the Contractor may also specify a combination of part-time roles, as necessary.

Additionally, the Contractor must list all additional roles that it may seek to leverage in the future to complete the scope of work. All roles that may be needed or made available must be specified in the pricing submission. There is no limit to the number of additional roles that may be submitted by the Contractor.

The team (e.g., role(s) in use, anticipated hours per role) may be adapted throughout the length of the Contract to meet the needs of the Program as determined via consultation between the State and Contractor, subject to approval from the State's Contract Manager/Project Manager/Product Owner, provided the changes comply with the Contract (e.g., the role(s) are available through this Contract, the activities are within the scope of this Contract, the costs remain within the approved budget). The Contractor shall maintain and provide the State with up-to-date cost projections for each role. The State reserves the right to expand and/or reduce the size or hours of the team if

doing so would best meet the needs of the State and/or project.

The Contractor's team will be working at the overall direction of the State's designated Product Owner, and in collaboration with the Program team and relevant leaders at NJ DOL and throughout the State. The Contractor should be prepared to operate both with and without additional engineering, product, and design support. This document specifies specific methodologies and playbooks that are followed by the team and these may be adapted by the State throughout the course of the contract to meet the needs of the State and New Jerseyans.

The base term of this Contract shall be for a period of two years with options to extend as detailed in Section 5.2.

1.2 BACKGROUND

UI Program: New Jersey is embarking on a comprehensive effort to improve the experience of receiving unemployment insurance (UI) benefits, modernize the case management and technology systems underpinning the UI program, and improve the equity of outcomes for all NJ residents. This effort encompasses multiple efforts, including NJ's selection as a key partner to the US Department of Labor (https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7984) and multiple state-level projects. This combined effort is unique in the number of areas it seeks to improve, the level of partnership between the state and federal government, and availability of funding to make critical improvements to the process. The effort will follow modern practices of agile, iterative development and human-centered design, and involve close collaboration across the domains of policy, customer experience, operations, data, and product development. The new system will be developed using modular components that enable discrete functions involved in the end-to-end processing of Unemployment Insurance claims.

During the COVID-19 pandemic and resulting economic faltering, state unemployment systems across the country, including NJ, faced a confluence of challenges in processing unemployment claims, resulting in a difficult experience for unemployed workers seeking life-sustaining benefits: an unprecedented surge in claims as economic lockdowns rolled across the country; an abrupt transition to an all-remote workforce to protect the health and safety of NJ DOL staff; the spontaneous availability of novel federal benefits and programs for which current systems were not designed; and an insidious corresponding increase in fraudulent schemes targeting these benefits.

New Jersey aims to build a resilient and flexible program that is ready to support residents in their moments of greatest need. Working with federal and state partners, the program will use modern, modular components that enable flexibility for the state, maximize the ability to leverage best-in-class private and public sector solutions including from the federal government, and enable re-use by others across the country in service of raising the bar of Unemployment Insurance service delivery. To enable us to take advantage of this opportunity, the State of New Jersey Department of Labor is establishing an Office of Unemployment Insurance Modernization and building the team that will lead this effort for the state. This effort will operate with the support of senior leadership at the Department and State.

The Contractor awarded and assigned to this program as a result of this RFQ will be an integral part of the New Jersey Office of Unemployment Insurance Modernization. This Contractor will be uniquely positioned to work alongside colleagues at the state and federal level to tackle challenges at their root, ensuring that the system is designed equitably with claimants at the center. Solutions are anticipated to include changes to technology, process, content, user experience, customer service, employer services, and policy.

WE Program: NJ DOL projected that a total of 4.6 million New Jerseyans made up the total workforce population in 2019. These workers now rely on digital services for activities ranging from finding jobs and getting access to employment and coaching tools to navigating information about

programs that support individuals with disabilities. This shift is reflected in the demand that New Jerseyans have for accessing digital services from government as well.

NJ DOL is seeking to invest in making career advancement and related support programs more accessible and easy to navigate for individuals. The department will embrace principles that take the burden off the individuals seeking assistance and create a more cohesive experience that ensures they can access the resources and benefits available to them.

To address these challenges, this work seeks to improve service delivery to New Jersey workers, promoting efficiency and potentially reducing costs. This principle to "meet the user where they are" in their journey rather than requiring them to navigate the complexity of government will greatly increase customer satisfaction, material outcomes, and more efficiently utilize government resources. This will be accomplished by applying the following key approaches related to improving delivery of services to New Jersey workers:

- Leveraging data from and working alongside complementary initiatives, including with partners supporting the State, to better inform and assist New Jerseyans in obtaining employment and advancing their careers
- Leveraging analytics that enable iterative improvement of service delivery
- Reducing friction to receiving relevant services from the State
- Building digital services that meet or exceed the standards of in-person services
- Collective embrace of a user-centered workforce service delivery model and use of plain language in products and services
- Leveraging data to provide users with the actionable, relevant information needed to make informed decisions

The WE Program is anticipated to include the following major components, which may evolve throughout the project and are subject to prioritization:

- Build on the initial release of the New Jersey Training Explorer by providing improved training recommendations leveraging data from other initiatives at the state. This work involves using data models to provide unique insights to training seekers.
- Curate and make available career pathways information and guidance to assist New Jerseyans in accessing data-driven information to inform their career choices. As relevant, leverage information regarding State-owned workforce connected products and services and the Training Explorer to complement pathways and guidance information.
- Evaluate the best methods to integrate with, enable, and/or support digital coaching efforts by the State alongside other partners and initiatives.

UI and WE Programs: The Contractor should expect to work alongside, support, and/or integrate with related efforts to improve service delivery at NJ DOL and the State, as necessary.

1.2.1 TECHNICAL BACKGROUND INFORMATION

UI Program: The current Unemployment Insurance system depends on several production systems, which are supported by a mainframe that has been in service for over 30 years. Underlying systems will be improved or replaced iteratively as part of this initiative. New modules may require integration with legacy systems as needed. Further, to enable a modular approach and interoperability, the Contractor may need to make enhancements to existing/legacy systems. Additionally, some components to be integrated will be third-party services, including both commercial services and new shared services that the team will have an opportunity to inform. Salesforce is an example of one such third-party system in use for a limited aspect of case management and adjudication. Other components will be developed and implemented directly by the team, with lessons and code being shared openly and with our partners.

WE Program: NJ DOL runs multiple independent workforce-connected programs and operations in collaboration with affiliated State agencies and departments. It is anticipated that many systems will remain independent in the near future, and the team will leverage content improvements as well as work across the department to implement and/or leverage standard APIs. NJ DOL may also seek to leverage new third-party services in the future to improve service delivery. Further, to enable a modular approach and interoperability, the Contractor may need to make enhancements to existing/legacy systems at the direction of the State. Additionally, beta versions of certain tools (e.g., Training Explorer) have been developed and may need refactoring and/or migration to AWS cloud environment to improve maintainability.

The planned technology stack for **both programs** (unless noted) includes the following primary elements (not exhaustive):

- Client-side:
  - Modern JavaScript framework like React
- Server-side:
  - Node.js
  - Express.js
  - Python (UI Program only)
  - Java (UI Program only: ability to read code and understand configuration of existing UI systems necessary)
- Platform & Infrastructure:
  - Serverless framework
  - AWS Amplify
  - AWS DynamoDB
  - AWS Lambda
  - AWS SQS and related (UI Program only)
  - Docker
- Data stores:
  - PostgreSQL, Redis
  - Oracle Database (UI Program only: necessary to interface with existing UI systems)
- Development:
  - Version control with git
  - CI/CD
  - Testing with jest and Cypress

Appropriate experience to do this work includes:

- Design: user research, user interface design, information architecture, and interaction design across web and mobile web applications
- Engineering: technical requirements analysis of commercial solutions, integration and custom development using client- and server-side JavaScript, standard-compliant HTML and CSS; experience with data management and analysis through SQL and related technologies
- Development Operations / Site Reliability Engineering: configuration, administration, and operations and monitoring of cloud based service in AWS
- Product: user-centered product lifecycle and management, technical requirements definition and scoping, technical team leadership and performance management
- Data Science: understanding data needs, processing and integrating data, conducting data analysis
- All: agile development methodology experience, project management and source version control, accessibility, and cross-agency collaboration and partnership

1.2.2 PRODUCT BACKLOG / USER STORIES

This initial product backlog is not a binding document, but rather a representative sample of the user stories and functionality that is anticipated will be required to be delivered under this contract. These preliminary user stories are provided only for illustrative purposes, and do not comprise the full scope or detail of the project. They are not prioritized. The specific user stories will be identified through the agile development process.

The State expects that the Contractor will work closely with the State to perform user research, prepare user personas, and to develop and prioritize a full gamut of user stories as the project progresses. The State also expects that the Contractor will work closely with the State including Agencies and Departments, and end-users to perform usability testing at regular intervals throughout the development process.

Individual user stories may be modified, added, retracted, or reprioritized by the State at any time, and the State expects that the user stories will be continuously refined during the development process. Development and the backlog of user stories will be maintained in a software development system, or other systems as designated by the State.

UI Program: The illustrative set of user stories includes:

- As a UI claimant, I would like to file an initial benefits claim online or over the phone, to initiate the process of getting paid UI benefits
- As NJ DOL, I would like to validate the authenticity of a claimant, to limit and avoid fraudulent claims and erroneous payments
- As NJ DOL, I would like to simplify the process of cross-checking claimant-supplied information with employer-supplied records to reduce the time it takes to discover discrepancies
- As a UI claimant, I would like to get paid in a simple way, to limit undue burden on accessing benefits payments
- As NJ DOL, I would like an automated process to adjudicate claims, to ensure accurate information, reduce errors, and efficiently process claims
- As a UI claimant, I would like a simple way to re-certify my benefits with clear alerts and notifications, to avoid delay in payments due to missed certification windows or deadlines for submitting required information
- As NJ DOL, I would like a way to audit and monitor claim statuses individually and in aggregate, to monitor program health and detect potential cases of fraud
- As a UI claimant, I would like my benefits to resume at the end of the year as appropriate, to avoid interruption in payments
- As NJ DOL, I would like a way to refer cases for appeal and record the appeals decisions status
- As an employer, I would like a seamless way to remain in compliance with the State with regards to my unemployment insurance obligations

WE Program: The illustrative set of user stories includes:

- Career Mapping:
    - As Chris (an individual seeking to kick-start their professional career), I want to identify the types of entry-level positions in my desired field of work that will allow me to reach my long-term career goals.
    - As Chris, I want to understand the competencies, education, and experience required to advance in my career so that I can invest in my development most effectively.
    - As Chris, I want to identify educational and training opportunities in New Jersey that I can pursue to launch and sustain my career.
- Training Exploration:

- As Ash (an individual seeking to obtain new skills and qualify for new job opportunities), I want to understand my return on investment for training programs, so that I know which training opportunity is the right one for my goals and experience.
- As Ash, I want to see job search and training recommendations, so that I know which direction I can take my job search in.
- As Ash, I want to know more information about the quality of training providers, so that I know which providers are performing the best and worth pursuing.

1.3 QUESTION AND ANSWER PERIOD

The Using Agency will electronically accept questions and inquiries from all potential Bidders.

A. Questions should be directly tied to the RFQ and asked in consecutive order, from beginning to end, following the organization of the RFQ; and

B. Each question should begin by referencing the RFQ page number and section number to which it relates.

A Bidder shall submit questions only to the Using Agency designee at Agile-bid@dol.nj.gov in writing. The Using Agency will not accept any question in person or by telephone concerning this RFQ.

The cut-off date for electronic questions and inquiries relating to this RFQ is indicated on the RFQ cover sheet. In the event that questions are posed by Bidders, answers to such questions will be issued by Addendum. Any Addendum to this RFQ will become part of this RFQ and part of any Contract awarded as a result of this RFQ. Addenda to this RFQ, if any, will be posted to the Using Agency's website.

1.3.1 SUBMISSION OF QUOTES

In order to be considered for award, the Quote must be received by the Using Agency at the designated time and place.

QUOTES NOT RECEIVED PRIOR TO THE QUOTE OPENING DEADLINE SHALL BE REJECTED. THE DATE AND TIME OF THE QUOTE OPENING IS INDICATED ON THE RFQ COVER SHEET.

IF THE QUOTE OPENING DEADLINE HAS BEEN REVISED, THE NEW QUOTE OPENING DEADLINE SHALL BE SHOWN ON THE POSTED ADDENDUM.

The following information is provided as a convenience. See Section 4.0 (Quote Preparation and Submission – Requirements of the Bidder) for full details.

All quote submissions must include the following:

- Technical Submission inclusive of
  - Program Preference(s) (optional template provided with RFQ),
  - Technical Proposal,
  - Staffing Plan, and
  - Similar Experience Submission
- Completed State-Supplied Price Sheet (template provided with RFQ)
- Ownership Disclosure Form
- If applicable, Subcontractor Utilization Form

- State of New Jersey Security Due Diligence Third-Party Information Security Questionnaire including Confidentiality/Non-Disclosure Agreement (template provided with RFQ)

It is recommended that quote submissions include the following, which may otherwise be requested:

- Copy of GSA Schedule 70 Contract Document(s)
- Confidentiality and Commitment to Defend Form (template provided with RFQ)
- Offer and Acceptance Page
- If applicable, Joint Venture agreement between parties

For efficiency, submissions may include the following, which may otherwise be requested:

- Business Registration
- Disclosure of Investigations and Other Actions Involving Bidder Form
- Disclosure of Investment Activities in Iran Form
- Source Disclosure Form
- Certificate(s) of Insurance
- Chapter 51 Certification (see Division's website for additional details)
- Affirmative Action Compliance/Report (see Division's website for additional details)

Note: In the case of a Joint Venture, authorized signatories from each party comprising the Joint Venture must sign the Offer and Acceptance Page. Each party to the Joint Venture must individually comply with all the forms and certification requirements of this RFQ. In the case of a Joint Venture, all parties of the Joint Venture must have an active GSA contract under the designated SIN (see section 1.1).

1.4 ADDITIONAL INFORMATION

1.4.1 BIDDER RESPONSIBILITY

The Bidder assumes sole responsibility for the complete effort required in submitting a Quote in response to this RFQ. No special consideration will be given after Quotes are opened because of a Bidder's failure to be knowledgeable as to all of the requirements of this RFQ.

1.4.2 COST LIABILITY

The State assumes no responsibility and bears no liability for costs incurred by a Bidder in the preparation and submittal of a Quote in response to this RFQ.

1.4.3 CONTENTS OF QUOTE

Quotes can be released to the public pursuant to N.J.A.C. 17:12-1.2(b) and (c), or under the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1.1 et seq., or the common law right to know.

After the opening of sealed Quotes, including Quotes submitted electronically, all information submitted by a Bidder in response to a RFQ is considered public information notwithstanding any disclaimers to the contrary submitted by a Bidder. Proprietary, financial, security and confidential information may be exempt from public disclosure by OPRA and/or the common law when the Bidder has a good faith legal/factual basis for such assertion.

When the RFQ contains a negotiation component, the Quote will not be subject to public disclosure until a notice of intent to award a Contract is announced.

As part of its Quote, a Bidder may designate any data or materials it asserts are exempt from public disclosure under OPRA and/or the common law, explaining the basis for such assertion. Vendor {Bidder} must provide a detailed statement clearly identifying those sections of the Quote that it claims are exempt from production, and the legal and factual basis that supports said exemption(s) as a matter of law. The State will not honor any attempts by a Vendor {Bidder} to designate its entire Quote as proprietary, confidential and/or to claim copyright protection for its entire Quote.

The State reserves the right to make the determination as to what is proprietary or confidential, and will advise the Vendor {Bidder} accordingly. Any proprietary and/or confidential information in a Quote will be redacted by the State. Copyright law does not prohibit access to a record which is otherwise available under OPRA.

In the event of any challenge to the Vendor's {Bidder's} assertion of confidentiality with which the State does not concur, the Vendor {Bidder} shall be solely responsible for defending its designation, but in doing so, all costs and expenses associated therewith shall be the responsibility of the Vendor {Bidder}. The State assumes no such responsibility or liability.

A Vendor {Bidder} shall not designate any price lists and/or catalogs submitted as exempt from public disclosure as the same must be accessible to State Using Agencies and Cooperative Purchasing Program participants (if the Bid Solicitation has been extended to these participants) and thus must be made public to allow all eligible purchasing entities access to the pricing information.

In order not to delay consideration of the Quote or the State's response to a request for documents, the State requires that Vendor {Bidder} respond to any request regarding confidentiality markings within the timeframe designated in the State's correspondence regarding confidentiality. If no response is received by the designated date and time, the State will be permitted to release a copy of the Quote with the State making the determination regarding what may be proprietary or confidential.

1.4.4 ELECTRONIC SIGNATURES

Bidders submitting Quotes electronically may sign the forms required with the Quote, or required before Contract award, by electronically by typing the name of the authorized signatory in the "Signature" block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form.

2.0 DEFINITIONS

2.1 CROSSWALK

The following definitions will be part of any Contract awarded or order placed as a result of this RFQ.

When this Contract is awarded in the State of New Jersey's eProcurement system, ***NJSTART***, the ***NJSTART*** terminology listed below will be used

NJSTART **Term**	**Equivalent Existing New Jersey Term**
Bid/Bid Solicitation	RFQ/Solicitation
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order (Blanket P.O.)	Contract
Offer and Acceptance Page	Signatory Page
Vendor	Bidder/Contractor/Offeror

2.2 GENERAL DEFINITIONS

All-Inclusive Hourly Rate – An hourly rate comprised of all direct and indirect costs including, but not limited to: labor costs, overhead, fee or profit, clerical support, travel expenses, per diem, safety equipment, materials, supplies, managerial support and all documents, forms, and reproductions thereof. This rate also includes portal-to-portal expenses as well as per diem expenses such as food.

Addendum – Written clarification or revision to this RFQ issued by the Using Agency. Bid Amendments, if any, will be issued prior to Quote opening due date.

Bidder – An entity offering a Quote in response to the Using Agency's RFQ.

Business Day - Any weekday, excluding Saturdays, Sundays, State legal holidays, and State-mandated closings unless otherwise indicated.

Calendar Day – Any day, including Saturdays, Sundays, State legal holidays, and State-mandated closings unless otherwise indicated.

Change Order – An amendment, alteration or modification of the terms of a Contract between the State and the Contractor(s). A Change Order is not effective until it is signed and approved in writing by the Director or Deputy Director, Division of Purchase and Property.

Contract – The Contract consists of the State of NJ Standard Terms and Conditions (SSTC), the RFQ, the responsive Quote submitted by a responsible Bidder as accepted by the State, the notice of award, any subsequent written document memorializing the agreement, any modifications to any of these documents approved by the State and any attachments, Bid Amendment or other supporting documents, or post-award documents including Change Orders agreed to by the State and the Contractor, in writing.

Contractor – The Bidder awarded a Contract resulting from this RFQ.

Days After Receipt of Order (ARO) - The number of calendar days 'After Receipt of Order' in which the Using Agency will receive the ordered materials and/or services.

Director – Director, Division of Purchase and Property, Department of the Treasury, who by statutory authority is the Chief Contracting Officer for the State of New Jersey.

Discount - The standard price reduction applied by the Bidder / Contractor to all items.

Division – The Division of Purchase and Property.

Evaluation Committee – A committee established or Using Agency staff member assigned by the Director to review and evaluate Quotes submitted in response to this RFQ and recommend a Contract award to the Director.

Firm Fixed Price – A price that is all-inclusive of direct cost and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs.

May – Denotes that which is permissible or recommended, not mandatory.

Must – Denotes that which is a mandatory requirement.

No Bid – The Bidder is not submitting a price Quote for an item on a price line.

No Charge – The Bidder will supply an item on a price line free of charge.

Project – The undertakings or services that are the subject of this RFQ.

QRGs – Quick Reference Guides.

Quote – Bidder's timely response to the RFQ including, but not limited to, technical Quote, price Quote, and any licenses, forms, certifications, or other documentation required by the RFQ.

Request For Quotes (RFQ) – This series of documents, which establish the bidding and contract requirements and solicits Quotes to meet the needs of the Using Agencies as identified herein, and includes the RFQ, State of NJ Standard Terms and Conditions (SSTC), price schedule, attachments, and Bid Amendments.

Shall – Denotes that which is a mandatory requirement.

Should – Denotes that which is permissible or recommended, not mandatory.

Small Business – Pursuant to N.J.A.C. 17:13-1.2, "small business" means a business that meets the requirements and definitions of "small business" and has applied for and been approved by the New Jersey Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit as (i) independently owned and operated, (ii) incorporated or registered in and has its principal place of business in the State of New Jersey; (iii) has 100 or fewer full-time employees; and has gross revenues falling in one (1) of the three (3) following categories: For goods and services - (A) 0 to $500,000 (Category I); (B) $500,001 to $5,000,000 (Category II); and (C) $5,000,001 to $12,000,000, or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher (Category III); For construction services: (A) 0 to $3,000,000 (Category IV); (B) gross revenues that do not exceed 50 percent of the applicable annual revenue standards established at 13 CFR 121.201 (Category V); and (C) gross revenues that do not exceed the applicable annual revenue standards established at CFR 121.201, (Category VI).

State – The State of New Jersey.

State Contract Manager (SCM) – The individual, as set forth in Section 8.0, responsible for the approval of all deliverables, i.e., tasks, sub-tasks or other work elements in the Scope of Work. The SCM cannot direct or approve a Change Order.

State-Supplied Price Sheet – the bidding document created by the State and attached to this RFQ on which the Bidder submits it proposal pricing as is referenced and described in RFQ Section 4.1.4.

Subtasks – Detailed activities that comprise the actual performance of a task.

Subcontractor – An entity having an arrangement with a Contractor, whereby the Contractor uses the products and/or services of that entity to fulfill some of its obligations under its State Contract, while retaining full responsibility for the performance of all the Contractor's obligations under the Contract, including payment to the Subcontractor. The Subcontractor has no legal relationship with the State, only with the Contractor.

Task – A discrete unit of work to be performed.

Unit Cost – All-inclusive, firm fixed price charged by the Bidder for a single unit identified on a price line.

2.3 CONTRACT -SPECIFIC DEFINITIONS/ACRONYMS

NOT APPLICABLE FOR THIS RFQ.

3.0 SCOPE OF WORK – REQUIREMENTS OF THE CONTRACTOR

3.1 TECHNICAL DETAILS

3.1.1 WORKING PRINCIPLES

The Contractor shall follow practices described in the "Digital Services Playbook" (https://playbook.cio.gov) and Digital Service Best Practices (Attachment A, Section 3.1.17.1). Using the Digital Services Playbook, the Contractor will operate with a **user-centered agile delivery process** – learning from research and prototypes, using that knowledge to iteratively design, build, and maintain digital applications, services, and features for New Jerseyans, State staff and partners, and iteratively launching those applications, features, and supporting processes continuously.

The Contractor shall:

1. Follow the practices described in the "Digital Services Playbook" (https://playbook.cio.gov). The Contractor shall be familiar with the concepts in each play and implement them in their solutions and support.
2. Incorporate Agile methodology and iteration ceremonies into all work, such as (but not limited to) sprint planning, daily scrum, sprint review, sprint retrospective, backlog grooming, and estimating activities.
3. Incorporate best practices for modern user research and usability testing into all solutions.
4. Actively involve users in the design of all solutions.
5. Maintain a consistent look, feel, and voice across products.
6. When possible and appropriate, re-use existing components.
7. Whenever possible, personalize solutions for the individual using the service.
8. Protect user information with best-in-class security, given the constraints of the environment.
9. Incorporate robust accessibility principles into design, development and testing for all products to deliver high-quality digital experiences to users of assistive devices.
10. Design, develop, configure, customize, deploy, and operate these solutions.
11. Use DevOps techniques of continuous integration and continuous deployment across all environments including, at a minimum, development, staging, and production.
12. Deliver secure, scalable, and tested modern web application designs using automated testing frameworks to create unit tests, integration tests, and functional/black box tests (or their equivalents as applicable) to test 100% of functionality delivered. The Contractor should strive for compliance with Test Driven Development practices.
13. Ensure configuration and sensitive data, including data defined as sensitive, are not present in source code, and are stored in encrypted credential management systems.
14. Deliver all code not containing configuration or sensitive data to an open source repository on a continuous basis.
15. Support and enable the successful rollout and adoption of services.
16. Work across boundaries, including with other existing systems, applications, and teams, to ensure the delivery of the projects and services.
17. Contribute to and/or integrate with common shared services that support the delivery of the project and the State's ability to provide consistent services.
18. Support the growth and development of State team members.
19. Ensure the State is equipped to continue to develop, operate, and maintain solution(s) beyond the length of the Contract.

20. Participate in the New Jersey Office of Information Technology's System Architecture Review along with State Agency Staff (https://nj.gov/it/whatwedo/sar/)
21. Cultivate positive, trusting, and cooperative partnerships and working relationships with the State and all other vendors supporting this work.

3.1.2 APPLICABLE DOCUMENTS

The Contractor shall comply with the following documents in the performance of this effort:

1. US Digital Service Playbook (https://playbook.cio.gov)
2. United States Web Design Standards (https://designsystem.digital.gov) adapted for New Jersey (https://github.com/newjersey/njwds)
3. New Jersey Statewide Information Security Manual (https://www.cyber.nj.gov/NJ-Statewide-Information-Security-Manual.pdf)
4. State of New Jersey Accessibility Statement (https://www.nj.gov/nj/accessibility.html)

3.1.3 SPECIFIC TASKS AND DELIVERABLES

The Contractor shall perform the following:

3.1.4 BUILD NEW PRODUCTS AND CONTINUOUSLY IMPROVE EXISTING FUNCTIONALITY

At the direction of State, the Contractor shall build new products and continuously improve new and existing functionality. For each product to be developed or enhanced, the Contractor shall support agile product initiation, requirements refinement and design, development, testing, deployment, project management, and rollout. The State anticipates that the development support personnel will function as a collaborative, multi-disciplinary team including Product Managers, Engineers, Designers, and Quality Assurance Software Testers.

3.1.5 PRODUCT DEVELOPMENT

For all new and existing products, the Contractor shall use agile development and UX design methods to support product initiation; requirements refinement; human-centered research and design; development; testing; deployment; ongoing maintenance and bug fixes; and ongoing testing, evaluation, and enhancement. The Contractor is also expected to provide expert guidance on product direction and strategy. The Contractor will create and maintain documentation for all product activities, recommendations, and decisions.

The Contractor shall:

- Collaborate with State to determine which of the items in the current backlog should be implemented and when. List and prioritization of elements are subject to change at the direction of State.
- At the start of work on a new or existing product, conduct a product kick-off meeting with State and designated stakeholders.
- Facilitate discovery activities to include formative research with users and business stakeholders, an assessment of current related features, a content review, business process review; and collection of any available data and analytics.
- For new products, apply user research to define minimum viable product (MVP) functionality, including epics, user stories, interaction design, and information architecture, as well as operational, business, functional, technical, data, and integration requirements.

- Prepare and maintain a product plan and roadmap, to include epics, user stories, areas for improvement, recommended strategy, an assessment of level of effort and complexity, a plan for evaluation, and a plan for ongoing maintenance and enhancement for State review.
- Use a modular, API-first approach whenever appropriate and feasible.
- Determine if individual components of the solution could be solved via best-in-class, available third-party solutions rather than custom development.
- Upon request and as necessary, support the State in the evaluation of third-party solutions.
- Develop products using an agile, continuous integration and deployment methodology with the capability of multiple code releases per day in production.
- Commit all work to the designated code repository at least daily.
- Follow web application coding best practices as defined in Twelve-Factor App (https://12factor.net). Code shall be annotated and linted per industry-accepted standards for the given language or framework being used.
- Create, include, and track analytics for new and existing products that can support Key Performance Indicators (KPIs) defined by State or defined as acceptance criteria in user stories.
- Update any publicly available KPIs, analytics and outcome measures with launch information, and create and maintain a "one-sheet" with product information, e.g. KPIs, value proposition, and screen shots of key service features.
- Develop and execute a pre-launch checklist to mitigate risk.
- Develop a testing and quality assurance plan and provide test reports prior to any launch using approved agile development tools for all user stories and scripts and ensuring traceability for testing. The Contractor is responsible for creating automated test scripts, conducting all testing (including, but not limited to, unit, development, performance, security, Section 508, functional, and integration), and documenting the results in a test report.
    - Supplement automated testing with manual testing as required.
- Upon request, develop periodic reports for State leadership to demonstrate metrics of success. These reports will include slides, screenshots, etc. that are not limited to metrics dashboards and scorecard snapshots.
    - Upon request, produce other analytics reporting materials to support presentations to State leadership.
- Continually review products against established KPIs to ensure that services continue to meet stated goals and address user needs. The Contractor will notify the Product Owner (designated by State) if issues or anomalies arise following these reviews.
- Conduct usability tests on products released to the production environment to evaluate the holistic experience and identify areas for further improvement.
- Track and develop technical debt user stories for inclusion in the product backlog.
- Support custom integrations between products and existing systems.
- Ensure effective coordination and communication across team to enable product delivery.
- Provide the State with the necessary knowledge to operate, maintain, and expand developed systems.

3.1.6 DEVOPS

The Contractor shall continuously improve all new and existing products by conducting continual enhancements, bug fixes, monitoring, testing and evaluation, analytics, and support activities. The Contractor is also expected to provide expert guidance on engineering direction and strategy.

The Contractor shall:

- Ensure all code is tested at the unit, functional, and integrational level prior to release into the production environment.

- Set up monitoring and alerting for new and existing products to ensure compliance with industry-standard uptime numbers.
- Maintain multiple pre-production environments where products can be released.
- Maintain automated pipelines that execute unit, functional, and accessibility tests as part of the code review process.
- Maintain automated pipelines that deploy reviewed code to all environments.
- Develop regular reports for State leadership to demonstrate metrics of success including but not limited to SLAs, error rates, test coverage, operating status, and build quality. Upon request, produce other analytics reporting materials to support presentations to State leadership.
- Provide operational support to ensure the performance of the system meets agreed upon SLAs, including 24/7 support for critical issues. For example,
    - System impaired: < 24 hours
    - Production system impaired: < 4 hours
    - Production ~~system down~~outage: < 1 hour
    - Business-critical ~~system down~~outage: < 15 minutes

3.1.7 USER EXPERIENCE (UX)

The Contractor shall follow the value: “Design with users, not for them”. The Contractor shall approach design and user research activities as opportunities to learn from users and then quickly apply those learnings, such that new and existing products can be designed, built, and deployed in weeks (vs. months or years). The Contractor is also expected to provide expert guidance on user experience design direction and strategy. The Contractor will create and maintain documentation for all research and design activities, recommendations, and decisions.

The Contractor shall:

- Conduct user research on new and existing products throughout their development or enhancement lifecycle and iteratively apply insights gathered to inform design and development.
    - Conduct generative research studies to better understand user’s needs, context, and pain points.
    - Conduct iterative usability testing to inform the content, information architecture, design, and functionality of products.
    - Conduct user acceptance testing on products before releasing to production.
- Work with State to leverage existing recruiting for user research studies completed outside of this contract.
- Employ design process management by breaking designs into small, bite-sized implementations and collecting data from each deployment to inform priorities and decisions in the next iteration.
- Create and edit “plain language” content for products, as well as static web pages. Plain language is defined as “writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience” (plainlanguage.gov).
- Adhere to and support the development and maintenance of the content style guide, which specifies the writing style and tone across products. This includes conducting ongoing scans of content to ensure currency and consistency, and updating content in accordance with existing workflows and procedures.
- Craft, test, and deploy design deliverables, such as wireframes, low- and high-fidelity prototypes, or interactive web forms to facilitate usability testing and agile development of products.
- As appropriate, create and update prototypes to conduct facilitated demos or usability testing to elicit feedback for improvements to the design.

- Develop designs that adhere to the New Jersey design system, adapted from the U.S. Web Design System. If the Contractor determines a need for a new pattern, the Contractor shall collaborate with the State to design that pattern and include it in the design system.

3.1.8 DATA, ANALYTICS, AND PERFORMANCE MANAGEMENT

The Contractor shall establish a system for performance management to optimize program delivery and apply data analysis techniques to generate insights and inform decision making.

The Contractor shall:

- Implement or improve capabilities to use quantitative and qualitative methods to collect, validate, analyze, and display customer feedback and performance data to aid service improvement and decision-making.
- Develop and optimize KPIs to monitor performance and deliver continual improvement.
- Apply data science techniques and develop/use data models as necessary.
- Work alongside and/or integrate with other relevant data initiatives in the State as necessary.

3.1.9 ACCESSIBILITY

For all new and existing products, the Contractor shall ensure that they serve the needs of New Jerseyans with disabilities that may impact their access to digital tools. The Contractor is also expected to provide expert guidance on accessibility direction and strategy. The Contractor will create and maintain documentation for all related activities, recommendations, and decisions.

The Contractor shall:

- Ensure, through continued development and testing, that products are not only accessible, but are also easy for users to interact with using screen readers and other assistive technology.
- Design and build products that are accessible to the widest range of users and devices; all products and websites must be responsive and compliant with State Accessibility statement (https://www.nj.gov/nj/accessibility.html).
- Demonstrate how they will routinely evaluate all resources created and maintained for accessibility.
- Ensure all products are mobile-responsive.
- Ensure that all design/templates for products are viewable on any mobile device or web browser, with an exceptional experience on the leading ones.
- Provide expert guidance to determine which range of browsers and devices to target for testing.

3.1.10 OPEN SOURCE/REUSE

The Contractor is required to deliver any products, technical data, configurations, documentation or other information, including source code, during contract performance. The State shall receive Unlimited Rights in intellectual property first produced and delivered in the performance of this contract. This includes all rights to source code and any and all documentation created in support thereof.

The Contractor shall:

- Approach system design in an “out-of-the-box” manner, using native best practice approaches or preconfigured solutions drawn from the open source community where possible with a focus on minimizing system customization with written code.
- Adopt open-source licenses that enable the State to publish all components, source code, or software artifacts for reuse in an open source manner.
- Separate configuration and sensitive information from source code.
- Manage dependencies on other open source libraries and tools and provide recommendations to State for continued use or updates.
- Maintain a list of products’ open-source libraries and tools published by State that are available for reuse.
- Store source code, technical data, configurations, documentation in the State’s designated source control repository(s).

3.1.11 DATA MANAGEMENT AND SECURITY

The Contractor shall ensure the continual monitoring, compliance, and security for all new and existing products.

The Contractor shall:

- Provide technical documentation support for State security processes.
- Secure products in accordance with applicable system security policies and industry best-practices.
- Provide data, security, and Integration Architecture Diagrams.
- Create and maintain, data taxonomy of products to ensure maximal re-use of data elements, minimal information collection burden on end users, and ease of maintenance for State agencies and departments.

3.1.12 TRAINING AND ROLLOUT

The Contractor shall enable the successful rollout, use and adoption of services.

The Contractor shall:

- Develop training and rollout plans to support rollout of products, features, and functionality.
- Develop training materials and help content to be delivered via various mediums.
- Develop communication materials to enable the successful rollout and adoption of products.
- Conduct regular reviews of training materials and user-facing content to ensure that it is current and reflects the most recent product releases.
- Test training materials and content with users to validate clarity and effectiveness; update content as required based on user feedback.
- Facilitate, support, and/or lead training sessions to support staff in the adoption of products.
- As necessary, develop interim demo videos to share functionality of products with stakeholders.
- As necessary, ensure that training and/or support materials cover relevant information from other/legacy systems (e.g., support the transition from the legacy system to a new system, consider the end-to-end experience when processes involve both new and legacy systems)
- Coordinate with teams across State to ensure alignment of efforts with other teams who are involved in the rollout process.

3.1.13 TRANSITION SUPPORT

At the request of the State, the Contractor shall conduct analysis, create the strategy, and develop the plans and products needed to successfully transition the provision of services. The Contractor

shall develop and implement detailed transition strategies and processes needed to maintain continuity of operations and quality of service during the transition period. The Contractor shall develop and provide a Transition Plan for COR approval covering transition out activities. The Contractor shall then implement the detailed transition strategies and processes needed to enable an efficient transfer of products and services from the incumbent service provider to the new service provider or to State without disruption to ongoing services. During implementation of the Transition Plan, the Contractor shall:

1. Minimize transition impact to the user community.
2. Ensure no breaks in service availability.
3. Maintain existing service quality and performance levels.
4. Ensure a transparent and seamless transition.
5. Maintain support and meet delivery milestones of ongoing projects.
6. Minimize operations and maintenance (O&M) cost overlaps.
7. Ensure that the IT security posture during transition is maintained at current levels without creating gaps and/or vulnerabilities.
8. Ensure no service disruption or degradation during transition.

The Contractor shall ensure a seamless transition during the next successor's phase-in period. For planning purposes, the overall transition period shall not exceed 60 days. Transition of operational capabilities is to be completed within 60 days.

3.1.14 HELP DESK SUPPORT (OPTIONAL)

The technical support roles described in this section are separate from the development activities performed by the sprint team. While preferred, if the Bidder is unable to offer dedicated support specified in this section, they may not be disqualified, but should clarify this in the staffing plan.

Upon execution of this optional task at the request of the State, the Contractor shall provide help desk support for products and services developed under the scope of this contract. This help desk support will enable resolution of technical issues or challenges (e.g., navigation) of the platform. Support should be comprised of technician(s) experienced and knowledgeable about the product and can assist end-users to resolve problems. The technician(s) will be responsible for monitoring channels (e.g., phone, email, chat) and working directly with internal users, partners, and/or the public to diagnose, document and resolve issues.

The Contractor may be responsible for working with:

1. Development team
2. Department of Labor, who will engage Office of Information Technology if necessary
3. State colleagues
4. External partners
5. End-users

The Contractor shall:

1. Resolve issues by working with and being the primary point of contact for the impacted user(s)
2. Develop and use documentation to enable the issue(s) to be recreated for analysis and resolution
3. Partner and work with development team to inform them of issues that require escalation
4. Maintain high levels of customer satisfaction, including ensuring prompt and transparent updates are provided to the user(s)
5. Ensure user(s) are always connected with the appropriate support, even if not under the scope of the technician
6. Categorize and analyze issues encountered to identify overall user issues and trends.

The Contractor shall meet agreed-upon SLAs for issue response time.

3.1.15 PERFORMANCE METRICS

The table below defines the Performance Standards and Acceptable Levels of Performance associated with this effort.

Performance Objective	Performance Standard	Acceptable Levels of Performance
A. Technical / Quality of Product or Service	1. Shows understanding of requirements 2. Efficient and effective in meeting requirements 3. Meets technical needs and mission requirements 4. Services are accessible, including, but not limited to, meeting Section 508 compliance 5. Provides quality services/products 6. Maintains an excellent rating on help desk surveys (optional task order) 7. Meets agreed-upon operational and/or help desk support SLAs	Satisfactory or higher
B. Project Milestones and Schedule	1. Quick response capability 2. Products completed, reviewed, delivered in accordance with the established schedule 3. Notifies customer in advance of potential problems	Satisfactory or higher
C. Cost & Staffing	1. Currency of expertise and staffing levels appropriate 2. Personnel possess necessary knowledge, skills and abilities to perform tasks	Satisfactory or higher
D. Management	1. Integration and coordination of all activities to execute effort	Satisfactory or higher

The COR may utilize a Quality Assurance Surveillance Plan (QASP) throughout the life of the Contract to ensure that the Contractor is performing the services required by this SOW at an acceptable level of performance. The State reserves the right to alter or change the QASP at its own discretion. See Attachment B (Section 3.1.17.2) for Technical Performance Standards that augment Performance Objective A above.

A Performance Based Service Assessment may be used by the COR in accordance with the QASP to assess Contractor performance.

3.1.16 ADMINISTRATION

3.1.16.1 PLACE OF PERFORMANCE

Remote work is expected and may be the primary work location for contractor staff, provided the contractor staff is located in the United States. Contractor staff should be readily available 9a-5p ET. Contractor should also be able to maintain a rotating on-call schedule to respond to critical production issues.

3.1.16.2 COMMENCEMENT OF WORK

All Key Personnel and initial team members should be available to commence work within 60 days of award or provide a reasonable timeline for the commencement of work subject to approval by the State. The Contractor should specify the plan to start work in the Staffing Plan if unable to meet the 60 day timeframe.

3.1.16.3 EQUIPMENT

The State will not provide IT or other equipment. The Contractor is responsible for providing all necessary equipment, such as laptops.

3.1.16.4 PROJECT TOOLS AND SERVICES

The Contractor shall provide additional project tools and services as necessary and as determined in consultation with the Using Agency. Examples include, but are not limited to: content management tools, team collaboration and meeting tools, prototyping tools, user story development tools, and user feedback tools. Any tools and services purchased under this contract shall be considered Other Direct Costs (ODC), will be reimbursed on a Time & Materials basis via Pass-through Price Lines, and must be approved by the COR prior to purchase. No mark-up will be provided.

3.1.16.5 TRAVEL

Travel requires pre-approval from the Contracting Officer's Representative (COR).

Travel shall be considered Other Direct Costs (ODC) and reimbursed on a Time & Materials basis via Pass-through Price Lines in accordance with the terms of the Contractor's GSA Schedule(s) and requires advanced approval by the Contracting Officer's Representative (COR). Contractor travel within the local commuting area will not be reimbursed. No mark-up will be provided for Travel Expenses and Reimbursements.

3.1.16.6 KEY PERSONNEL

In the event that any individual designated as Key Personnel or individual filling Key Personnel role becomes unavailable during the course of the contract (inclusive of the base period and option periods), the Contractor agrees to fill the Key Personnel role in a reasonable amount of time (if feasible, without a coverage gap) with an individual who has appropriate experience in consultation with the State.

3.1.17 ATTACHMENTS

3.1.17.1 ATTACHMENT A: DIGITAL SERVICE BEST PRACTICES

Understand what users need

- Early in the product's development, participate in meetings with current and prospective users of the service
- Use a range of qualitative and quantitative research methods to determine people's goals, needs, and behaviors; be thoughtful about the time spent
- Test prototypes of solutions with real people, in the field if possible
- Document the findings about user goals, needs, behaviors, and preferences
- Share findings with others on the team and stakeholders
- Create a prioritized list of tasks the user is trying to accomplish, also known as "user stories"
- As the product is being built, regularly test it with potential users to ensure it meets people's needs
- Build feedback collection into the product and review feedback regularly

Address the whole user experience from start to finish

- Understand the different points at which people will interact with the products – both online and in person
- Identify pain points in the current way users perform their tasks, and prioritize these according to user needs
- Design the digital parts of the service so that they are integrated with the offline touch points people use to interact with the service such as letters or other correspondence.
- Develop metrics that will measure how well the service is meeting user needs at each step of the service
- Develop and support the creation of help content embedded within the product

Make it simple and intuitive

- Use a simple and flexible design style guide for the service. Use the NJ adaptation of the U.S. Web Design Standards as a default
- Use the design style guide consistently for related digital services
- Give users clear information about where they are in each step of the process
- Follow accessibility requirements to ensure all people can use the service
- Provide users with a way to exit and return later to complete the process
- Use language that is familiar to the user and easy to understand
- Use language and design consistently throughout the service, including online and offline touch points such as letters and other correspondence

Build the service using agile and iterative practices

- Ship functioning "minimum viable products" (MVP) that solves a core user need as soon as possible, no longer than one month from the beginning of an initiative, using a "beta" or "test" period if needed
- Run usability tests monthly, at a minimum, to see how well the service works and identify improvements that should be made
- Ensure the individuals building the service communicate closely using techniques such as launch meetings, war rooms, daily standups, and team chat tools
- Keep delivery teams small and focused
- Release features and improvements multiple times each month, if not a daily
- Use a modern source code version control system
- Give the entire product team access to product's repository
- Create a prioritized list of features and bugs in issue tracker, also known as the "feature backlog" and "bug backlog"

- Use small code reviews to ensure quality. Every line of code submitted to the product's repository shall be reviewed by at least one other qualified person and merged in by a party other than the person who wrote it

Assign one leader and hold that person accountable

- A product owner shall be identified for each product
- The product owner has the authority to assign tasks and make decisions about features and technical implementation details in consultation with the State
- The product owner shall have a product management background with technical experience to assess alternatives and weigh tradeoffs
- The product owner shall maintain and update the product's work plan
- The product owner shall work closely with key stakeholders

Bring in experienced teams

- Member(s) of the team shall have experience building popular, high-traffic digital services that support 100,000 users at a minimum
- Member(s) of the team shall have experience designing mobile and web applications such as iOS, Android, HTML5
- Member(s) of the team shall have experience using automated testing frameworks
- Member(s) of the team shall have experience with modern development and operations (DevOps) techniques like continuous integration and continuous deployment

Use a modern technology stack

- The team shall use software frameworks that are commonly used by private-sector companies creating similar services
- Whenever appropriate, the team shall ensure that software can be deployed on a variety of commodity hardware types
- The team shall ensure that each project has clear, understandable instructions for setting up a local development environment documented in the repository, and that team members can be quickly added or removed from projects
- The team shall consider open source software solutions at every layer of the stack

Deploy in a flexible hosting environment

- Resources shall be provisioned on demand
- Resources shall scale based on real-time user demand
- Resources shall be provisioned through an API
- Resources shall be available in multiple regions
- The team shall only pay for resources they use
- Static assets shall be served through a content delivery network
- Application shall be hosted on commodity infrastructure

Automate testing and deployments

- Create automated tests that verify all user-facing functionality, including 508-compliance
- Create unit and integration tests to verify modules and components
- Run tests automatically as part of the build process
- Perform deployments automatically with deployment scripts, continuous delivery
- services, or similar techniques
- Conduct load and performance tests at regular intervals, including before public launch

Manage security and privacy through reusable processes

- Contact the appropriate privacy or security expert at the State to determine if a privacy or security review should be conducted

- Determine, in consultation with the State, what data is collected and why, how it is used or shared, how it is stored and secured, and how long it is kept
- Determine, in consultation with the State, whether and how users are notified about how personal information is collected and used, including whether a privacy policy is needed and where it should appear, and how users will be notified in the event of a security breach
- Consider whether the user should be able to access, delete, or remove their information from the service
- Use deployment scripts to ensure configuration of production environment remains consistent and controllable

Use data to drive decisions

- Monitor system-level resource utilization in real time
- Monitor system performance in real-time (e.g. response time, latency, throughput, and error rates)
- Ensure monitoring can measure median, 95th percentile, and 98th percentile performance
- Create automated alerts based on this monitoring
- Track concurrent users in real-time, and monitor user behaviors in the aggregate to determine how well the service meets user needs
- Publish metrics internally
- Publish metrics externally
- Use an experimentation tool that supports multivariate testing in production

Default to open

- Offer users a mechanism to report bugs and issues, and be responsive to these reports
- When appropriate, make data available through bulk downloads and APIs (application programming interfaces)
- Whenever possible, ensure that code from the service is explicitly made available as open source
- Catalog data in the agency's enterprise data inventory and add any public datasets to the agency's public data listing
- Ensure that the State maintains the rights to all data developed by third parties in a manner that is releasable and reusable at no cost to the public
- Ensure that the State maintains contractual rights to all custom software developed by third parties in a manner that is publishable and reusable at no cost
- When appropriate, create an API for third parties and internal users to interact with the service directly
- When appropriate, publish source code of projects or components online
- When appropriate, share your development process and progress publicly

3.1.17.2 ATTACHMENT B: TECHNICAL PERFORMANCE STANDARDS

The following chart sets forth more detailed performance standards and quality levels the code and documentation provided by the Contractor must meet and the methods the State will use to assess the standard and quality levels of that code and documentation unless otherwise specified by the State.

Deliverable	Performance Standard(s)	Acceptable Quality Level	Method of Assessment

Tested Code	Code delivered under the order must have substantial test code coverage. Version-controlled repository of code that comprises the product that will remain in the State domain.	Minimum of 90% test coverage of all code. All areas of code are meaningfully tested.	Combination of manual review and automated testing
Properly Styled Code	GSA 18F Front- End Guide or similar best-practice based front-end style guide	0 linting errors and 0 warnings	Combination of manual review and automated testing
Accessible	Web Content Accessibility Guidelines 2.1 AA standards; State Accessibility Statement	0 errors reported using an automated scanner and 0 errors reported in manual testing	Combination of manual review and automated testing; (https://github.com/pa11y/pa11y)
Deployed	Code must successfully build and deploy into staging environment.	Successful build with a single command	Combination of manual review and automated testing

Documented	All dependencies are listed and the licenses are documented. Major functionality in the software/source code is documented. Individual methods are documented inline in a format that permit the use of tools such as JSDoc. System diagram is provided.	Combination of manual review and automated testing, if available	Manual review
Secure	OWASP Application Security Verification Standard 3.0	Code submitted must be free of medium- and high-level static and dynamic security vulnerabilities	Clean tests from a static testing SaaS (such as Snyk, npm audit, or similar) and from OWASP ZAP, along with documentation explaining any false positives

User research	Usability testing and other user research methods must be conducted at regular intervals throughout the development process (not just at the beginning or end).	Research plans and artifacts from usability testing and/or other research methods with end users are available at the end of every applicable sprint, in accordance with the Contractor's research plan.	State will manually evaluate the artifacts based on a research plan provided by the Contractor at the end of the second sprint and every applicable sprint thereafter.

3.2 SECURITY AND PRIVACY

3.2.1.1 SECURITY PLAN

The Vendor {Contractor} shall submit a detailed Security Plan that addresses the Vendor's {Contractor's} approach to meeting each applicable security requirement outlined below, to the State, no later than 30 days after the award of the Blanket P.O. The State approval of the Security Plan shall be set forth in writing. In the event that the State reasonably rejects the Security Plan after providing the Vendor {Contractor} an opportunity to cure, the Director may terminate the Blanket P.O. pursuant to the SSTC.

3.2.2 INFORMATION SECURITY PROGRAM MANAGEMENT

The Vendor {Contractor} shall establish and maintain a framework to provide assurance that information security strategies are aligned with and support the State's business objectives, are consistent with applicable laws and regulations through adherence to policies and internal controls, and provide assignment of responsibility, in an effort to manage risk. Information security program management shall include, at a minimum, the following:

A. Establishment of a management structure with clear reporting paths and explicit responsibility for information security;
B. Creation, maintenance, and communication of information security policies, standards, procedures, and guidelines to include the control areas listed in sections below;
C. Development and maintenance of relationships with external organizations to stay abreast of current and emerging security issues and for assistance, when applicable; and
D. Independent review of the effectiveness of the Vendor's {Contractor's} information security program.

3.2.3 COMPLIANCE

The Vendor {Contractor} shall develop and implement processes to ensure its compliance with all statutory, regulatory, contractual, and internal policy obligations applicable to this Blanket P.O. Examples include but are not limited to General Data Protection Regulation (GDPR), Payment Card Industry Data Security Standard (PCI DSS), Health Insurance Portability and Accountability Act of 1996 (HIPAA), IRS-1075. Vendor {Contractor} shall timely update its processes as applicable standards evolve.

A. Within ten (10) days after award, the Vendor {Contractor} shall provide the State with contact information for the individual or individuals responsible for maintaining a control framework that captures statutory, regulatory, contractual, and policy requirements relevant to the organization's programs of work and information systems;
B. Throughout the solution development process, Vendor {Contractor} shall implement processes to ensure security assessments of information systems are conducted for all significant development and/or acquisitions, prior to information systems being placed into production; and
C. The Vendor {Contractor} shall also conduct periodic reviews of its information systems on a defined frequency for compliance with statutory, regulatory, and contractual requirements. The Vendor {Contractor} shall document the results of any such reviews.

3.2.4 PERSONNEL SECURITY

The Vendor {Contractor} shall implement processes to ensure all personnel having access to relevant State information have the appropriate background, skills, and training to perform their job responsibilities in a competent, professional, and secure manner. Workforce security controls shall include, at a minimum:

A. Position descriptions that include appropriate language regarding each role's security requirements;
B. To the extent permitted by law, employment screening checks are conducted and successfully passed for all personnel prior to beginning work or being granted access to information assets;
C. Rules of behavior are established and procedures are implemented to ensure personnel are aware of and understand usage policies applicable to information and information systems;
D. Access reviews are conducted upon personnel transfers and promotions to ensure access levels are appropriate;
E. Vendor {Contractor} disables system access for terminated personnel and collects all organization owned assets prior to the individual's departure; and
F. Procedures are implemented that ensure all personnel are aware of their duty to protect information assets and their responsibility to immediately report any suspected information security incidents.

3.2.5 SECURITY AWARENESS AND TRAINING

The Vendor {Contractor} shall provide periodic and on-going information security awareness and training to ensure personnel are aware of information security risks and threats, understand their responsibilities, and are aware of the statutory, regulatory, contractual, and policy requirements that are intended to protect information systems and State Confidential Information from a loss of confidentiality, integrity, availability and privacy. Security awareness and training shall include, at a minimum:

A. Personnel are provided with security awareness training upon hire and at least annually, thereafter;
B. Security awareness training records are maintained as part of the personnel record;

C. Role-based security training is provided to personnel with respect to their duties or responsibilities (e.g. network and systems administrators require specific security training in accordance with their job functions); and
D. Individuals are provided with timely information regarding emerging threats, best practices, and new policies, laws, and regulations related to information security.

3.2.6 RISK MANAGEMENT

The Vendor {Contractor} shall establish requirements for the identification, assessment, and treatment of information security risks to operations, information, and/or information systems. Risk management requirements shall include, at a minimum:

A. An approach that categorizes systems and information based on their criticality and sensitivity;
B. An approach that ensures risks are identified, documented and assigned to appropriate personnel for assessment and treatment;
C. Risk assessments shall be conducted throughout the lifecycles of information systems to identify, quantify, and prioritize risks against operational and control objectives and to design, implement, and exercise controls that provide reasonable assurance that security objectives will be met; and
D. A plan under which risks are mitigated to an acceptable level and remediation actions are prioritized based on risk criteria and timelines for remediation are established. Risk treatment may also include the acceptance or transfer of risk.

3.2.7 PRIVACY

If the State data associated with the Blanket P.O. includes PII, State Confidential Information, this section is applicable.

A. Data Ownership. The State is the data owner. Vendor {Contractor} shall not obtain any right, title, or interest in any of the data furnished by the State, or information derived from or based on State data.

B. Data usage, storage, and protection of PII and State Confidential Information, as defined in Section 5.9 are subject to all applicable international, federal and state statutory and regulatory requirements, as amended from time to time, including, without limitation, those for HIPAA, Tax Information Security Guidelines for Federal, State, and Local Agencies (IRS Publication 1075), New Jersey State tax confidentiality statute, the New Jersey Privacy Notice found at NJ.gov, N.J.S.A. § 54:50-8, New Jersey Identity Theft Prevention Act, N.J.S.A. § 56:11-44 et. seq., the federal Drivers' Privacy Protection Act of 1994, Pub.L.103-322, and the confidentiality requirements of N.J.S.A. § 39:2-3.4. Vendor {Contractor} shall also conform to PCI DSS, where applicable.

C. Security: Vendor {Contractor} agrees to take appropriate administrative, technical and physical safeguards reasonably designed to protect the security, privacy, confidentiality, and integrity of user information. Vendor {Contractor} shall ensure that PII and other State Confidential Information is secured and encrypted during transmission or at rest.

D. Data Transmission: The Vendor {Contractor} shall only transmit or exchange State of New Jersey data with other parties when expressly requested in writing and permitted by and in accordance with requirements of the Blanket P.O. or the State of New Jersey. The Vendor {Contractor} shall only transmit or exchange data with the State of New Jersey or other parties through secure means supported by current technologies. The Vendor {Contractor} shall encrypt all PII and other State Confidential Information as defined by the State of New

Jersey or applicable law, regulation or standard during any transmission or exchange of that data.

E. Data Re-Use: All State data shall be used expressly and solely for the purposes enumerated in the Blanket P.O. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Vendor {Contractor}. No State data of any kind shall be transmitted, exchanged or otherwise passed to other contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the State Contract Manager.

F. Data Breach: In the event of any actual, probable or reasonably suspected breach of security, or any unauthorized access to or acquisition, use, loss, destruction, compromise, alteration or disclosure of any PII (each, a security breach) that may concern any State Confidential Information or PII, Vendor {Contractor} shall: (a) immediately notify the State of such breach, but in no event later than 24 hours after learning of such security breach; (b) designate a single individual employed by Vendor {Contractor} who shall be available to the State 24 hours per day, seven (7) days per week as a contact regarding Vendor's {Contractor's} obligations under Section 3.2 (Incident Response); (c) not provide any other notification or provide any disclosure to the public regarding such security breach without the prior written consent of the State, unless required to provide such notification or to make such disclosure pursuant to any applicable law, regulation, rule, order, court order, judgment, decree, ordinance, mandate or other request or requirement now or hereafter in effect, of any applicable governmental authority or law enforcement agency in any jurisdiction worldwide (in which case Vendor {Contractor} shall consult with the State and reasonably cooperate with the State to prevent any notification or disclosure concerning any PII, security breach, or other State Confidential Information); (d) assist the State in investigating, remedying and taking any other action the State deems necessary regarding any security breach and any dispute, inquiry, or claim that concerns the security breach; (e) follow all instructions provided by the State relating to the State Confidential Information affected or potentially affected by the security breach; (f) take such actions as necessary to prevent future security breaches; and (g) unless prohibited by an applicable statute or court order, notify the State of any third party legal process relating to any security breach including, at a minimum, any legal process initiated by any governmental entity (foreign or domestic).

G. Minimum Necessary. Vendor {Contractor} shall ensure that PII and other State Confidential Information requested represents the minimum necessary information for the services as described in this Bid Solicitation and, unless otherwise agreed to in writing by the State, that only necessary individuals or entities who are familiar with and bound by the Blanket P.O. will have access to the State Confidential Information in order to perform the work.

H. End of Contract Data Handling: Upon termination/expiration of this Blanket P.O. the Vendor {Contractor} shall first return all State data to the State in a usable format as defined in the Blanket P.O., or in an open standards machine-readable format if not. The Vendor {Contractor} shall then erase, destroy, and render unreadable all Vendor {Contractor} back up copies of State data according to the standards enumerated in accordance with the State's most recent Media Protection policy, https://www.nj.gov/it/docs/ps/NJ_Statewide_Information_Security_Manual.pdf, and certify in writing that these actions have been completed within 30 days after the termination/expiration of the Blanket P.O. or within seven (7) days of the request of an agent of the State whichever should come first.

I. In the event of loss of any State data or records where such loss is due to the intentional act, omission, or negligence of the Vendor {Contractor} or any of its subcontractors or

agents, the Vendor {Contractor} shall be responsible for recreating such lost data in the manner and on the schedule set by the State Contract Manager. The Vendor {Contractor} shall ensure that all data is backed up and is recoverable by the Vendor {Contractor}. In accordance with prevailing federal or state law or regulations, the Vendor {Contractor} shall report the loss of non-public data.

3.2.8 ASSET MANAGEMENT

The Vendor {Contractor} shall implement administrative, technical, and physical controls necessary to safeguard information technology assets from threats to their confidentiality, integrity, or availability, whether internal or external, deliberate or accidental. Asset management controls shall include at a minimum:

A. Information technology asset identification and inventory;
B. Assigning custodianship of assets; and
C. Restricting the use of non-authorized devices.

3.2.9 SECURITY CATEGORIZATION

The Vendor {Contractor} shall implement processes that classify information and categorize information systems throughout their lifecycles according to their sensitivity and criticality, along with the risks and impact in the event that there is a loss of confidentiality, integrity, availability, or breach of privacy. Information classification and system categorization includes labeling and handling requirements. Security categorization controls shall include the following, at a minimum:

A. Implementing a data protection policy;
B. Classifying data and information systems in accordance with their sensitivity and criticality;
C. Masking sensitive data that is displayed or printed; and
D. Implementing handling and labeling procedures.

3.2.10 MEDIA PROTECTION

The Vendor {Contractor} shall establish controls to ensure data and information, in all forms and mediums, are protected throughout their lifecycles based on their sensitivity, value, and criticality, and the impact that a loss of confidentiality, integrity, availability, and privacy would have on the Vendor {Contractor}, business partners, or individuals. Media protections shall include, at a minimum:

A. Media storage/access/transportation;
B. Maintenance of sensitive data inventories;
C. Application of cryptographic protections;
D. Restricting the use of portable storage devices;
E. Establishing records retention requirements in accordance with business objectives and statutory and regulatory obligations; and
F. Media disposal/sanitization.

3.2.11 CRYPTOGRAPHIC PROTECTIONS

The Vendor {Contractor} shall employ cryptographic safeguards to protect sensitive information in transmission, in use, and at rest, from a loss of confidentiality, unauthorized access, or disclosure. Cryptographic protections shall include at a minimum:

A. Using industry standard encryption algorithms;
B. Establishing requirements for encryption of data in transit;
C. Establishing requirements for encryption of data at rest; and

D. Implementing cryptographic key management processes and controls.

3.2.12 ACCESS MANAGEMENT

The Vendor {Contractor} shall establish security requirements and ensure appropriate mechanisms are provided for the control, administration, and tracking of access to, and the use of, the Vendor's {Contractor's} information systems that contain or could be used to access State data. Access management plan shall include the following features:

A. Ensure the principle of least privilege is applied for specific duties and information systems (including specific functions, ports, protocols, and services), so processes operate at privilege levels no higher than necessary to accomplish required organizational missions and/or functions;
B. Implement account management processes for registration, updates, changes and de-provisioning of system access;
C. Apply the principles of least privilege when provisioning access to organizational assets;
D. Provision access according to an individual's role and business requirements for such access;
E. Implement the concept of segregation of duties by disseminating tasks and associated privileges for specific sensitive duties among multiple people;
F. Conduct periodic reviews of access authorizations and controls.

3.2.13 IDENTITY AND AUTHENTICATION

The Vendor {Contractor} shall establish procedures and implement identification, authorization, and authentication controls to ensure only authorized individuals, systems, and processes can access the State's information and Vendor's {Contractor's} information and information systems. Identity and authentication provides a level of assurance that individuals who log into a system are who they say they are. Identity and authentication controls shall include, at a minimum:

A. Establishing and managing unique identifiers (e.g. User-IDs) and secure authenticators (e.g. passwords, biometrics, personal identification numbers, etc.) to support nonrepudiation of activities by users or processes; and
B. Implementing multi-factor authentication (MFA) requirements for access to sensitive and critical systems, and for remote access to the Vendor's {Contractor's} systems.

3.2.14 REMOTE ACCESS

The Vendor {Contractor} shall strictly control remote access to the Vendor's {Contractor's} internal networks, systems, applications, and services. Appropriate authorizations and technical security controls shall be implemented prior to remote access being established. Remote access controls shall include at a minimum:

A. Establishing centralized management of the Vendor's {Contractor's} remote access infrastructure;
B. Implementing technical security controls (e.g. encryption, multi-factor authentication, IP whitelisting, geo-fencing); and
C. Training users in regard to information security risks and best practices related remote access use.

3.2.15 SECURITY ENGINEERING AND ARCHITECTURE

The Vendor {Contractor} shall employ security engineering and architecture principles for all information technology assets, and such principles shall incorporate industry recognized leading

security practices and sufficiently address applicable statutory and regulatory obligations. Applying security engineering and architecture principles shall include:

A. Implementing configuration standards that are consistent with industry-accepted system hardening standards and address known security vulnerabilities for all system components;
B. Establishing a defense in-depth security posture that includes layered technical, administrative, and physical controls;
C. Incorporating security requirements into the systems throughout their life cycles;
D. Delineating physical and logical security boundaries;
E. Tailoring security controls to meet organizational and operational needs;
F. Performing threat modeling to identify use cases, threat agents, attack vectors, and attack patterns as well as compensating controls and design patterns needed to mitigate risk;
G. Implementing controls and procedures to ensure critical systems fail-secure and fail-safe in known states; and
H. Ensuring information system clock synchronization.

3.2.16 CONFIGURATION MANAGEMENT

The Vendor {Contractor} shall ensure that baseline configuration settings are established and maintained in order to protect the confidentiality, integrity, and availability of all information technology assets. Secure configuration management shall include, at a minimum:

A. Hardening systems through baseline configurations; and
B. Configuring systems in accordance with the principle of least privilege to ensure processes operate at privilege levels no higher than necessary to accomplish required functions.

3.2.17 ENDPOINT SECURITY

The Vendor {Contractor} shall ensure that endpoint devices are properly configured, and measures are implemented to protect information and information systems from a loss of confidentiality, integrity, and availability. Endpoint security shall include, at a minimum:

A. Maintaining an accurate and updated inventory of endpoint devices;
B. Applying security categorizations and implementing appropriate and effective safeguards on endpoints;
C. Maintaining currency with operating system and software updates and patches;
D. Establishing physical and logical access controls;
E. Applying data protection measures (e.g. cryptographic protections);
F. Implementing anti-malware software, host-based firewalls, and port and device controls;
G. Implementing host intrusion detection and prevention systems (HIDS/HIPS) where applicable;
H. Restricting access and/or use of ports and I/O devices; and
I. Ensuring audit logging is implemented and logs are reviewed on a continuous basis.

3.2.18 ICS/SCADA/OT SECURITY

The Vendor {Contractor} shall implement controls and processes to ensure risks, including risks to human safety, are accounted for and managed in the use of Industrial Control Systems (ICS), Supervisory Control and Data Acquisition (SCADA) systems and Operational Technologies (OT). ICS/SCADA/OT Security requires the application of all of the enumerated control areas in this Bid Solicitation, including, at a minimum:

A. Conducting risk assessments prior to implementation and throughout the lifecycles of ICS/SCADA/OT assets;
B. Developing policies and standards specific to ICS/SCADA/OT assets;

C. Ensuring the secure configuration of ICS/SCADA/OT assets;
D. Segmenting ICS/SCADA/OT networks from the rest of the Vendor's {Contractor's} networks;
E. Ensuring least privilege and strong authentication controls are implemented
F. Implementing redundant designs or failover capabilities to prevent business disruption or physical damage; and
G. Conducting regular maintenance on ICS/SCADA/OT systems.

3.2.19 INTERNET OF THINGS SECURITY

The Vendor {Contractor} shall implement controls and processes to ensure risks are accounted for and managed in the use of Internet of Things (IoT) devices including, but not limited to, physical devices, vehicles, appliances and other items embedded with electronics, software, sensors, actuators, and network connectivity which enables these devices to connect and exchange data. IoT. IoT security shall include, at a minimum, the following:

A. Developing policies and standards specific to IoT assets;
B. Ensuring the secure configuration of IoT assets;
C. Conducting risk assessments prior to implementation and throughout the lifecycles of IoT assets;
D. Segmenting IoT networks from the rest of the Vendor's {Contractor's} networks; and
E. Ensuring least privilege and strong authentication controls are implemented.

3.2.20 MOBILE DEVICE SECURITY

The Vendor {Contractor} shall establish administrative, technical, and physical security controls required to effectively manage the risks introduced by mobile devices used for organizational business purposes. Mobile device security shall include, at a minimum, the following:

A. Establishing requirements for authorization to use mobile devices for organizational business purposes;
B. Establishing Bring Your Own Device (BYOD) processes and restrictions;
C. Establishing physical and logical access controls;
D. Implementing network access restrictions for mobile devices;
E. Implementing mobile device management solutions to provide centralized management of mobile devices and to ensure technical security controls (e.g. encryption, authentication, remote-wipe, etc.) are implemented and updated as necessary;
F. Establishing approved application stores from which applications can be acquired;
G. Establishing lists approved applications that can be used; and
H. Training of mobile device users regarding security and safety.

3.2.21 NETWORK SECURITY

The Vendor {Contractor} shall implement defense-in-depth and least privilege strategies for securing the information technology networks that it operates. To ensure information technology resources are available to authorized network clients and protected from unauthorized access, the Vendor {Contractor} shall:

A. Include protection mechanisms for network communications and infrastructure (e.g. layered defenses, denial of service protection, encryption for data in transit, etc.);
B. Include protection mechanisms for network boundaries (e.g. limit network access points, implement firewalls, use Internet proxies, restrict split tunneling, etc.);
C. Control the flow of information (e.g. deny traffic by default/allow by exception, implement Access Control Lists, etc.); and

D. Control access to the Vendor's {Contractor's} information systems (e.g. network segmentation, network intrusion detection and prevention systems, wireless restrictions, etc.).

3.2.22 CLOUD SECURITY

The Vendor {Contractor} shall establish security requirements that govern the use of private, public, and hybrid cloud environments to ensure risks associated with a potential loss of confidentiality, integrity, availability, and privacy are managed. This shall ensure, at a minimum, the following:

A. Security is accounted for in the acquisition and development of cloud services;
B. The design, configuration, and implementation of cloud-based applications, infrastructure and system-system interfaces are conducted in accordance with mutually agreed-upon service, security, and capacity-level expectations;
C. Security roles and responsibilities for the Vendor {Contractor} and the cloud provider are delineated and documented; and
D. Controls necessary to protect sensitive data in public cloud environments are implemented.

3.2.23 CHANGE MANAGEMENT

The Vendor {Contractor} shall establish controls required to ensure change is managed effectively. Changes are appropriately tested, validated, and documented before implementing any change on a production network. Change management provides the Vendor {Contractor} with the ability to handle changes in a controlled, predictable, and repeatable manner, and to identify, assess, and minimize the risks to operations and security. Change management controls shall include, at a minimum, the following:

A. Notifying all stakeholder of changes;
B. Conducting a security impact analysis and testing for changes prior to rollout; and
C. Verifying security functionality after the changes have been made.

3.2.24 MAINTENANCE

The Vendor {Contractor} shall implement processes and controls to ensure that information assets are properly maintained, thereby minimizing the risks from emerging information security threats and/or the potential loss of confidentiality, integrity, or availability due to system failures. Maintenance security shall include, at a minimum, the following:

A. Conducting scheduled and timely maintenance;
B. Ensuring individuals conducting maintenance operations are qualified and trustworthy; and
C. Vetting, escorting and monitoring third-parties conducting maintenance operations on information technology assets.

3.2.25 THREAT MANAGEMENT

The Vendor {Contractor} shall establish effective communication protocols and proceesses to collect and disseminate actionable threat intelligence, thereby providing component units and individuals with the information necessary to effectively manage risk associated with new and emerging threats to the organization's information technology assets and operations. Threat management includes, at a minimum:

A. Developing, implementing, and governing processes and documentation to facilitate the implementation of a threat awareness policy, as well as associated standards, controls and procedures.

B. Subscribing to and receiving relevant threat intelligence information from the US CERT, the organization's vendors, and other sources as appropriate.

3.2.26 VULNERABILITY AND PATCH MANAGEMENT

The Vendor {Contractor} shall implement proactive vulnerability identification, remediation, and patch management practices to minimize the risk of a loss of confidentiality, integrity, and availability of information system, networks, components, and applications. Vulnerability and patch management practices shall include, at a minimum, the following:

A. Prioritizing vulnerability scanning and remediation activities based on the criticality and security categorization of systems and information, and the risks associated with a loss of confidentiality, integrity, availability, and/or privacy;
B. Maintaining software and operating systems at the latest vendor-supported patch levels;
C. Conducting penetration testing and red team exercises; and
D. Employing qualified third-parties to periodically conduct Independent vulnerability scanning, penetration testing, and red-team exercises.

3.2.27 CONTINUOUS MONITORING

The Vendor {Contractor} shall implement continuous monitoring practices to establish and maintain situational awareness regarding potential threats to the confidentiality, integrity, availability, privacy and safety of information and information systems through timely collection and review of security-related event logs. Continuous monitoring practices shall include, at a minimum, the following:

A. Centralizing the collection and monitoring of event logs;
B. Ensuring the content of audit records includes all relevant security event information;
C. Protecting of audit records from tampering; and
D. Detecting, investigating, and responding to incidents discovered through monitoring.

3.2.28 SYSTEM DEVELOPMENT AND ACQUISITION

The Vendor {Contractor} shall establish security requirements necessary to ensure that systems and application software programs developed by the Vendor {Contractor} or third-parties (e.g. vendors, contractors, etc.) perform as intended to maintain information confidentiality, integrity, and availability, and the privacy and safety of individuals. System development and acquisition security practices shall include, at a minimum, the following:

A. Secure coding;
B. Separation of development, testing, and operational environments;
C. Information input restrictions;
D. Input data validation;
E. Error handling;
F. Security testing throughout development;
G. Restrictions for access to program source code; and
H. Security training of software developers and system implementers.

3.2.29 PROJECT AND RESOURCE MANAGEMENT

The Vendor {Contractor} shall ensure that controls necessary to appropriately manage risks are accounted for and implemented throughout the System Development Life Cycle (SDLC). Project and resource management security practices shall include, at a minimum:

A. Defining and implementing security requirements;

B. Allocating resources required to protect systems and information; and
C. Ensuring security requirements are accounted for throughout the SDLC.

3.2.30 CAPACITY AND PERFORMANCE MANAGEMENT

The Vendor {Contractor} shall implement processes and controls necessary to protect against avoidable impacts to operations by proactively managing the capacity and performance of its critical technologies and supporting infrastructure. Capacity and performance management practices shall include, at a minimum, the following:

A. Ensuring the availability, quality, and adequate capacity of compute, storage, memory and network resources are planned, prepared, and measured to deliver the required system performance and future capacity requirements; and
B. Implementing resource priority controls to prevent or limit Denial of Service (DoS) effectiveness.

3.2.31 THIRD PARTY MANAGEMENT

The Vendor {Contractor} shall implement processes and controls to ensure that risks associated with third-parties (e.g. vendors, contractors, business partners, etc.) providing information technology equipment, software, and/or services are minimized or avoided. Third party management processes and controls shall include, at a minimum:

A. Tailored acquisition strategies, contracting tools, and procurement methods for the purchase of systems, system components, or system service from suppliers;
B. Due diligence security reviews of suppliers and third parties with access to the Vendor's {Contractor's} systems and sensitive information;
C. Third party interconnection security; and
D. Independent testing and security assessments of supplier technologies and supplier organizations.

3.2.32 PHYSICAL AND ENVIRONMENTAL SECURITY

The Vendor {Contractor} shall establish physical and environmental protection procedures that limit access to systems, equipment, and the respective operating environments, to only authorized individuals. The Vendor {Contractor} ensures appropriate environmental controls in facilities containing information systems and assets, to ensure sufficient environmental conditions exist to avoid preventable hardware failures and service interruptions. Physical and environmental controls shall include, at a minimum, the following:

A. Physical access controls (e.g. locks, security gates and guards, etc.);
B. Visitor controls;
C. Security monitoring and auditing of physical access;
D. Emergency shutoff;
E. Emergency power;
F. Emergency lighting;
G. Fire protection;
H. Temperature and humidity controls;
I. Water damage protection; and
J. Delivery and removal of information assets controls.

3.2.33 CONTINGENCY PLANNING

The Vendor {Contractor} shall develop, implement, test, and maintain a contingency plan to ensure continuity of operations for all information systems that deliver or support essential or critical business functions on behalf of the Vendor {Contractor}. The plan shall address the following:

A. Backup and recovery strategies;
B. Continuity of operations;
C. Disaster recovery; and
D. Crisis management.

3.2.34 INCIDENT RESPONSE

The Vendor {Contractor} shall maintain an information security incident response capability that includes adequate preparation, detection, analysis, containment, recovery, and reporting activities. Information security incident response activities shall include, at a minimum, the following:

A. Information security incident reporting awareness;
B. Incident response planning and handling;
C. Establishment of an incident response team;
D. Cybersecurity insurance;
E. Contracts with external incident response services specialists; and
F. Contacts with law enforcement cybersecurity units.

4.0 QUOTE PREPARATION AND SUBMISSION – REQUIREMENTS OF THE BIDDER

Failure to submit information as indicated below may result in your Quote being deemed non-responsive.

4.1 GENERAL

A Bidder may submit additional terms as part of its Quote and Quotes including Bidder proposed terms and conditions may be accepted, but Bidder proposed terms or conditions that conflict with those contained in the RFQ as defined in Section 2.0, or that diminish the State's rights under any Contract resulting from the RFQ, may render a Quote non-responsive. It is incumbent upon the Bidder to identify and remove its conflicting proposed terms and conditions prior to Quote submission.

After award of the Contract, if a conflict arises between a Bidder's additional terms included in the Quote and a term or condition of the RFQ, the term or condition of the RFQ will prevail.

The forms discussed herein and required for submission of a Quote in response to this RFQ are available on the Division's website unless noted otherwise.

4.1.1 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED

Bidders are under a continuing obligation to report updates to the information contained in its required forms.

4.1.1.1 OFFER AND ACCEPTANCE PAGE

The Bidder shall complete and submit the Offer and Acceptance Page accompanying this RFQ prior to the initiation of negotiation. The Bidder should submit the Offer and Acceptance Page with the Quote.

If the Offer and Acceptance Page is not submitted with the Quote or is incomplete, the Using Agency will require the Bidder to submit the Offer and Acceptance Page. If the Bidder fails to comply with the requirement within seven (7) business days of the demand, the Using Agency may deem the Quote non-responsive.

The Offer and Acceptance Page must be signed by an authorized representative of the Bidder. If the Bidder is a limited partnership, the Offer and Acceptance Page must be signed by a general partner.

4.1.1.1.1 MACBRIDE PRINCIPLES CERTIFICATION

The Bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it is in compliance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of its compliance with those principles. See Section 2.5 of the SSTC and N.J.S.A. 52:34-12.2 for additional information about the MacBride principles.

By signing the RFQ Offer and Acceptance Page, the Bidder is automatically certifying that either:

A. The Bidder has no operations in Northern Ireland; or

B. The Bidder has business operations in Northern Ireland and is committed to compliance with the MacBride principles.

A Bidder electing not to certify to the MacBride Principles must nonetheless sign the RFQ Offer and Acceptance Page AND must include, as part of its Quote, a statement indicating its refusal to comply with the provisions of this Act.

4.1.1.1.2 NON-COLLUSION

By submitting a Quote and signing the RFQ Offer and Acceptance Page, the Bidder certifies as follows:

A. The price(s) and amount of its Quote have been arrived at independently and without consultation, communication or agreement with any other Contractor / Bidder or any other party;

B. Neither the price(s) nor the amount of its Quote, and neither the approximate price(s) nor approximate amount of this Quote, have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before the Quote submission;

C. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this Contract, or to submit a Quote higher than this Quote, or to submit any intentionally high or noncompetitive Quote or other form of complementary Quote;

D. The Quote of the firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Quote; and

E. The Bidder, its affiliates, subsidiaries, officers, directors, and employees are not, to the Bidder's knowledge, currently under investigation by any governmental agency for alleged conspiracy or collusion with respect to bidding on any public Contract and have not in the last five (5) years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public Contract.

4.1.1.1.3 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION

The Treasurer has established a business ethics guide to be followed by Bidders / Contractors in its dealings with the State. The guide provides further information about compliance with Section 2.7 of the SSTC. The guide can be found at: https://www.state.nj.us/treasury/purchase/ethics.shtml

By signing the RFQ Offer and Acceptance Page, the Bidder is automatically certifying that it has complied with all applicable laws and regulations governing the provision of State goods and services, including the Conflicts of Interest Law, N.J.S.A. 52:13D-12 to 28.

4.1.1.2 STANDARD FORMS REQUIRED WITH THE QUOTE

Bidder's failure to complete, sign and submit the forms in Section 4.1.1.2 shall be cause to reject its Quote as non-responsive.

4.1.1.2.1 OWNERSHIP DISCLOSURE FORM

Pursuant to N.J.S.A. 52:25-24.2, in the event the Bidder is a corporation, partnership or limited liability company, the Bidder must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote. A Bidder's failure to submit the completed and signed form with its Quote will

result in the rejection of the Quote as non-responsive and preclude the award of a Contract to said Bidder unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote.

In the alternative, to comply with this section, a Bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

The Ownership Disclosure Form located on the Division's website.

4.1.1.3 SUBCONTRACTOR UTILIZATION PLAN

Bidders intending to use a Subcontractor shall submit a Subcontractor Utilization Plan form and should indicate whether any proposed Subcontractor is a Small Business.

As defined at N.J.A.C. 17:13-1.2, "Small Business" means a business that is incorporated or registered in and has its principal place of business in the State of New Jersey, is independently owned and operated, and has no more than 100 full-time employees. The program places small business into the following categories:

For goods and services - (i) those with gross revenues not exceeding $500,000; (ii) those with gross revenues not exceeding $5,000,000; and (iii) those with gross revenues that do not exceed $12,000,000 or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher. While companies registered as having revenues below $500,000 can bid on any Contract, those earning more than the $500,000 and $5,000,000 amounts will not be permitted to bid on Contracts designated for revenue classifications below its respective levels.

For construction services: (iv) those with gross revenues not exceeding $3,000,000; (v) those with gross revenues that do not exceed 50 percent of the applicable annual revenue standards established at 13 CFR 121.201; and (vi) those with gross revenues that do not exceed the applicable annual revenue standards established at CFR 121.201. While companies registered as having revenues below $3,000,000 can bid on any Contract, those earning more than the revenue standards established at CFR 121.201 will not be permitted to bid on Contracts designated for revenue classifications below their respective levels.

The Subcontractor Utilization Plan form is located on the Division's website.

For a Quote that does NOT include the use of any Subcontractors, by signing the RFQ Offer and Acceptance Page, the Bidder is *automatically* certifying that in the event the award is granted to the Bidder, and the Bidder later determines at any time during the term of the Contract to engage Subcontractors to provide certain goods and/or services, pursuant to Section 5.8 of the SSTC, the Bidder shall submit a Subcontractor Utilization Plan form for approval to the Division in advance of any such engagement of Subcontractors.

4.1.2 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED BEFORE CONTRACT AWARD AND THAT SHOULD BE SUBMITTED WITH THE QUOTE

Unless otherwise specified, forms must contain an original, physical signature, or an electronic signature.

4.1.2.1 BUSINESS REGISTRATION

In accordance with N.J.S.A. 52:32-44(b), a Bidder and its named Subcontractors must have a valid Business Registration Certificate ("BRC") issued by the Department of the Treasury, Division of Revenue and Enterprise Services prior to the award of a Contract. To facilitate the Quote evaluation and Contract award process, the Bidder should submit a copy of its valid BRC and those of any named Subcontractors with its Quote. See Section 2.1 of the SSTC.

Any Bidder, inclusive of any named Subcontractors, not having a valid business registration at the time of the Quote opening, or whose BRC was revoked prior to the submission of the Quote, should proceed immediately to register its business or seek reinstatement of a revoked BRC.

The Bidder is cautioned that it may require a significant amount of time to secure the reinstatement of a revoked BRC. The process can require actions by both the Division of Revenue and Enterprise Services and the Division of Taxation. For this reason, a Bidder's early attention to this requirement is highly recommended. The Bidder and its named Subcontractors may register with the Division of Revenue and Enterprise Services, obtain a copy of an existing BRC or obtain information necessary to seek re-instatement of a revoked BRC online at http://www.state.nj.us/treasury/revenue/busregcert.shtml.

A Bidder otherwise identified by the Division as a responsive and responsible Bidder, inclusive of any named Subcontractors, but that was not business registered at the time of submission of its Quote must be so registered and in possession of a valid BRC by a deadline to be specified in writing by the Division. A Bidder failing to comply with this requirement by the deadline specified by the Division will be deemed ineligible for Contract award. Under any circumstance, the Division will rely upon information available from computerized systems maintained by the State as a basis to verify independently compliance with the requirement for business registration.

A Bidder receiving a Contract award as a result of this procurement and any Subcontractors named by that Bidder will be required to maintain a valid business registration with the Division of Revenue and Enterprise Services for the duration of the executed Contract, inclusive of any Contract extensions.

4.1.2.2 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS INVOLVING BIDDER FORM

The Bidder should submit the Disclosure of Investigations and Other Actions Involving Bidder Form, with its Quote, to provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If a Bidder does not submit the form with the Quote, the Bidder must comply within seven (7) business days of the State's request or the State may deem the Quote non-responsive.

The Disclosure of Investigations and Other Actions Involving Bidder Form located on the Division's website.

4.1.2.3 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

Pursuant to N.J.S.A. 52:32-58, the Bidder must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Bidder, nor one (1) of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Bidder, nor one (1) of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Bidder is unable to so certify, the Bidder shall provide a detailed and precise description of such activities as directed on the form. A Bidder must complete and submit the form prior to award.

The Disclosure of Investment Activities in Iran form located on the Division's website.

4.1.2.4 SOURCE DISCLOSURE

Pursuant to N.J.S.A. 52:34-13.2, prior to an award of Contract, the Bidder is required to submit a completed Source Disclosure Form. The Bidder's inclusion of the completed Source Disclosure Form with the Quote is requested and advised. See RFQ Section 7.1.2 for additional information concerning this requirement.

The Source Disclosure Form is located on the Division's website.

4.1.3 FINANCIAL CAPABILITY OF THE BIDDER

The Bidder should provide sufficient financial information to enable the State to assess the financial strength and creditworthiness of the Bidder and its ability to undertake and successfully complete the Contract. In order to provide the State with the ability to evaluate the Bidder's financial capacity and capability to undertake and successfully complete the Contract, the Bidder should submit the following:

(i) For publically traded companies the Bidder should provide copies or the electronic location of the annual reports filed for the two most recent years; or

(ii) For privately held companies the Bidder should provide the certified financial statement (audited or reviewed) in accordance with applicable standards by an independent Certified Public Accountant which include a balance sheet, income statement, and statement of cash flow, and all applicable notes for the most recent calendar year or the Bidder's most recent fiscal year.

If the information is not supplied with the Quote, the State may still require the Bidder to submit it. If the Bidder fails to comply with the request within seven (7) business days, the State may deem the Quote non-responsive.

A Bidder may designate specific financial information as not subject to disclosure when the Bidder has a good faith legal/factual basis for such assertion. A Bidder may submit specific financial documents in a separate, sealed package clearly marked "Confidential-Financial Information" along with the Quote.

The State reserves the right to make the determination to accept the assertion and shall so advise the Bidder.

4.1.4 STATE-SUPPLIED PRICE SHEET

The Bidder must submit its pricing using the State-Supplied Price Sheet accompanying this RFQ.

4.1.4.1 STATE-SUPPLIED PRICE SHEET INSTRUCTIONS

Where the State-Supplied Price Sheet includes an estimate quantity column, Bidders are advised that estimated quantities may vary throughout the Contract term resulting from this RFQ. There is no guaranteed minimum or maximum volume for these price lines.

Please see section 4.2.2.5 (Price Submission) for State-Supplied Price Sheet Instructions.

4.1.4.2 DELIVERY TIME AND COSTS

Unless otherwise noted elsewhere in the RFQ, all delivery times are 30 calendar days after receipt of order (ARO) and prices for items in Quotes shall be submitted Freight On Board (F.O.B.) Destination (30 calendar days ARO/F.O.B.). Quotes submitted other than 30 calendar days ARO/F.O.B. may be deemed non-responsive. The Contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's Using Agency or designated purchaser. 30 calendar days ARO/F.O.B. does not cover "spotting" but does include delivery on the receiving platform of the Using Agency at any destination in the State of New Jersey unless otherwise specified.

No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at the Contractor’s convenience when a single shipment is ordered.

The weights and measures of the State's Using Agency receiving the shipment shall govern.

4.1.4.3 COLLECT ON DELIVERY (C.O.D.) TERMS

C.O.D. terms are not acceptable as part of a Quote and shall be deemed non-responsive.

4.1.4.4 CASH DISCOUNTS

The Bidder is encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the price rankings of Quotes.

Should the Bidder choose to offer cash discounts the following shall apply:

A. Discount periods shall be calculated starting from the next business day after the Using Agency has accepted the goods or services, received a properly signed and executed invoice and, when required, a properly executed performance security, whichever is latest; and

B. The date on the check issued by the State in payment of that invoice shall be deemed the date of the State's response to that invoice.

4.2 REQUIRED COMPONENTS OF THE QUOTE

4.2.1 OVERVIEW OF SECURITY PLAN AND STANDARDS

The Bidder shall complete and submit the State of New Jersey Security Due Diligence Third-Party Information Security Questionnaire (Questionnaire) with its Quote as per Section 4.2. This Questionnaire is designed to provide the State with an overview of the Bidder’s security and privacy controls to meet the State of New Jersey’s objectives as outlined and documented in the Statewide

Information Security Manual and compliance with the State's security requirements as outlined in Section 3.

The State has executed a Confidentiality/Non-Disclosure Agreement which is attached to the Questionnaire. The Bidder must countersign the Confidentiality/Non-Disclosure Agreement and include it with its submitted Questionnaire. No amendments to Confidentiality/Non-Disclosure Agreement are permitted.

To the extent permissible under the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1.1 , the New Jersey common law right to know, and any other lawful document request or subpoena, the completed Questionnaire and supplemental documentation provided by the Bidder will be kept confidential and not shared with the public or other Bidders. Please see RFQ Section 5.8.

4.2.2 TECHNICAL SUBMISSION

Technical submissions should consist of the following:

- the Programs (i.e., UI Program and/or WE Program) the Bidder seeks to be considered for and, if applicable, the Bidder's ranked preference of the Programs
- a technical proposal of no more than ~~four (4)~~ five (5) pages in PDF Format
- a staffing plan of no more than three (3) pages in PDF Format, and
    - Resumes for each Key Personnel
    - Signed letters of intent to participate (if applicable)
- a similar experience overview of no more than three (3) pages, and
    - Up to ten (10) pages of supporting artifacts from these prior experience(s) such as user research plans, design artifacts, and post-mortem reports
    - Two (2) source code repositories

Written materials should be submitted using 11-point type.

Failure to provide all requested information may impact the score of the proposal. Failure to submit any required materials may make the submission non-responsive.

4.2.2.1 PROGRAM PREFERENCE

The Bidder must indicate the Program(s) (i.e., UI Program and/or WE Program) that it chooses to be considered for award. The Bidder may select one Program or both Programs and should specify the ordered preference.

The Bidder may use the provided UI + WE Program Preference worksheet to indicate which Program(s) the Bidder chooses to be considered for award and the Bidder's ordered preference. This additional worksheet is not included in the page limitations.

4.2.2.2 TECHNICAL PROPOSAL

The Written Technical Proposal should be limited to ~~4~~ five (5) pages, excluding the cover page and table of contents, in PDF Format.

Within the Written Technical Proposal, the Bidder should provide a recommended approach that it would intend to follow to build the solution(s) described in Section 1. The approach should provide, at minimum, details regarding the following:

1. Product Management and Development methodology, including partnering with business stakeholders.
2. Software engineering approach.
~~2.~~3. DevOps and system operations.
~~3.~~4. Design, inclusive of user research, content, visual design, and feedback.
~~4.~~5. Software testing, security, and accessibility.
~~5.~~6. Partnering with State team members including Program and technical staff to enable them to deliver effectively and to ensure the long-term success of the Program.
~~6.~~7. If applicable, any differences that the Bidder anticipates between the two Programs.

4.2.2.3 STAFFING PLAN

The Staffing Plan should be limited to 3 pages, excluding resumes and signed letters of intent to participate. The Staffing Plan should set forth the Bidder's proposed approach to staffing the requirements of this project, and should cover the following:

1. Identify the proposed full-time Product Management, Technical, and Design Leads by name as Key Personnel.
    a. The State anticipates that Bidders will submit the same Key Personnel for either Program. However, in the event the Bidder decides to specify different Key Personnel for the different Programs, it must indicate in the Staffing Plan, including the names and resumes of the individuals assigned to each Program.
2. Set forth the extent to which the proposed team for this project was involved in the development of the case studies and other work referenced in the proposal.
3. Include one-page resumes for all Key Personnel (excluded from page limit), which include a brief description of the experience and capability for each individual.
4. For each Program (i.e., UI Program and/or WE Program) the Bidder is competing, provide a recommended base team staffing plan for the team beyond the Key Personnel up to the budget described in Section 1.1.1. This recommendation should include, at minimum, additional roles, labor categories, and estimated hours (e.g., full-time) that would enable this program to be successful and supported. The staffing plan may include and describe the experience of additional individuals who are expected to support this Contract. The price submission estimates full-time at 1,880 hours/year (3,760 hours during the 2-year base period). Any deviations expected should be noted.
5. Explain the Bidder's ability to meet the needs of the Contract beyond the specified budget, if necessary, including expanded product talent and technical support expertise.
6. Specify plans to fully commence work within 60 days of award. If unable to commence work within 60 days of award, specify the proposed timeline for commencing work as soon as possible thereafter.
7. Bidders proposing Key Personnel who are not currently employed by the Bidder or a teaming partner should include a signed letter of intent from the individual(s) proposed as Key Personnel stating that the individual(s) intends to participate in this project for at least one (1) year.
8. The staffing plan should also include a description of the Bidder's plans, if any, to provide services through a Joint Venture, teaming partner, or subcontractors.
    a. If the Bidder plans to provide services with subcontractor(s), the Bidder should also complete the Subcontractor Utilization Plan Form.
    b. If a Joint Venture is submitting a Quote, the agreement between the parties relating to such Joint Venture should be submitted with the Joint Venture's Quote. Authorized signatories from each party comprising the Joint Venture must sign the Offer and Acceptance Page. Each party to the Joint Venture must individually comply with all the forms and certification requirements of this RFQ. In the case of a Joint Venture, all parties of the Joint Venture must have an active GSA contract under the

designated SIN (see section 1.1). In the case of a Joint Venture, the Bidder should also specify how the Joint Venture parties will ensure efficient coordination.

The Bidder may also attach a copy of its GSA Schedule 70 Contract document containing details regarding its GSA labor categories (e.g., the rates, descriptions, title, functional responsibility, experience level). This attachment does not count against the page limit.

4.2.2.4 SIMILAR EXPERIENCE OVERVIEW AND WORK SAMPLES

Bidders should provide a listing of no more than 5 projects that have been recently completed or are currently being completed by the Contractor (and/or proposed subcontractors who will be responsible for at least 30% of its proposed price) and displays expertise and experience in similar scenarios (e.g., similar technology stack, similar methodology, similar to ~5-20 person delivery team responsible for public-facing, mission-critical service in use by hundreds of thousands or millions of diverse users) as detailed by this RFQ. Work performed by any proposed subcontractors should be clearly labeled.

Projects may include work completed for government and/or commercial clients. Bidders are strongly encouraged to submit projects that demonstrate the capability to perform multiple tasks from the SOW and to share at least one project serving a government client. While not required, and secondary to the factors above, Bidders are also encouraged to submit projects that display expertise in the domain (e.g., unemployment insurance modernization, streamlining access to benefits), if available.

For each project, the Bidder should include the following information:

1. Client organization name
2. Client industry or level of government
3. Brief description of project including problem statement and solution
4. Budget (including total contract value and amount allocated to Bidder)
5. Period of performance
6. Bidder's role, including number of individuals and roles staffed on project
7. If applicable, Key Personnel from this project that would be assigned to this Contract
8. Key goals and outcomes
9. Technology stack
10. Summary of delivery methodology

The total listing should not exceed three (3) pages.

In addition to the above, the Bidder should provide up to ten (10) pages total (across all projects) of supporting artifacts (e.g., user research plans, product materials, design artifacts, post-mortem reports) from these prior experience(s) to demonstrate their capacity to perform the requirements in this RFQ and approaches described in the Written Technical Approach. Included in this page limit, Bidders may submit a post-mortem report created for this RFQ up to two (2) pages in length that is related to these prior experience(s). The post-mortem report should outline the issues resolved, how the issue(s) were found, the root cause analysis conducted, and how the issue(s) were addressed. Except for this post-mortem report, artifacts should not be created for this RFQ.

In addition to the above, the Bidder should provide two (2) source code repositories. Repositories should include revision history and relevant documentation. It is recommended that the Bidder use the git bundle command to pack each code repository into a single file that is provided with the submission. Email messages (including attachments) exceeding 25MB may not be received. Bidders may send multiple emails, if necessary. It is recommended that attached file(s) be sent as zipped attachment(s) due to file attachment limitations of the email system. Any information needed to access and review the file(s)/data should be provided with the submission.

If the Bidder prefers, the source code samples may be provided via a public facing repository - the link to which must be provided in the submission documents. Any additional information, like a password or username, necessary to gain access to the repository, must also be provided with the link. In the event the source code is hosted in a private GitHub repository, the Bidder must provide access to the following username: NewJerseyBot. As a reminder, even if the Bidder provides access to one or more private repositories, the link(s) to these repositories should still be provided in the written materials submitted to the State. The third-party repository site must enable the State to download and save the materials. The State encourages Bidders to submit a copy of repository(s) via email as a backup to any links provided in the event the State is unable to access the link(s).

The Bidder should also include all repository links in the cover page of the proposal.

Artifacts may be anonymized as needed to protect PII, PHI, or other proprietary data, but should still demonstrate the vendor's expertise as it relates to the RFQ. As a reminder, all submitted information, including private repositories, is subject to the terms in section 1.4.3.

4.2.2.5 PRICE SUBMISSION

The Bidder must submit hourly rates and the Bidder's estimate of the total cost to the State for the services required for the base ~~year~~ period of work on this project inclusive of all roles deemed necessary to complete the scope of work as described in this RFQ.

To set forth the price submission, the Bidder must complete the provided Price Submission Spreadsheet. Please note there are multiple tabs in this spreadsheet.

The first tab ("Base ~~Year~~ Period Proposed Team") consists of the forecasted amounts for the proposed team in the base ~~year~~ period of the contract. This should include the full-time Key Personnel designated by the Bidder in this proposal. Additionally, for each Program that the Bidder is competing for, the Bidder should include additional team member(s), estimated hours/year, and rates for how to staff the team in the base ~~year~~ period in accordance with the ~~team size~~budget specified in section 1.1.1. The Bidder may note in the staffing plan any additional information or assumptions. Key Personnel roles should be expected to support the project full-time using 1,880 hours/year (3,760 hours during the 2-year base period) in the price submission for each of these 3 roles. Expected deviations should be noted in the staffing plan. 1,880 hours/year (3,760 hours during the 2-year base period) should be used for each FTE.

The second tab ("Rate Sheet") consists of a pricing template to be completed by the Bidder that contains the hourly rate for each labor category that could be required under this contract to complete activities described in the Scope of Work (e.g., engineering, design, DevOps, product management, project management, technical support technician, QA testing).

IMPORTANT: The Bidder should ensure that all possible roles and experience levels are reflected in the price submission, including for the optional activities if applicable. Different rates should be provided for different levels of expertise. The State encourages Bidders to include all relevant roles from their GSA Schedule Contract and their offered rates so that the roles may be available in the event required for this work.

The Bidder should provide hourly rates for the base period and each of the option periods. The labor ~~categories~~ rates should be consistent with or lower than those listed in the Bidder's GSA Schedule. It is expected that the Bidder and State will work together in the event the size of the team should be modified. It is strongly recommended that the Bidder include all potential labor categories that could be leveraged for this Contract on the "Rate Sheet" tab even if not certain they will be needed to ensure they are accessible through this contract. Furthermore, the Labor

Categories included on the “Base ~~Year~~ Period Proposed Team” tab should also be included on the “Rate Sheet” tab.

The Contractor will be compensated at loaded hourly rates. All proposed labor rates must be consistent with or lower than the Bidder’s current GSA Schedule rates, and must be fully burdened (inclusive of profit, fringe benefits, salary, indirect rates, and the GSA Contract Access Fee (CAF)). The State seeks further price reductions and Most Favored Customer (MFC) pricing for all labor categories. Bidders should provide their best discounted rates in their submissions. The State intends to evaluate proposals without discussions with Bidders, and therefore the Bidder’s initial proposal should contain the Bidder’s best terms. The State reserves the right to conduct discussions if the Contracting Officer determines them to be necessary.

The State makes no guarantee of volume of work effort. The Pass-Through Price Lines shall be used to reimburse for Travel and Other Direct Costs in accordance with the terms of the Contractor‘s GSA Schedule(s) subject to COR approval. No mark-up will be provided for "Other Direct Costs" or "Travel Expenses and Reimbursements.” See section 3.1.16.5 for travel reimbursement guidelines.

Additional rows may be added to the provided Price Submission Spreadsheet, as necessary.
The Contractor should submit the Price Submission Spreadsheet as a separate file with the submission.

4.3 INTERVIEWS

The Bidders with the most highly rated written submissions will each be invited to participate in an interview as part of the evaluation process. Each interview will be conducted remotely via video connection and/or teleconference. The State will communicate with certain Bidders to schedule the dates and times of interviews. There may be a limited time window when these interviews may be offered.

Each interview will include a question and answer session, during which Bidders will be asked questions about the technical aspects of their proposal and their approach to software development. The State expects these interviews will assist the State to assess the technical abilities of the proposed development team and to better understand the proposed technical approach described in the Bidder’s written submission. All of the Bidder’s proposed Key Personnel should participate in the interview.

The Introductions phase of each interview will last approximately 5 minutes, during which the Bidder and State interview team members will introduce themselves.

The Open Technical Session of each interview will last approximately 45 minutes, during which the Bidder interview team will respond to the State’s questions related to the technical aspects of the Bidder’s proposal. Bidders will NOT be able to use or present any slides, graphs, charts, or other written presentation materials, including handouts. There will be no follow-up session for further questions after this part of the interview.

The Closing Remarks phase of each interview will last approximately 5 minutes, during which the Bidder may make a short presentation summarizing the Bidder’s responses to the State’s questions.

Interviews will not constitute discussions. Statements made during an interview will not become part of the agreement.

5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO THE Contract

5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS

This Contract awarded, and the entire agreement between the parties, as a result of this RFQ shall consist of this RFQ, SSTC, Bid Amendment to this RFQ, the Contractor's Quote, any Best and Final Offer, and the Using Agency's Notice of Award.

In the event of a conflict in the terms and conditions among the documents comprising this Contract, the order of precedence, for purposes of interpretation thereof, listed from highest ranking to lowest ranking, shall be:

A. Executed Offer and Acceptance Page;
B. RFQ Section 5, as may be amended by Bid Amendment;
C. The State of NJ Standard Terms and Conditions (SSTC) included in this RFQ;
D. All remaining sections of the RFQ, as may be amended by Bid Amendment; and
E. The Contractor's Quote as accepted by the State.

5.2 CONTRACT TERM AND EXTENSION OPTION

The base term of this Contract shall be for a period of two years. If delays in the procurement process result in a change to the anticipated Contract Effective Date, the Contractor agrees to accept a Contract for the full term of this Contract.

This Contract may be extended up to three (3) years with no single extension exceeding one (1) year, by the mutual written consent of the Contractor and the Director at the same terms, conditions, and pricing at the rates in effect in the last year of this Contract or rates more favorable to the State, unless otherwise specified via the price submission in Bidder's proposal.

In the event of a termination or expiration of the underlying Federal Supply Schedule, the independent State contract based thereon survives for its own established term.

5.3 CONTRACT TRANSITION

In the event that a new Contract has not been awarded prior to this Contract expiration date, including any extensions exercised, and the State exercises this Contract transition, the Contractor shall continue this Contract under the same terms, conditions, and pricing until a new Contract can be completely operational. At no time shall this transition period extend more than 180 days beyond the expiration date of this Contract, including any extensions exercised.

5.4 CHANGE ORDER

Any changes or modifications to the terms of this Contract shall be valid only when they have been reduced to writing and signed by the Contractor and the Director.

5.5 CONTRACTOR RESPONSIBILITIES

The Contractor shall have sole responsibility for the complete effort specified in this Contract. Payment will be made only to the Contractor. The Contractor shall have sole responsibility for all payments due any Subcontractor.

The Contractor is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided under this Contract. The Contractor shall, without additional compensation, correct or revise any

errors, omissions, or other deficiencies in its deliverables and other services. The approval of deliverables furnished under this Contract shall not in any way relieve the Contractor of responsibility for the technical adequacy of its work. The review, approval, acceptance or payment for any of the services shall not be construed as a waiver of any rights that the State may have arising out of the Contractor's performance of this Contract.

5.6 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)

This Subsection serves to supplement but not to supersede Sections 5.8 and 5.9 of the SSTC accompanying this RFQ.

The Contractor shall forward a written request to substitute or add a Subcontractor or to substitute its own staff for a Subcontractor to the State Contract Manager for consideration. If the State Contract Manager approves the request, the State Contract Manager will forward the request to the Director for final approval. No substituted or additional Subcontractors are authorized to begin work until the Contractor has received written approval from the Director.

If it becomes necessary for the Contractor to substitute a Subcontractor, add a Subcontractor, or substitute its own staff for a Subcontractor, the Contractor will identify the proposed new Subcontractor or staff member(s) and the work to be performed. The Contractor must provide detailed justification documenting the necessity for the substitution or addition.

The Contractor must provide detailed resumes of its proposed replacement staff or of the proposed Subcontractor's management, supervisory, and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the Subcontractor is to undertake.

The qualifications and experience of the replacement(s) must equal or exceed those of similar personnel proposed by the Contractor in its Quote.

5.7 OWNERSHIP OF MATERIAL

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of this Contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this Contract shall be and remain the property of the State of New Jersey and shall be delivered to the State of New Jersey upon 30 days' notice by the State. With respect to software computer programs and/or source codes developed for the State, except those modifications or adaptations made to Bidder's/Contractor's Background IP as defined below, the work shall be considered "work for hire", i.e., the State, not the Contractor or Subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this Contract, Contractor or Subcontractor hereby assigns to the State all right, title and interest in and to any such material, and the State shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.

Should the Bidder anticipate bringing pre-existing intellectual property into the project, the intellectual property must be identified in the Quote. Otherwise, the language in the first paragraph of this section prevails. If the Bidder identifies such intellectual property ("Background IP") in its Quote, then the Background IP owned by the Bidder on the date of this Contract, as well as any modifications or adaptations thereto, remain the property of the Bidder. Upon Contract award, the Bidder/Contractor shall grant the State a nonexclusive, perpetual royalty free license to use any of

the Bidder's/Contractor's Background IP delivered to the State for the purposes contemplated by this Contract.

5.8 CONFIDENTIALITY

A. The obligations of the State under this provision are subject to the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena;

B. By virtue of this Contract, the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this Contract. Contractor's Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure and anything identified in Contractor's Quote as Background IP ("Contractor Confidential Information"). Notwithstanding the previous sentence, the terms and pricing of this Contract are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena;

C. The State's Confidential Information shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Contractor in fulfillment of the contract and any analysis thereof (whether in fulfillment of the contract or not).

D. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;

E. The State agrees to hold Contractor's Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;

F. In the event that the State receives a request for Contractor Confidential Information related to this Contract pursuant to a court order, subpoena, or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such order of law. Contractor shall take any action it deems appropriate to protect its documents and/or information;

G. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such order of law. The State shall take any action it deems appropriate to protect its documents and/or information; and

H. Notwithstanding the requirements of nondisclosure described in this Section, either party may release the other party's Confidential Information:

    A. if directed to do so by a court or arbitrator of competent jurisdiction; or
    B. pursuant to a lawfully issued subpoena or other lawful document request:
        (a) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as

described in Section 5.8(F), or if Contractor is unsuccessful in defending its rights as described in Section 5.8(F); or

(b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 5.8(G), or if the State is unsuccessful in defending its rights as described in Section 5.8(G).

5.9 NEWS RELEASES

The Contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this Contract without the prior written consent of the Director.

5.10 ADVERTISING

The Contractor shall not use the State's name, logos, images, or any data or results arising from this Contract as a part of any commercial advertising without first obtaining the prior written consent of the Director.

5.11 LICENSES AND PERMITS

The Contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this Contract. The Contractor shall comply with all New Jersey Department of Labor requirements. Notwithstanding the requirements of the RFQ, the Contractor shall supply the State Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to this Contract award. All costs associated with any such licenses, permits, and authorizations must be considered by the Bidder in its Quote.

5.12 CLAIMS AND REMEDIES

5.12.1 CLAIMS

All claims asserted against the State by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

5.12.2 REMEDIES

Nothing in this Contract shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.

5.12.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS

In the event that the Contractor fails to comply with any material Contract requirements, the Director may take steps to terminate this Contract in accordance with the SSTC, authorize the delivery of Contract items by any available means, with the difference between the price paid and the defaulting Contractor's price either being deducted from any monies due the defaulting Contractor or being an obligation owed the State by the defaulting Contractor, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

5.13 MODIFICATIONS AND CHANGES TO THE STATE OF NJ STANDARD TERMS AND CONDITIONS (SSTC)

5.13.1 INDEMNIFICATION

Section 4.1 of the SSTC is supplemented with the following:

4.1.1 LIMITATION OF LIABILITY

The Contractor's liability to the State for actual, direct damages resulting from the Contractor's performance or non-performance, or in any manner related to this Contract, for any and all claims, shall be limited in the aggregate to 200 % of the total value of this Contract, except that such limitation of liability shall not apply to the following:

a. The Contractor's obligation to indemnify the State of New Jersey and its employees from and against any claim, demand, loss, damage, or expense relating to bodily injury or the death of any person or damage to real property or tangible personal property, incurred from the work or materials supplied by the Contractor under this Contract caused by negligence or willful misconduct of the Contractor;

b. The Contractor's breach of its obligations of confidentiality; and

c. The Contractor's liability with respect to copyright indemnification.

The Contractor's indemnification obligation is not limited by but is in addition to the insurance obligations contained in Section 4.2 of the SSTC.

The Contractor shall not be liable for special, consequential, or incidental damages.

5.13.2 INSURANCE - PROFESSIONAL LIABILITY INSURANCE

Section 4.2 of the SSTC regarding insurance is modified with the addition of the following section regarding Professional Liability Insurance.

D. Professional Liability Insurance: The Contractor shall carry Errors and Omissions, Professional Liability Insurance, and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of not less than $5,000,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of this Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance, and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

5.14 CONTRACT ACTIVITY REPORT

The Contractor must provide, on a bi-annual basis, a record of all purchases made under this Contract resulting from this RFQ. This reporting requirement includes sales to State Using Agencies, political sub-divisions thereof and, if permitted under the terms of this Contract, sales to counties, municipalities, school districts, volunteer fire departments, first aid squads and rescue squads, independent institutions of higher education, state and county colleges and quasi-State agencies. Quasi-State agencies include any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member.

This information must be provided in Microsoft Excel such that an analysis can be made to determine the following:

A. Contractor's total sales volume, with line item detail, to each purchaser under this Contract;

B. Subtotals by product, including, if applicable, catalog number and description, price list with appropriate page reference, and/or Contract discount applied; and

C. Total dollars paid to Subcontractors, include a separate breakdown for dollars paid to New Jersey Small Business as defined in N.J.A.C. 17:13-1.2.

Submission of purchase orders, confirmations, and/or invoices do not fulfill this Contract requirement for information. Failure to report this mandated information may be a factor in future award decisions.

The Contractor must submit the required information in Microsoft Excel format to NJSupplierReports@treas.nj.gov.

Reports are due:

January 1st through June 30th – due by July 30th; and
July1st through December 31st – due by January 30th.

5.15 ELECTRONIC PAYMENTS

With the award of this contract, the successful Contractor(s) will be required to receive its payment(s) electronically. In order to receive your payments via automatic deposit from the State of New Jersey, you must complete the EFT information within your NJSTART Vendor Profile. Please refer to Section 5.2 of the QRG entitled "Vendor Profile Management – Company Information and User Access" for instructions. QRGs are located on the NJSTART Vendor Support Page.

5.16 PROGRAM EFFICIENCY ASSESSMENT FOR STATE USING AGENCIES

The Program Efficiency Assessment shall not be charged against the winning Contractor and therefore is not to be included in the Bidder's pricing. The State Using Agencies shall be charged an assessment equal to one-quarter of one (1) percent (0.25%) of the value of all transactions under this Contract. This assessment is authorized by N.J.S.A. 52:27B-56 and N.J.A.C. 17:12-1.5, to maintain the State's procurement system at a level to meet industry standards of efficiency.

For purposes of this section, "transaction" is defined as the payment or remuneration to the Contractor for services rendered or products provided to the State pursuant to the terms of this Contract, including but not limited to the following: purchase orders, invoices, hourly rates, firm fixed price, commission payments, progress payments and contingency payments.

6.0 QUOTE EVALUATION

6.1 DIRECTOR'S RIGHT OF FINAL QUOTE ACCEPTANCE

The Director reserves the right to reject any or all Quotes, or to award in whole or in part if deemed to be in the best interest of the State to do so. The Director shall have authority to award orders or Contracts in accordance with N.J.S.A. 52:34-12.

6.2 STATE'S RIGHT TO INSPECT BIDDER FACILITIES

The State reserves the right to inspect the Bidder's establishment before making an award, for the purposes of ascertaining whether the Bidder has the necessary facilities for performing the Contract.

The State may also consult with clients of the Bidder during the evaluation of Quotes. Such consultation is intended to assist the State in making a Contract award that is most advantageous to the State.

6.3 STATE'S RIGHT TO REQUEST FURTHER INFORMATION

After the submission of Quotes, unless requested by the State as noted below, Bidder contact with the State is not permitted.

After the Quotes are reviewed, one (1), some or all of the Bidders may be asked to clarify certain aspects of its Quote. A request for clarification may be made in order to resolve minor ambiguities, irregularities, informalities or clerical errors. Clarifications cannot correct any deficiencies or material omissions, or revise or modify a Quote.

6.4 EVALUATION

Quotes will be scored based upon the Bidder's demonstration in the Quote that the Bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the requirements of the Contract.

6.4.1 BIDDER'S PRICE SCHEDULE

To ensure comparability, price proposals will be ranked from least to greatest total full-time equivalent cost of the three (3) State-specified Key Personnel roles (i.e., Product Management, Technical, and Design Leads) in the base period. If the number of hours for the Key Personnel deviates from 1,880 billable hours per person per year (3,760 hours in the 2 year base period), the State will adjust the number of hours to 1,880 per person per year (3,760 hours in the 2 year base period) for the purpose of enabling a comparative price comparison across Bidders.

Additional pricing information will be considered as described in Section 6.4.4 (Technical and Price Evaluation).

6.4.2 QUOTE DISCREPANCIES

In evaluating Quotes, discrepancies between words and figures will be resolved in favor of words. Discrepancies between unit prices and totals of unit prices will be resolved in favor of unit prices. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated total of multiplied unit prices and units of work and the actual total will be resolved in favor of the actual total. Discrepancies between the

indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum of the column of figures.

6.4.3 TIE-BREAKING CRITERIA

Tie Quotes will be awarded by the Director in accordance with N.J.A.C. 17:12-2.10.

6.4.4 TECHNICAL AND PRICE EVALUATION

Each submission received by the State will be evaluated for technical acceptability. Submissions that are determined to not be technically acceptable will not be evaluated further subject to the terms of this RFQ.

Quotes should be realistic with respect to technical approach, staffing approach, and price. Quotes that indicate a lack of understanding of the project requirements may not be considered for award. Quotes may indicate a lack of understanding of the project requirements if the staffing plan does not offer a realistic set of labor categories and hours, or if any proposed hourly labor rates are unrealistically high or low.

The State will evaluate quotes that are technically acceptable on a competitive best value basis using a trade-off between technical and price factors. Technically acceptable submissions will be evaluated based on four (4) evaluation factors. These factors are (1) technical approach, (2) staffing approach, (3) similar experience, and (4) price. The three (3) technical, non-price evaluation factors, when combined, are significantly more important than price. The State may make an award to a Bidder that demonstrates an advantage with respect to technical, non-price factors, even if such an award would result in a higher total price to the State. The importance of price in the evaluation will increase with the degree of equality between Bidders with respect to the non-price factors, or when the Bidder's price is so significantly high as to diminish the value to the State of the Bidder's advantage in the non-price factors.

6.4.4.1 TECHNICAL APPROACH

In evaluating a Bidder's technical approach, the State will consider, among other things, (a) the quality of the Bidder's approach to provide the open source, agile development services required, including product management, engineering, user research and design and other factors described in this requisition and (b) the extent of the Bidder's understanding of the details of the project requirements, including technical information and partnering with the State to enable long-term success.

6.4.4.2 STAFFING APPROACH

In evaluating a Bidder's staffing approach, the State will consider, among other things, (a) the skills and experience of the Key Personnel and other individuals that the Bidder plans to use to provide the required services, (b) the Bidder's proposed plan for staffing the Program(s) for which they are being considered according to the RFQ specifications including the set of labor categories and capabilities that will comprise the Bidder's team, (c) the Bidder's ability to provide high quality support that is flexible according to the State's needs as described in this requisition including the set of labor categories that the Bidder makes available to enable team expansion, and (d), if applicable, any limitations on promptly commencing work.

6.4.4.3 SIMILAR EXPERIENCE

In evaluating a Bidder's similar experience, the State will consider the extent to which the Bidder has recently provided software development services for projects that are similar in size, scope, and complexity to the project(s) described in this RFQ, and the quality of those services. In

evaluating the quality of those services, the State will consider, among other things, the similar experience listing and source code repositories provided including documentation, incorporated tests, revision history, and additional information that informs the quality of discussion and decision making. The State will also consider the provided supporting artifacts such as user research plans, product materials, design artifacts, and post-mortem reports. The State may consider the Bidder's similar experiences' relevance to the domain and/or subject matter area of the proposed scope of work. In considering a Bidder's similar experience, the State may also consider information from any other source, including Bidder's prior customers and public websites.

6.4.4.4 PRICE

The State will consider the total normalized full-time equivalent cost of the State-specified Key Personnel roles in the base period using the methodology detailed in Section 6.4.1.

In evaluating a Bidder's price, the State will consider the total of the Bidder's estimated costs for the development services for the base period. The State will also consider the hourly rates for talent in the base period and option periods.

6.5 NEGOTIATION

In accordance with N.J.S.A. 52:34-12(f) and N.J.A.C. 17:12-2-7, after evaluating Quotes, the Bureau may establish a competitive range and enter into negotiations with one (1) Bidder or multiple Bidders within this competitive range. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one (1) Bidder or multiple Bidders. Negotiations will be structured by the Bureau to safeguard information and ensure that all Bidders are treated fairly.

After evaluation of Quotes and as applicable, negotiation(s), the Bureau will recommend, to the Director, the responsible Bidder(s) whose Quote(s), conforming to the RFQ, is/are most advantageous to the State, price, and other factors considered. The Director may accept, reject or modify the recommendation of the Using Agency. The Director may initiate additional negotiation procedures with the selected Bidder(s).

Negotiations will be conducted only in those circumstances where it is deemed to be in the State's best interests and to maximize the State's ability to get the best value. Therefore, the Bidder is advised to submit its best technical and price Quote in response to this RFQ since the State may, after evaluation, make a Contract award based on the content of the initial submission, without further negotiation with any Bidder.

All contacts, records of initial evaluations, any correspondence with a Bidder related to any request for clarification, negotiation, any revised technical and/or price Quotes, and related documents will remain confidential until a Notice of Intent to Award a Contract is issued.

If the Bureau contemplates negotiation, Quote prices will not be publicly read at the Quote opening. Only the name and address of each Bidder will be publicly announced at the Quote opening.

6.6 POOR PERFORMANCE

A Bidder with a history of performance problems may be bypassed for consideration of an award issued as a result of this RFQ. The following materials may be reviewed to determine Bidder performance: Contract cancellations for cause pursuant to Section 5.7(b) of the SSTC; information contained in Vendor performance records; information obtained from audits or investigations

conducted by a local, state or federal agency of the Bidder's work experience; current licensure, registration, and/or certification status and relevant history thereof; or its status or rating with established business/financial reporting services, as applicable. Bidders should note that this list is not exhaustive.

7.0 CONTRACT AWARD

7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD

7.1.1 REQUIREMENTS OF PUBLIC LAW 2005, CHAPTER 51, N.J.S.A. 19:44A-20.13 - N.J.S.A. 19:44A-20.25 (FORMERLY EXECUTIVE ORDER NO. 134), EXECUTIVE ORDER NO. 117 (2008) AND N.J.A.C. 17:12-5 *ET SEQ.*

A. The State shall not enter into a Contract to procure services or any material, supplies or equipment, or to acquire, sell, or lease any land or building from any Business Entity, where the value of the transaction exceeds $17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership committee during certain specified time periods;

B. Prior to awarding any Contract or agreement to any Business Entity, the Business Entity proposed as the intended Contractor of the Contract shall submit the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, certifying that no contributions prohibited by either Chapter 51 or Executive Order No. 117 have been made by the Business Entity and reporting all qualifying contributions made by the Business Entity or any person or entity whose contributions are attributable to the Business Entity. The required form and instructions, available for review on the Division's website at http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf, shall be provided to the intended Contractor for completion and submission to the Division with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended Contractor shall submit to the Division, the Certification and Disclosure(s) within five (5) business days of the State's request. The Certification and Disclosure(s) may be executed electronically by typing the name of the authorized signatory in the "Signature" block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form. Failure to submit the required forms will preclude award of a Contract under this RFQ, as well as future Contract opportunities; and

C. Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the Contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Division's website at http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf, shall be provided to the intended Contractor with the Notice of Intent to Award.

The Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form is located on the Division's website.

7.1.2 SOURCE DISCLOSURE REQUIREMENTS

Pursuant to N.J.S.A. 52:34-13.2, all Contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a Contractor or Subcontractor within the United States and the certification is approved by the State Treasurer. Also refer to Section 3.6 Service Performance within U.S. of the SSTC.

Pursuant to the statutory requirements, the intended Contractor of a Contract primarily for services with the State of New Jersey must disclose the location by country where services under the Contract, including subcontracted services, will be performed. The Source Disclosure Form accompanies the subject RFQ. FAILURE TO SUBMIT SOURCING INFORMATION WHEN

REQUESTED BY THE STATE SHALL PRECLUDE AWARD OF A CONTRACT TO THE INTENDED BIDDER.

If any of the services cannot be performed within the United States, the Bidder shall state with specificity the reasons why the services cannot be so performed. The Director shall determine whether sufficient justification has been provided by the Bidder to form the basis of his or her certification that the services cannot be performed in the United States and whether to seek the approval of the Treasurer.

The Source Disclosure Form is located on the Division's website.

7.1.2.1 BREACH OF CONTRACT

A SHIFT TO PROVISION OF SERVICES OUTSIDE THE UNITED STATES DURING THE TERM OF THE CONTRACT SHALL BE DEEMED A BREACH OF Contract. If, during the term of the Contract, or any extension thereof, the Contractor or Subcontractor, who had upon Contract award declared that services would be performed in the United States, proceeds to shift the performance of any of the services outside the United States, the Contractor shall be deemed to be in breach of its Contract. Such Contract shall be subject to termination for cause pursuant to Section 5.7b.1 of the SSTC, unless such shift in performance was previously approved by the Director and the Treasurer.

7.1.3 AFFIRMATIVE ACTION

The intended Contractor must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Intended Contractors not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at https://www.state.nj.us/treasury/contract_compliance/.

7.1.4 BUSINESS REGISTRATION

In accordance with N.J.S.A. 52:32-44(b), a Bidder and its named Subcontractors must have a valid Business Registration Certificate ("BRC") issued by the Department of the Treasury, Division of Revenue and Enterprise Services prior to the award of a Contract. See Section 4.1.2.1 of this RFQ for further information.

7.2 FINAL CONTRACT AWARD

Contract award[s] will be made with reasonable promptness by written notice to that responsible Bidder(s), whose Quote(s) is(are) most advantageous to the State, price, and other factors considered. Any or all Quotes may be rejected when the State Treasurer or the Director determines that it is in the public interest to do so.

To award this Contract, the State will perform the evaluation of all Quotes collectively according to the evaluation criteria specified in this solicitation. The Bidder which submits the Quote determined to be most advantageous to the State will be awarded one of the Programs that the Bidder is competing for. The State will primarily consider the Bidder's ranked preference, if specified, in making the Program determination. The remaining Program will be awarded to the Bidder which submits the Quote deemed next most advantageous to the State that is eligible for the remaining Program (i.e., the Bidder has indicated that it is competing for this remaining Program).

The State reserves the right to award fewer than two (2) awards in the event that the Quote(s) are

not advantageous to the State, including if Technical Proposal(s) are not deemed satisfactory to effectively complete the Scope of Work.

The State reserves the right to prioritize one of the Programs in the event that only one (1) award is made. The State intends to award each Program to different Bidders, but reserves the right (without obligation) to award both Programs to the same Bidder in the event that the State has not received sufficient Quote(s) advantageous to the State. The State reserves the right to consider elements of Quote(s) that are unique to each Program when determining which Quote(s) are most advantageous to the State and deciding Program assignment.

7.3 INSURANCE CERTIFICATES

The Contractor shall provide the State with current certificates of insurance for all coverages required by the terms of this Contract. See Section 4.2 of the SSTC accompanying this RFQ.

8.0 CONTRACT ADMINISTRATION

8.1 STATE CONTRACT MANAGER

The State Contract Manager (SCM) is the State employee responsible for the overall management and administration of the Contract.

The SCM for this project will be identified at the time of execution of Contract. At that time, the Contractor will be provided with the State Contract Manager's name, department, division, agency, address, telephone number, fax phone number, and e-mail address.

8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES

For an agency Contract where only one (1) State office uses the Contract, the SCM will be responsible for engaging the Contractor, assuring that Purchase Orders are issued to the Contractor, directing the Contractor to perform the work of the Contract, approving the deliverables and approving payment vouchers. The SCM is the person who the Contractor will contact **after the** Contract **is executed** for answers to any questions and concerns about any aspect of the Contract. The SCM is responsible for coordinating the use of the Contract and resolving minor disputes between the Contractor and any component part of the SCM's Department. The SCM is also responsible for notifying OIT and other appropriate parties of security and privacy violations or incidents. The SCM cannot modify the Contract, direct or approve a Change Order.

If the Contract has multiple users, the SCM shall be the central coordinator of the use of the Contract for all Using Agencies, while other State employees engage and pay the Contractor. All persons and agencies using the Contract must notify and coordinate the use of the Contract with the SCM.

8.1.2 COORDINATION WITH THE STATE CONTRACT MANAGER

Any Contract user that is unable to resolve disputes with a Contractor shall refer those disputes to the SCM for resolution. Any questions related to performance of the work of the Contract by Contract users shall be directed to the SCM. The Contractor may contact the SCM if the Contractor cannot resolve a dispute with Contract users.

9.0 STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS

(Rev: 12/13/2021)

1. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT

The following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. The State's terms and conditions shall prevail over any conflicts set forth in a Contractor's Quote or Proposal.

1.1 CONTRACT TERMS CROSSWALK

NJSTART Term	Equivalent Statutory, Regulatory and/or Legacy Term
Bid/Bid Solicitation	Request For Proposal (RFP)/Solicitation
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order (Blanket P.O.)	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor	Bidder/Contractor

2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

2.1 BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the Contractor and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the Contractor who shall provide it to the State.

The contractor shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The contractor shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of $25 for each day of violation, not to exceed $50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at http://www.state.nj.us/treasury/revenue/busregcert.shtml.

2.2 OWNERSHIP DISCLOSURE

Pursuant to N.J.S.A. 52:25-24.2, in the event the Contractor is a corporation, partnership or limited liability company, the Contractor must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote. A Contractor's failure to submit the completed and signed form prior to or with its Quote will result in the Contractor being ineligible for a Contract award, unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote.

In the alternative, a Contractor with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that

holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

2.3 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN
Pursuant to N.J.S.A. 52:32-58, the Contractor must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Contractor is unable to so certify, the Contractor shall provide a detailed and precise description of such activities as directed on the form. A Contractor's failure to submit the completed and signed form will preclude the award of a Contract to said Contractor.

2.4 ANTI-DISCRIMINATION
All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Constructions
Contracts (Exhibit B and Exhibit C - Executive Order 151 Requirements) as appropriate.
The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

2.5 AFFIRMATIVE ACTION
In accordance with N.J.A.C. 17:27-1.1, prior to award, the Contractor and subcontractor must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Contractors or subcontractors not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at https://www.state.nj.us/treasury/contract_compliance/.

2.6 AMERICANS WITH DISABILITIES ACT
The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.

2.7 MACBRIDE PRINCIPLES
The Contractor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

2.8 PAY TO PLAY PROHIBITIONS
Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), The State shall not enter into a Contract to procure services or any material, supplies or equipment, or to acquire, sell, or lease any land or building from any Business Entity, where the value of the transaction exceeds $17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership committee during certain specified time periods. It shall be a breach of the terms of the contract for the business entity to:

A. Make or solicit a contribution in violation of the statute;
B. Knowingly conceal or misrepresent a contribution given or received;
C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;

D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

Prior to awarding any Contract or agreement to any Business Entity, the Business Entity proposed as the intended Contractor of the Contract shall submit the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, certifying that no contributions prohibited by either Chapter 51 or Executive Order No. 117 have been made by the Business Entity and reporting all qualifying contributions made by the Business Entity or any person or entity whose contributions are attributable to the Business Entity. The required form and instructions, available for review on the Division's website at http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf, shall be provided to the intended Contractor for completion and submission to the Division with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended Contractor shall submit to the Division, in care of the Division Procurement Specialist, the Certification and Disclosure(s) within five (5) business days of the State's request. The Certification and Disclosure(s) may be executed electronically by typing the name of the authorized signatory in the "Signature" block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form. Failure to submit the required forms will preclude award of a Contract under this Bid Solicitation, as well as future Contract opportunities; and Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the Contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Division's website at http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf, shall be provided to the intended Contractor with the Notice of Intent to Award.

2.9 POLITICAL CONTRIBUTION DISCLOSURE

The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one (1) or more contracts valued at $50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at http://www.elec.state.nj.us/.

2.10 STANDARDS PROHIBITING CONFLICTS OF INTEREST

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

A. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;
B. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards, now known as the State Ethics Commission;
C. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the

purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, now known as the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;

D. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;
E. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and
F. The provisions cited above in paragraphs 2.8A through 2.8E shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards, now known as the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

2.11 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION

The Treasurer has established a business ethics guide to be followed by a Contractor in dealings with the State. The guide can be found at: https://www.nj.gov/treasury/purchase/pdf/BusinessEthicsGuide.pdf.

2.12 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

2.13 COMPLIANCE - LAWS

The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

2.14 COMPLIANCE - STATE LAWS

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

2.15 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

2.16 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS

The Contractor should submit the Disclosure of Investigations and Other Actions Form which provides a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If a Contractor does not submit the form with the Quote, the Contractor must comply within seven (7) business days of the State's request or the State may deem the Quote non-responsive.

3.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT

3.1 COMPLIANCE - CODES

The contractor must comply with New Jersey Uniform Construction Code and the latest National Electrical Code 70®, B.O.C.A. Basic Building code, Occupational Safety and Health Administration and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

3.2 PREVAILING WAGE ACT

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The Contractor 's signature on [the proposal] is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by [the proposal] has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the Contractor's signature on the proposal is also his/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by [the proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

3.3 PUBLIC WORKS CONTRACTOR REGISTRATION ACT

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance.

3.4 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
B. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
C. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of $50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

A. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion,

B. or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause; B. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:
    1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
    2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
    3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
    4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

3.5 BUILDING SERVICE

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

3.6 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

3.7 SERVICE PERFORMANCE WITHIN U.S.

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

3.8 BUY AMERICAN
Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States, whenever available, and the contractor shall be required to so certify.

3.9 DOMESTIC MATERIALS
Pursuant to N.J.S.A. 52:33-2 et seq., if the contract is for the construction, alteration or repair of any public work, the contractor and all subcontractors shall use only domestic materials in the performance of the work unless otherwise noted in the specifications.

3.10 DIANE B. ALLEN EQUAL PAY ACT
Pursuant to N.J.S.A. 34:11-56.14 and N.J.A.C. 12:10-1.1 et seq., a contractor performing "qualifying services" or "public work" to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see https://nj.gov/labor/equalpay/equalpay.html.

3.11 EMPLOYEE MISCLASSIFICATION
In accordance with Governor Murphy's Executive Order #25 and the Task Force's July 2019 Report, employers are required to properly classify their employees. Workers are presumed to be employees and not independent contractors, unless the employer can demonstrate all three factors of the "ABC Test" below:

A. Such individual has been and will continue to be free from control or direction of the performance of such service, but under his or her contract of service and in fact; and
B. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all places of business of the enterprise for which such service is performed; and
C. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

This test has been adopted by New Jersey under its Wage & Hour, Wage Payment and Unemployment Insurance Laws to determine whether a worker is properly classified. Under N.J.S.A. 34:1A-1.17-1.19, the Department of Labor and Workforce Development has the authority to investigate potential violations of these laws and issue penalties and stop work order to employers found to be in violation of the laws.

3.12 EXECUTIVE ORDER NO. 271 (MURPHY)
Pursuant to Governor Murphy's Executive Order No. 271 (EO 271) which was signed and went into effect on October 20, 2021, a covered contractor, must certify that it has a policy in place:

1) that requires all covered workers to provide adequate proof, in accordance with EO 271, to the covered contractor that the covered worker has been fully vaccinated; or
2) that requires that unvaccinated covered workers submit to COVID-19 screening testing at minimum one to two times weekly until such time as the covered worker is fully vaccinated; and
3) that the covered contractor has a policy for tracking COVID-19 screening test results as required by EO 271 and must report the results to local public health departments.

The requirements of EO 271 apply to all covered contractors and subcontractors, at any tier, providing services, construction, demolition, remediation, removal of hazardous substances, alteration, custom fabrication, repair work, or maintenance work, or a leasehold interest in real property through which covered workers have access to State property.
These requirements shall automatically expire when EO 271 is rescinded.

4.0 <u>INDEMNIFICATION AND INSURANCE</u>

4.1 INDEMNIFICATION
The contractor's liability to the State and its employees in third party suits shall be as follows:

A. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;
B. The contractor's indemnification and liability under subsection (A) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and
C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

4.2 INSURANCE

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the contractor's insurer cannot provide 30 days written notice, then it will become the obligation of the contractor to provide the same. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to the State at: ccau.certificate@treas.nj.gov

The insurance to be provided by the contractor shall be as follows:

A. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be $1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;
B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than $1,000,000 per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;
C. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

    1. $1,000,000 BODILY INJURY, EACH OCCURRENCE;
    2. $1,000,000 DISEASE EACH EMPLOYEE; and
    3. $1,000,000 DISEASE AGGREGATE LIMIT.

This $1,000,000 amount may be raised when deemed necessary by the Director;

In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections A, B, and B. above may be amended for certain commodities when deemed in the best interests of the State by the Director.

5.0 <u>TERMS GOVERNING ALL CONTRACTS</u>

5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR

The contractor's status shall be that of any independent contractor and not as an employee of the State.

5.2 RESERVED

5.3 CONTRACT TERM AND EXTENSION OPTION

If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions of the original contract shall apply unless more favorable terms for the State have been negotiated.

5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

A. If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and
B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

Any changes or modifications to the terms of this Contract shall be valid only when they have been reduced to writing and signed by the Contractor and the Director.

5.5 CHANGE IN LAW

If, after award, a change in applicable law or regulation occurs which affects the Contract, the parties may amend the Contract, including pricing, in order to provide equitable relief for the party disadvantaged by the change in law. The parties shall negotiate in good faith, however if agreement is not possible after reasonable efforts, the Director shall make a prompt decision as to an equitable adjustment, taking all relevant information into account, and shall notify the Contractor of the final adjusted contract price.

5.6 SUSPENSION OF WORK

The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is
required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

A. For Convenience:
B. Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;
C. For Cause:
    1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond; and
    2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure

in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.

D. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and
E. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

5.8 SUBCONTRACTING

The Contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws. Nothing contained in any of the contract documents, shall be construed as creating any contractual relationship between any subcontractor and the State.

5.9 RESERVED

5.10 MERGERS, ACQUISITIONS AND ASSIGNMENTS

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR

The contractor hereby certifies that:

A. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;
B. All equipment supplied to the State and operated by electrical current is UL listed where applicable;
C. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;
D. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
E. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
F. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and

G. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

5.12 DELIVERY REQUIREMENTS

A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
B. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice;
C. Items delivered must be strictly in accordance with the contract; and
D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

5.13 APPLICABLE LAW AND JURISDICTION

This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

5.14 CONTRACT AMENDMENT

Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.

5.15 MAINTENANCE OF RECORDS

Pursuant to N.J.A.C. 17:44-2.2, the contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)

The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor:

A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
B. It shall advise the Attorney General of New Jersey:
    1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and
    2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

5.17 NEWS RELEASES

The Contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this Contract without the prior written consent of the Director.

5.18 ADVERTISING

The Contractor shall not use the State's name, logos, images, or any data or results arising from this Contract as a part of any commercial advertising without first obtaining the prior written consent of the Director.

5.19 ORGAN DONATION
As required by N.J.S.A. 52:32-33.1, the State encourages the contractor to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.

5.20 LICENSES AND PERMITS
The Contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this Contract. Notwithstanding the requirements of the Bid Solicitation, the Contractor shall supply the State Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to this Contract award. All costs associated with any such licenses, permits, and authorizations must be considered by the Contractor in its Quote.

5.21 CLAIMS AND REMEDIES
A. All claims asserted against the State by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.
B. Nothing in this Contract shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.
C. In the event that the Contractor fails to comply with any material Contract requirements, the Director may take steps to terminate this Contract in accordance with the SSTC, authorize the delivery of Contract items by any available means, with the difference between the price paid and the defaulting Contractor's price either being deducted from any monies due the defaulting Contractor or being an obligation owed the State by the defaulting Contractor, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

5.22 ACCESSIBILITY COMPLIANCE
The Contractor acknowledges that the State may be required to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. The Contractor agrees that any information that it provides to the State in the form of a Voluntary Product Accessibility Template (VPAT) about the accessibility of the Software is accurate to a commercially reasonable standard and the Contractor agrees to provide the State with technical information available to support such VPAT documentation in the event that the State relied on any of Contractor's VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. In addition, Contractor shall defend any claims against the State that the Software does not meet the accessibility standards set forth in the VPAT provided by Provider in order to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794 and will indemnify the State with regard to any claim made against the State with regard to any judgment or settlement resulting from those claims to the extent the Provider's Software provided under this Contract was not accessible in the same manner as or to the degree set forth in the Contractor's statements or information about accessibility as set forth in the then-current version of an applicable VPAT.

5.23 CONFIDENTIALITY
A. The obligations of the State under this provision are subject to the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena;
B. By virtue of this Contract, the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this Contract. Contractor's Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure Vendor Intellectual Property ("Contractor Confidential Information"). Notwithstanding the previous sentence, the terms and pricing of this Contract are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena;

C. The State's Confidential Information shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not);
D. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;
E. The State agrees to hold Contractor's Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;
F. In the event that the State receives a request for Contractor Confidential Information related to this Contract pursuant to a court order, subpoena, or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such order of law. Contractor shall take any action it deems appropriate to protect its documents and/or information;
G. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such order of law. The State shall take any action it deems appropriate to protect its documents and/or information; and
H. Not withstanding the requirements of nondisclosure described in this Section, either party may release the other party's Confidential Information:
    (i) if directed to do so by a court or arbitrator of competent jurisdiction; or
    (ii) pursuant to a lawfully issued subpoena or other lawful document request:
        a) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in Section 5.23(F), or if Contractor is unsuccessful in defending its rights as described in Section 5.23(F); or
        b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 5.23(G), or if the State is unsuccessful in defending its rights as described in Section 5.23(G).

6.0 TERMS RELATING TO PRICE AND PAYMENT

6.1 PRICE FLUCTUATION DURING CONTRACT

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract. In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

In an exceptional situation the State may consider a price adjustment. Requests for price adjustments must include justification and documentation.

6.2 TAX CHARGES

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

6.3 PAYMENT TO VENDORS

A. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may

be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price;

B. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the Bill of Lading, and/or other documentation to confirm shipment and receipt of contracted goods must be received by the using agency prior to payment. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work and must be in strict accordance with the firm, fixed prices submitted for each task or subtask. When applicable, invoices should reference the appropriate task or subtask or price line number from the contractor's proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;
C. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls; and
D. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Office of Diversity and Inclusion.
E. The Contractor shall have sole responsibility for all payments due any Subcontractor

6.4 OPTIONAL PAYMENT METHOD: P-CARD

The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 NEW JERSEY PROMPT PAYMENT ACT

The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds $5.00 per properly executed invoice. Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

6.6 AVAILABILITY OF FUNDS

The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

7.0 TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth in this Section of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

7.1 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made the Contractor shall:

1) Include qualified small and minority businesses and women's business enterprises on solicitation lists;

2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

7.2 DOMESTIC PREFERENCE FOR PROCUREMENTS

Pursuant to 2 CFR 200.322, where appropriate, the State has 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). If subawards are to be made the Contractor shall include 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). 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 nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7.3 PROCUREMENT OF RECOVERED MATERIALS

Where applicable, in the performance of contract, pursuant to 2 CFR 200.323, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in 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.

To the extent that the scope of work or specifications in the contract requires the contractor to provide recovered materials the scope of work or specifications are modified to require that as follows.

(i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
    1. Competitively within a timeframe providing for compliance with the contract performance schedule;
    2. Meeting contract performance requirements; or
    3. At a reasonable price.
(ii) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program.
(iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

7.4 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." See, 2 CFR Part 200, Appendix II, para. C.

During the performance of this contract, the contractor agrees as follows:

1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will

take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information

as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

7.5 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

When required by Federal program legislation, all prime construction contracts in excess of $ 2,000 shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are 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.

Additionally, contractors are required to pay wages not less than once a week.

7.6 COPELAND ANTI-KICK-BACK ACT

Where applicable, the Contractor must comply with 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").

a) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
b) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
c) Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

7.7 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 comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the

standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The unauthorized user shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7.8 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.

7.9 CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED

Where applicable, Contract and subgrants of amounts inexcess of $150,000, must comply with the following:

Clean Air Act

7.9.1.1 The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

7.9.1.2 The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

7.9.1.3 The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2) The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

7.10 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3) This certification is a material representation of fact relied upon by the State or authorized user. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or authorized user, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4) The bidder or proposer agrees to comply with the requirements of2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7.11 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. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

7.12 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in *Public Law 115–232*, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) 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).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) 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.

EXHIBIT A - GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.A.C. 17:27 et seq.

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- Letter of Federal Affirmative Action Plan Approval;

- Certificate of Employee Information Report; or

- Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at http://www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase an Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase an Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

EXHIBIT B - CONSTRUCTION CONTRACTS

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.S.A. 10:5-39 et seq. (P.L. 1983, c. 197)

N.J.A.C. 17:27-1.1 et seq.

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of $250,000 to guarantee equal employment opportunity to veterans.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

A. If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

B. If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(5) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
(6) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
(7) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
(8) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
(9) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
(10) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contactor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as

trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

C. The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.

D. The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXHIBIT C - EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

4. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at https://newjersey.usnlx.com/;

5. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;

6. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and

7. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.

8. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.

Program Excellence, Continued Success

Integrity Monitor Engagement Query Response

Contract G4018 – Integrity Oversight Monitoring – Category 3 Services

New Jersey Department of Labor – Unemployment Insurance Information Technology Modernization Program

April 8, 2024 | 3:00 p.m. EST

Submitted by:

CohnReznick LLP
101 Crawfords Corner Road
Suite 2316
Holmdel, NJ 07733

Frank Banda, CPA, CFE, CGMA, PMP
Managing Partner – Public Sector
[redacted]
Frank.Banda@CohnReznick.com

Ms. Mona Cartwright
Fiscal Manager
NJ Department of the Treasury
Via email:
TreasuryIM@treas.nj.gov

Copy to:

[redacted]
Agency Contract Manager
NJ Department of Labor
Via email:
[redacted]

April 8, 2024 | 3:00 p.m.

Response to Integrity Monitor Engagement Query, Contract G4018 – Integrity Oversight Monitoring Program and Performance Monitoring, Financial Monitoring and Grant Management and Anti-Fraud Monitoring for COVID-19 Recovery Funds and Programs

Unemployment Insurance Information Technology Modernization Program

CohnReznick
ADVISORY • ASSURANCE • TAX

Transmittal Letter

Dear Ms. Cartwright [redacted],

We are excited to present our proposal in response to the New Jersey Department of Labor (NJDOL) Engagement Query (EQ) for Integrity and Anti-Fraud Oversight Monitoring services for the Unemployment Insurance Information Technology (UI IT) Modernization Program. It is evident that NJDOL is committed to enhancing New Jersey residents' access to unemployment insurance benefits and facilitating their career advancement opportunities.

With our extensive experience and track record of excellence in serving as a trusted Integrity Monitor for the State of New Jersey since 2013, we are uniquely positioned to fulfill the requirements outlined in the EQ. Our comprehensive understanding of the state's regulatory landscape – coupled with our innovative solutions – enables us to offer the most effective and efficient support to NJDOL to complete this requirement.

Choosing CohnReznick offers NJDOL the following advantages:

Extensive understanding of ARPA-funded programs. NJDOL will benefit from selecting an integrity monitor who has proven success preventing fraud, waste and abuse with the American Rescue Plan Act (ARPA)-funded programs. We have worked with state agencies, including within New Jersey, to protect the integrity of programs on behalf of hundreds of thousands of taxpayers across the New Jersey and the U.S., helping them to achieve successful outcomes.

Immediately available staff who are experts in NJDOL program guidance and have never missed a deadline. CohnReznick stands ready to immediately support as a firm with highly-qualified staff capable of delivering program oversight monitoring. With our team's vast experience across similar programs in various state agencies, we can ensure quality service and responsiveness to NJDOL's needs in enhancing the UI benefit system and meeting applicant benefit requirements.

New Jersey-focused lens from our experience in the state. With a New Jersey-focused perspective cultivated through our extensive experience in the state, CohnReznick has spearheaded compliance and oversight monitoring services since the Superstorm Sandy recovery program. We've successfully overseen 23+ COVID recovery programs, including one valued at over $4B. Our real-time monitoring mechanisms track, quantify, and evaluate performance while mitigating risks, a model we bring to Day 1 of this engagement.

Our carefully selected team guarantees a flexible, effective, efficient and economical approach to monitoring the Unemployment IT Modernization Program for NJDOL. It would be an honor to mobilize our team once more, aiding New Jersey in serving its citizens while safeguarding taxpayer dollars. If you have any questions please do not hesitate to contact me via email Frank.Banda@CohnReznick.com or phone [redacted]

Sincerely,

Frank D Banda

Frank Banda, CPA, CFE, CGMA, PMP
Managing Partner
Government and Public Sector Advisory

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EXPERIENCE Supporting the State of New Jersey

Experience Supporting New Jersey for 10+ Years

A trusted advisor in Integrity Monitoring to the State of New Jersey since 2013, CohnReznick is proud to have helped the state protect an enormous volume of federal funds from misuse. From Hurricane Sandy to COVID-19 recovery and economic revitalization, CohnReznick has helped New Jersey state agencies and municipalities correctly utilize over $9 billion in federal funding.

Since 2020, CohnReznick has been chosen as the Integrity Monitor across multiple competitive solicitations by New Jersey state agencies. We have been selected to monitor twenty-three (23) programs for New Jersey pertaining to the use of COVID-19 Relief Funds, assisting New Jersey agencies in achieving defensible, successful program outcomes. To date these programs have been awarded over $6.5 Billion in relief funds.

CohnReznick will leverage our ***extensive knowledge of the State of New Jersey and national COVID-19 compliance efforts*** to be a true, strategic advisor to the NJDOL.

Nationally, multiple states have also turned to and depend on CohnReznick for the delivery of successful, billion-dollar assistance programs, giving us a unique perspective on the principal modern challenges the NJDOL may encounter.

7 New Jersey Agencies Supported

- New Jersey Treasury Office of Management and Budget (OMB)
- New Jersey Department of Community Affairs (DCA)
- New Jersey Department of Corrections (DOC)
- New Jersey Department of Education (DOE)
- New Jersey Department of Health (DOH)
- New Jersey Department of State (DOS)
- New Jersey Division of Taxation

$6.5B+
Federal Funds Monitored

23 Unique Programs

- ✓ CVERAP
- ✓ LGEF
- ✓ CVERAP Phase II
- ✓ County Jail Reimbursements
- ✓ Long Term Care Testing
- ✓ Testing Expansion
- ✓ Direct Care Salary
- ✓ Survey Program
- ✓ 25% FEMA Match
- ✓ Psyc. Hospital Emergency Rate
- ✓ DR4488PA CORONAVIRUS PANDEMIC (FEMA)
- ✓ ELC COVID 19 Enhancing Detection
- ✓ ELC COVID 19 Enhancing Detection-Laboratory
- ✓ COVID 19 Immunization and Vaccines
- ✓ Digital Divide
- ✓ ESSER I
- ✓ ESSER II
- ✓ ESSER III
- ✓ PR for Public Safety EE's (JJC, DSP, DOH, MAVA)
- ✓ Utility Assistance Program
- ✓ CRRSA Emergency Assistance to Non-public Schools
- ✓ ITIN Taxation
- ✓ Travel & Tourism

National Experience in Federal Grant Monitoring and Oversight

CohnReznick has been trusted to oversee the distribution of over $66 Billion in federal funds nationwide, earning recognition for expediting distribution of funds while ensuring statutory compliance and safeguarding program integrity.

Year after year, states including New Jersey, Connecticut, Texas, Georgia, Louisiana, Mississippi and Florida hold their trust in CohnReznick to help them efficiently monitor all aspects of both federal and state funds distribution. These states trust us with the compliance, monitoring and oversight resulting in delivery of successful, billion-dollar grant programs, providing us with a unique perspective on the modern challenges NJDOL may face.

In response to the unprecedented administrative challenges posed by the American Rescue Plan Act (ARPA), CohnReznick stands ready to support NJDOL in navigating the complexities of this historic legislation. With our deep understanding of federal funding mechanisms and extensive experience in overseeing large-scale relief programs, we are well-equipped to assist NJDOL in being compliant while supporting the state's economic recovery efforts. Our proven track record in ensuring compliance, expediting relief to communities in need, and safeguarding program integrity uniquely positions us to help NJDOL maximize the impact of ARPA funding while minimizing administrative burden through this integrity monitoring solicitation.

Bringing our Experience with Similar Projects

In addition to our extensive experience providing Integrity Oversight Monitoring (IOM) services to the state of New Jersey, CohnReznick has demonstrated experience providing IOM support for multiple projects with similar scopes across the country. The table included below highlights several similar projects we supported for the states of New Jersey, Texas, Connecticut and Louisiana and the siimlarities between those projects and the NJDOL requirements for this EQ.

Similar Projects to NJDOL Requirements and Tasks	***Relevant Features***				
	ARPA Funded	***Procurement / Expenditure Reviews***	***Fraud, Waste & Abuse Monitoring***	***Desk and/or Onsite Monitoring***	***Capital Improvement Project Monitoring***
New Jersey Department of Community Affairs	✓	✓	✓	✓	✓
New Jersey Department of Treasury – Division of Taxation	✓	✓	✓	✓	✓
Connecticut Department of Housing	✓	✓	✓	✓	
Louisiana Office of Community Development	✓	✓	✓	✓	✓
Texas Department of Housing and Community Affairs	✓	✓	✓	✓	✓

CASE STUDY
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS | COVID-19 RELIEF PROGRAM COMPLIANCE

PROJECT SUMMARY

CohnReznick was selected through three separate procurements to serve as the Integrity Monitor for three distinct COVID-19 relief programs monitoring ***~$4 Billion in COVID relief*** funding. Originally selected in 2021 to serve as the Integrity Monitor for NJDCA's allocations of federal funding for its Emergency Rental Assistance Program (ERAP) and Local Government Emergency Fund, we were again selected in 2022 to serve as the Integrity Monitor for NJDCA's Emergency Rental Assistance Program, phase II and for NJDCA's Utility Arrearage program.

COVID RELIEF PROGRAM COMPLIANCE HIGHLIGHTS

Our responsibility for all programs includes:

- Conducting a risk assessment of the programs to evaluate conformance with documented program guidelines, federal and state statutes and guidance, and award agreements/MOUs.
- Developing a work plan using industry-accepted best practices and Generally Accepted Government Auditing Standards (GAGAS), and incorporating methodologies developed according to Circular A-133, Compliance Audits, as published by the American Institute of Certified Public Accountants (AICPA).
- Swiftly reviewing and monitoring applicant files for eligibility, accuracy, and completeness in relation to program guidance.
- Submitting periodic quarterly and monthly reports, and a final Project Completion Report to provide a summary of findings and to outline recommendations to mitigate against future risks of fraud, waste and abuse.

All programs were designed to help the State of New Jersey recover from the impact of COVID-19. Throughout each engagement, the monitoring team made extensive use of data analytics to identify potential instances of duplication of benefits, fraud, waste and abuse, as well as program inefficiencies. The resulting final reports included ***recommendations and industry best practices*** for the Department to carry forward into future programs. CohnReznick completed all activities and delivered all reports on time and without issues.

CASE STUDY

NEW JERSEY DEPARTMENT OF TREASURY – DIVISION OF TAXATION | SFRF OVERSIGHT MONITORING

PROJECT SUMMARY

The Individual Taxpayer Identification Number (ITIN) Holders Direct Assistance Program was established to provide benefits to New Jersey income tax filers who were ineligible for other federal economic stimulus payments. The NJ Department of Treasury, Division of Taxation was allocated $60 million in Coronavirus State Fiscal Recovery Funds (SFRF) to establish the ITIN Holders Direct Assistance Program and calculate benefits based on the 2021 Income Tax Returns filed. The Division of Taxation provided a $500 benefit which was treated as a tax rebate to each eligible ITIN holder per reporting household, subject to certain income limits.

SCOPE OF WORK

CohnReznick performed a risk assessment of the ITIN Holders Direct Assistance Program and conducted data analytics on the entire universe of ITIN IDs to test for incongruities, anomalies, and indications of fraud, waste, and abuse. CR reviewed payments made for eligibility, reviewed policies and procedures for compliance with Treasury requirements, and compared actual expenditures to Division payment records.

DIRECT ASSISTANCE PROGRAM HIGHLIGHTS

- Monitored approximately ***$50+ Million*** in benefits paid.
- Using data analytics completed ***review of 79,752 records*** and tested for duplication of benefits and other evidence of fraud.
- Implemented machine learning to validate program data to ensure that eligible households were paid proper amounts based on number of ITIN holders and verify legitimacy of dependent ITINs reported.
- All deliverables met on time.

CASE STUDY

CONNECTICUT DEPARTMENT OF HOUSING | ERAP SUPPORT

PROJECT SUMMARY

Acting through its Department of Housing (DOH), the State of Connecticut (CT) developed an emergency rental assistance program - UniteCT. This $235 million program provided rental and utility payment assistance to qualified CT households financially impacted by the COVID-19 pandemic. The intention of UniteCT was to help stabilize CT's rental housing market while serving households at or below 80% of HUD's Area Median Income.

PROJECT DESCRIPTION

CohnReznick provided program design and implementation services for Connecticut's Emergency Rental Assistance Program, UniteCT. The program assisted Connecticut's low- and moderate-income (LMI) tenants with rental assistance and utility payments.

UTILITY ARREARS ENGAGEMENT HIGHLIGHTS

As part of our assistance to the state CohnReznick worked with their utility providers and grants management vendor to design and execute a utility batch payment process in order to address utility accounts in arrears. We designed the process to reconcile information provided by the utility companies against applications and information received by the State for tenant accounts in arrears, to make bulk payments against the LMI tenants' outstanding utility bills. We worked with multiple utility companies and co-ops throughout the state to streamline and reconcile these payments for ***10,000+ utility accounts*** in arrears. In total, over **20,000** applications were processed and funded by the CohnReznick team.

This quote from U.S. Treasury Deputy Secretary Wally Adeyemo speaks to the quality of the services we provided:

"I'll walk away from today realizing that here in Connecticut you have found a way to use the flexibility provided by the federal government in a way that assures people get the resources they need... I will be referring people to the State of Connecticut when they ask me how we can do this, when I'm talking to other governors, when I'm talking to other mayors, when I'm talking to housing commissioners."

CASE STUDY

LOUISIANA OFFICE OF COMMUNITY DEVELOPMENT | ERAP SUPPORT

PROJECT SUMMARY

The Louisiana Housing Corporation (LHC), in partnership with the State of Louisiana Office of Community Development (OCD), is administering the emergency rental and utility assistance program included in the Coronavirus Response and Relief Supplemental Appropriations Act in 57 parishes. The CohnReznick team is providing Quality Assurance and Quality Control (QA/QC) services in support of the State of Louisiana's Emergency Rental Assistance Program (ERAP).

PROJECT DESCRIPTION

The Compliance and Monitoring team reviewed a sample selection (approximately 20%) of utility payments made directly to providers for eligible utility expenses (up to 12 months of arrears and current charges) for tenants already approved for rental assistance. Review of rental assistance determinations was previously performed by the Compliance and Monitoring team and established basic eligibility for this additional program. Where practical, programs should rely on existing welfare or subsidy programs to identify an eligible applicant population and streamline the process for utility payment support. Additionally, the Program established data sharing agreements with some providers to facilitate accurate payment amounts and application to the appropriate account. The Compliance and Monitoring teams review consisted of appropriateness of expense (service address, customer name and expense type), accuracy of payment amount and eligible period and review of supporting documentation if not already validated via information received from providers via the data sharing agreement.

UTILITY ARREARS ENGAGEMENT HIGHLIGHTS

The team validated the accuracy of third-party data from utility providers and ***identified an issue*** in which an import from Louisiana's largest utility provider was not performed appropriately and resulted in an overpayment of more than ***$185,000***. This error was identified by CohnReznick's Compliance and Monitoring team in a timely manner and was clearly documented such that the program was able to coordinate with the utility provider to expeditiously ***return the funds and correct customer accounts***.

CASE STUDY

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS | EMERGENCY RENTAL ASSISTANCE PROGRAM SUPPORT

PROJECT SUMMARY

The Texas Rent Relief Program (TRRP) is administered by the Texas Department of Housing and Community Affairs (TDHCA). Congress established the Emergency Rental Assistance Program to make funding available to assist households that are unable to pay rent or utilities. The program provides rental and utility assistance to qualifying applicants to prevent housing instability, potential eviction, and financial hardship for tenants and landlords because of the COVID-19 pandemic.

PROJECT DESCRIPTION

CohnReznick provided Application Eligibility Review services to TDHCA. Our team supported tenants and landlords who seek assistance for rent and/or utility costs for past, current and prospective future months; approximately $2 Billion was allocated to the state of Texas for implementation of this program. CohnReznick performed application reviews and moved applications through the entire review cycle including initial eligibility reviews; communicating with tenants, landlords and utility providers to confirm eligibility information and determine eligible award amounts; setting up draw requests; placing applications into final disposition and processing appeals.

UTILITY ARREARS ENGAGEMENT HIGHLIGHTS

- Performed ***130,000 application eligibility reviews*** and processed ***4,355 appeals***.
- Reviewed nearly ***$105 Million of utility expenses*** requested by tenants, including $80.8 Million in arrearage and related to ***~100 distinct utility providers***.
- Implemented machine learning model to ***identify 235,024 potential duplicate cases*** out of the 1.1 million rent relief applications.
- Created analytics to identify and correctly distinguish between the approval of arrears and future months to ensure rent and utility months approved did not exceed program limits.
- Implemented machine learning model for anti-fraud detection to identify ***2,377 potentially fraudulent cases*** totaling ***$51.2 Million*** in requested assistance.
- Implemented machine learning model to associate 51,020 tenant applicants to corresponding landlord applications.

Insights From a CohnReznick Integrity Monitor

Orterio Villa
– *Senior Manager*

> ***In 2007 I helped define and implement reporting for the Louisiana Road Home program, supporting recovery efforts for Hurricanes Katrina and Rita. That experience taught me the positive impact capital improvement and recovery programs can have on the worst days in someone's life. I have been involved with IT, reporting and/or compliance and monitoring programs specific to disaster recovery ever since then.***
>
> ***As the current Senior Manager of Reporting and Analytics for a large and ongoing Compliance & Monitoring engagement with the state of Louisiana, we support federally funded programs with a reporting team that delivers information both internally and to the public. Using an agile process that includes user involvement and iterative releases of more complex deliverables, we have continued to exceed Louisiana's expectations through multiple contracts and extensions and always strive to bring the same level of client service to New Jersey.***

What Our Customers Are Saying

"We just wanted to thank you for your professionalism as you conducted [our] Integrity Monitoring. Your knowledge and expertise in overseeing the disbursement of … COVID-19 Funds and the administration of … COVID-19 programs are highly appreciated. We look forward to implementing your practice recommendation in order to mitigate the risk areas, and to improve and streamline our quality system."

~ State of New Jersey Client

"We're excited your contract was renewed and looking forward to continuing to work together to support agency and programs. The reporting support the team provides is critical to operations and allows our team to identify opportunities for improvement."

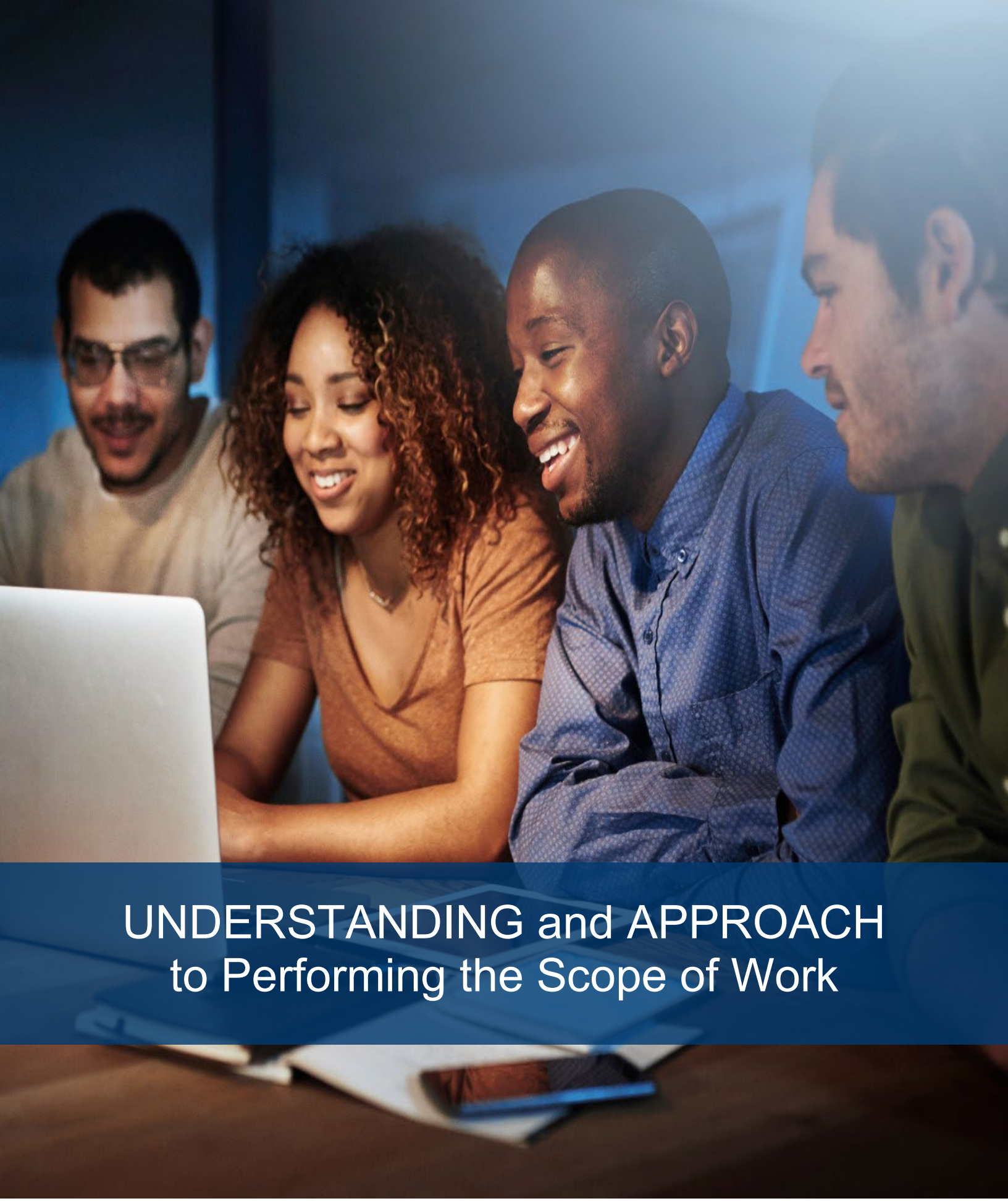
~ State of Louisiana Client

"Your commitment to quality and your agility – it was just really unprecedented. You stood out among the vendors. It was your standards that helped us really get this done and helped [us] see what we could, or maybe should, be expecting from others too."

~ State of Texas Client

"CohnReznick has provided – and continues to provide – [us] highly reliable, expert advice and statewide capacity augmentation services for [our] Recovery programs. Their prior experience working with other state agencies … has provided [us] the expedited, reliable guidance and subject matter expertise [we] required … [we are] a more capable organization with CohnReznick in the wake of COVID while managing multiple federal and state disasters."

~ State of North Carolina Client



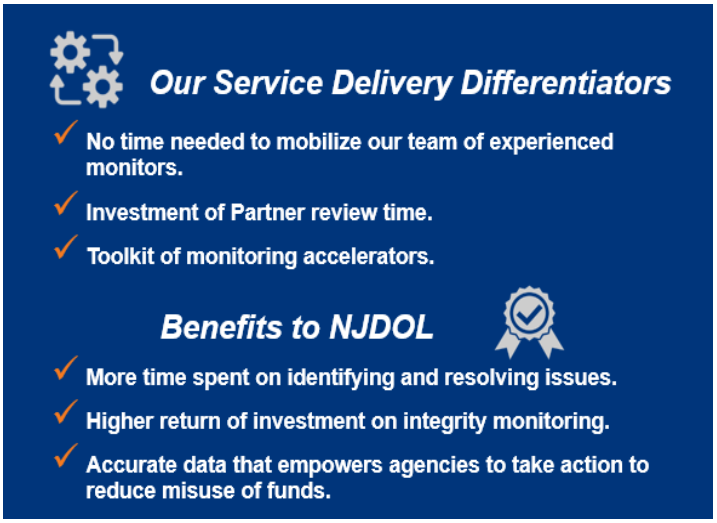
UNDERSTANDING and APPROACH to Performing the Scope of Work

Our Understanding of the Scope of Work

We understand that NJDOL is planning on using two separate awards totaling $50 million from the American Rescue Plan (ARPA) to fund the Unemployment Insurance Technology (UI IT) Modernization Program and improve the overall user experience for New Jersey residents. Specifically, the funds would be used for the improvement of the online application and related claims status functions, the communication structures, and the underlying technical infrastructure. In accordance with E.O. 166, the Engagement Query (EQ) seeks to address the oversight needs for this Program through the procurement of Category 3 Integrity Monitoring services.

Throughout this engagement we will review NJDOL policies and procedures, conduct a risk assessment of Agency's existing controls to prevent fraud, waste and abuse, examine and test procurement and payroll/consultant costs, and provide capital improvement project monitoring services. CohnReznick will also use analytics in our review of program data to identify anomalies, patterns and discrepancies as well as cross-check and validate the information against other data sources. In addition we will assist in the development of an anti-fraud monitoring, prevention and detection program.

CohnReznick tailors its approach to engagements in a unique and strategic manner to best support the needs and challenges of government agencies.



Our Integrity Monitoring Solution for NJDOL

A Proven Methodology for monitoring NJDOL's use of State and Local Fiscal Recovery Funds

NJDOL is seeking independent compliance and integrity oversight monitoring services, an area where CohnReznick excels. We work to augment our client's internal controls while performing detailed program oversight. Our vision is to apply our experience helping other New Jersey state agencies be successful and withstand the closest of public scrutiny.

Throughout this engagement NJDOL will benefit from our ability to leverage our extensive IOM experience to identify program weaknesses, gaps, or errors in reporting, as well as develop comprehensive recommendations and solutions to address compliance and risk management to reduce the potential for fraud, waste and abuse. Our approach to this engagement for NJDOL will include:

- A team of experienced professionals dedicated to serving NJ state agency programs;
- A streamlined organizational structure to facilitate decision-making and coordination with NJDOL program managers and program stakeholders;
- Unparalleled involvement of Partners, Managers and Subject Matter Experts with deep NJ IOM experience;
- Flexibility to provide a tailored service approach based on our proven methodology;
- A thoughtful communication strategy that puts relevant information in context for NJDOL;

- Access to local, experienced fiscal and integrity monitoring resources;
- Value for fees beyond our competitors;
- Protecting against fraud, waste and abuse.

Agile Monitoring and Sprint Cost Estimation

CohnReznick's approach to developing procedures and documentation to review and process software invoices and Sprint estimate s will be per the ***GAO-20-590G, AGILE ASSESSMENT GUIDE***: referenced in the EQ and incorporate CohnReznick's experience in Compliance, Monitoring, infrastructure, and Information Technology projects.

Our Approach to Agile Software Development Invoice Reviews

CohnReznick has standard approaches to invoice reviews to validate costs are reasonable, allocable, allowable, and in line with the project deliverables and contractual obligations.

Specific to Agile Software Development Invoices – and more importantly, specific to DOL's software upgrade program – CohnReznick anticipates a complex project and environment where custom software design and development may be combined with commercial off the shelf (COTS) software. This program may include integration and/or data exchange across multiple platforms from servers, cloud, hybrid and even more challenging an existing mainframe adding to its complexity. For those reasons we anticipate assigning team members with previous software and infrastructure project experience to NJDOL's unemployment insurance benefits and programs project, as well as ensuring our subject matter experts are readily available to provide dedicated, expert oversight of the review process.

Our Approach to Estimating and Evaluating Sprint Costs

CohnReznick will begin any process design for Sprint estimates and evaluations by learning the current project goals, budgets, schedule, and targets. Once that knowledge has been acquired, we would review the Sprint methodology and specifics regarding assignment of points, complexity, and specifics on the Sprint Teams, "adjustment factors," and the vendor leading the Sprints. Additionally, CohnReznick will review the project's Work Breakdown Structure (WBS) and any artifacts for insight into the overall status and health of the project.

Once the above foundation is in place, CohnReznick will evaluate any available history and/or existing procedures. If there is existing data, CohnReznick will analyze the data to get averages and variations associated with Sprint points, cost, schedule, backlog, rate of backlog increase, etc. Next, we identify any correlation between vendors, programmer experience, Subject Matter Expert or specific Sprint teams.

The steps described above will allow CohnReznick to create policies and procedures specific to NJDOL's UI IT project, personnel, and goals which will ensure our approach is as accurate and relevant in your environment. The output from the above steps should provide acceptable costs for specific Sprints, points and provide insight into Earned Value data like the overall project cost, points and cost to-date, and points and cost remaining.

Our Approach to Capital Improvement Project Monitoring

CohnReznick is a pioneer serving as a third-party auditor and can provide real-time monitoring of the standby generator project capital improvement project. We have extensive experience with prevailing wage compliance, minority and woman-owned business compliance, and overall conformity with requirements under numerous Federal funding sources. Additionally, we have significant experience in scrutinizing billing submissions including general conditions costs, self-performed work, change orders and delay claims, and we will identify areas of improvement and provide recommendations in an expeditious manner. As a leading CPA firm, we keep our monitoring scope focused on reducing fraud, waste, and abuse by looking for the typical fraud schemes and risks in major public construction projects.

Our Project Management Approach

Our team is equipped with tools to efficiently plan engagements, monitor performance, and maintain effective monitoring operations – all while keeping pace with rapidly changing regulatory environments. **Our project management approach** will bring together the right people, expertise, experience, and technology to ensure objectives and expectations are met; this will be accomplished through:

Dedicated Program Management Office (PMO) and Reporting Capabilities

Our dedicated PMO team will serve as the daily administrator and coordinator for the administrative and contractual requirements for all activities, tasks and subtasks associated with our engagement with NJDOL.

Scope Management

CohnReznick will develop a work plan and communicate this plan to all necessary stakeholders. We will incorporate monitoring processes that focus on project needs, deliverables and schedules.

Time Management

Many aspects of compliance oversight and integrity monitoring are predetermined, scheduled and recurring (quarterly reports, final reports, etc.). Our team understands that time management is imperative to meeting the deliverables set forth in NJDOL's EQ and uses innovative tools that monitor workflows and are customizable for specific deliverables to make sure we never miss a deadline.

Risk Management

CohnReznick's experienced team of compliance monitors will review enterprise-wide agency policies and procedures, conduct interviews with staff, and coordinate with NJDOL management and stakeholders to assess potential risks. This process will inform our sampling and testing procedures, and also allow our team to produce a fully formed workplan.

Quality Control (QC)

Our QC best practices include audit programs, checklists, and industry practice aids to ensure the engagement team has a comprehensive understanding of QC requirements. Furthermore, our PMO is a dedicated resource to verify the key elements of our QC processes as outlined below:

- Planning is conducted to include clearly defined objectives, scope, methodology and assignments
- Adherence to work plan is maintained
- Deliverables are met
- Reliable documentation is maintained to clearly demonstrate the work performed and to any recommendations we make to NJDOL

Staffing Management

A staffing plan is instrumental to the successful implementation and delivery of services. We design our staffing plans to be flexible and scalable, critical as multiple disciplines and areas of expertise may be required, though to varying degrees. Our Project Managers will always make the necessary resources available, and we will add and deduct staff based on the needs of the assigned tasks and required deliverables. Our teams will also have access to supplementary resources to support any potential future needs, providing the flexibility to deploy or scale down staff as necessary.

Communications Management

We understand the importance of effective communication for providing a collaborative, consistent and productive team environment, and will establish a communication strategy between stakeholders at project kickoff. Our approach to project management emphasizes the vital importance of communication among stakeholders by establishing internal and external stakeholder communication protocols (to the extent desired by NJDOL). We understand from experience how important a solid communication strategy is, and will incorporate the following key elements into our approach:

- Identification of stakeholders and their roles and responsibilities
- Determining the information and communication needs of each stakeholder
- Strategies and standards for making information available to project stakeholders in a timely manner
- Process for collecting and distributing performance information
- Guidelines and protocols for meetings, calls, emails, etc.
- Escalation protocols among stakeholders

How CohnReznick's Integrity Monitoring's Solution is Different

Throughout our work as Integrity Oversight Monitor for New Jersey's COVID-19 recovery programs, we have kept in mind the bigger picture: helping New Jersey state agencies to safeguard their use of federal funds, but also striving to deliver valuable insights and industry best practices that our clients can carry forward into future programs; all while prioritizing efficiencies through the use of our deep bench of experienced monitors and a robust portfolio of project-proven monitoring tools.

This mindset allows us to differentiate our ***Integrity Monitoring Service Delivery Model*** in the following ways:

Data Analytics & Fraud Analysis

CohnReznick has extensive experience using data analytics to identify potential instances of fraud or abuse across multiple compliance engagements in states such as New Jersey, Connecticut, Texas, and Louisiana. These tools have assisted with the review of invoices, payroll, time sheets, requisitions, and change orders to ensure that the amounts charged are reasonable, allocable, and follow federal, state, and local laws as well as the contract terms.

CohnReznick's Construction and Capital Improvement Capabilities – by the Numbers

- ✓ **$50B+ Construction Funds PROTECTED**
- ✓ **$30B+ Payment Applications REVIEWED**
- ✓ **500+ Contractors and Subcontractors MONITORED across the U.S.**
- ✓ **100% - on SCHEDULE and on BUDGET**

Construction and Capital Improvement Experience

For over three decades, CohnReznick has provided oversight monitoring services for construction and capital improvement projects to government agencies and commercial owners/developers. We have worked with internal auditors, program managers and inspectors general to provide oversight for capital improvement and equipment installation projects at all levels of size and complexity. Our ability to provide these services comes from a team of more than 80 professionals serving over 200 clients across the construction industry, including public agencies, public-private partnerships, construction owners, construction management firms, construction joint ventures, general contractors, heavy equipment contractors, specialty contractors, and the building trades. This year, we were recognized by The Consulting Report for a second consecutive year as eighth in the 2023 rankings among its Top 50 Consulting Firms and the top-ranked public accounting firm on the list.

CohnReznick Has Never Missed a Deadline.

We have ***never missed a report or deliverable deadline*** in the history of our support of New Jersey and Contract G4018.

We are also ***familiar with NJ's Integrity Monitor report templates*** and will deliver all required reports and deliverables in a timely manner without sacrificing the quality our clients expect.

Plan to Accomplish Scope of Work Requirements

CohnReznick will support NJDOL in its management and monitoring efforts of the responsible disbursement of COVID-19 Recovery funds and perform a review of the UI IT Modernization Program and its compliance with NJDOL policies and state and federal regulations.

The project plan we are presenting here outlines our comprehensive methodology to performing each component of the scope as outlined in the EQ. Our extensive experience successfully supporting numerous New Jersey state agencies with their monitoring of several substantial, complex grant programs provides us with a keen understanding of the challenges and obstacles facing recipients and program administrators. Our team will meet the expectations set forth in the EQ and within the time frame specified in this response, and we are confident our plan presents the most efficient, effective means of monitoring the UI IT Modernization program.

Our plan to accomplish all aspects of the NJDOL EQ is outlined here and on the pages that follow.

Planning

Project Launch Meetings

At the outset of the engagement CohnReznick will:

- ✓ Conduct an engagement kick-off meeting with NJDOL within 5 business days of purchase order issuance;
- ✓ Conduct overview of the UI IT Modernization Program and confirm engagement scope and objectives;
- ✓ Confirm level of coordination between CohnReznick, NJDOL personnel and other stakeholders to establish protocol for communications and to request documents, interviews, and process walkthroughs;
- ✓ Coordinate a regular bi-weekly meeting schedule and confirm attendees;
- ✓ Request copies of policies, procedures, operational workflow, organization charts and other Program related documentation;
- ✓ Confirm the template(s) and timing for all deliverables with NJDOL.

Program Monitoring

Throughout this phase CohnReznick will communicate with NJDOL and all relevant stakeholders to coordinate meetings, report on project status, alert the agency to any issues noted, and document the results of findings.

Risk Assessment

In performing the Risk Assessments, CohnReznick will evaluate elements such as NJDOL's:

- ✓ Organizational structure and capacity
- ✓ Program policies and procedures
- ✓ Internal controls
- ✓ Prior audits
- ✓ Level of risk associated with the Program
- ✓ Initial risk self-assessment

Work Plan

In drafting the Work Plan, CohnReznick will develop and document:

- ✓ A sampling methodology using a nationally recognized audit standard (ACIAP or GAO Government Auditing Standard) to achieve a monitoring objective related to both compliance and internal controls;
- ✓ Testing Procedures considering risks identified, NJDOL policies and procedures, federal regulations, and contract terms. The procedures will include reviews and evaluations of:
  - Agile software development invoicing;
  - Estimated SPRINT costs.

Ongoing Program Review

During the engagement, CohnReznick will perform:

- ✓ Procurement Expenditures Reviews – to test for proper documentation, authorization and approvals;
- ✓ Payroll Expenditures Reviews – to ensure NJDOL and/or vendor/consultant payroll expenditures and fringe benefits are properly supported and documented;
- ✓ Fraud Monitoring/Data Analysis – review program and/or contracts to identify potential fraud using analytics tools to identify anomalies, patterns, and discrepancies;
- ✓ Capital Improvement project monitoring – review of procurements, expenditures, change orders, invoices and punch list items and for compliance with applicable laws and regulations;
- ✓ A review of Data Retention Policies and Procedures Reviews – review sample program files to verify compliance with relevant rules and regulations.

Deliverables and Closeout

Please see the ENGAGEMENT PHASES AND TIMELINE Section for the deliverables and reports NJDOL will be provided during this engagement.

ENGAGEMENT
Phases and Timeline

Deliverables for Scope of Work and Timeline

We are committed to providing quality services and deliverables within NJDOL's desired timeframe, and will provide the following reports and deliverables to NJDOL based on the agreed-upon schedule:

Kick-off Meeting

- Within 5 business days of Purchase Order issuance

Risk Assessment

- Within 45 business days of Purchase Order issuance

Work Plan

- Within 45 days of Purchase Order issuance

Draft Quarterly Report(s)

- Last day of each quarter

Final Quarterly Report(s)

- 15 business days after the end of each quarter

Final Quarterly Report(s)

- 15 business days after the end of each quarter

Project Completion Report

- At the completion / termination of the engagement

STAFF
Experience and Team Structure

NJDOL Engagement Management Team & Subject Matter Experts

CohnReznick has structured our team of professionals based on the requirements of this EQ as well as our direct experience providing compliance and oversight monitoring services for projects of similar size, scope and turnaround time.

The Engagement Partner leading the team will be ***Frank Banda, CPA, PMP***, who is Managing Partner of CohnReznick's Government and Public Sector Advisory practice and has 35+ years of management, audit, accounting and consulting experience who has deep expertise in fraud prevention and detection, compliance and monitoring, audit readiness, internal controls, disaster recovery and grant management.

The selected **Program Manager** for this engagement is ***Ron Frazier, JD, PMP***, who has 20+ years of experience and specializes in providing integrity oversight monitoring services for state and regulatory agencies. Ron is a Senior Manager who has worked with the State of New Jersey on multiple engagements in monitoring Coronavirus Relief Funds in the State's response to COVID-19.

The **Project Managers** for this NJDOL engagement are ***Anna Fomina*** and ***David Solomon***.

- ***Anna Fomina, CPA, CGMA*** has 18+ years of financial management, audit and advisory consulting experience with specific expertise in compliance and monitoring, fraud prevention and detection, assessment of internal controls, disaster recovery and grant management. A Manager with CohnReznick, Anna has supervised integrity oversight and anti-fraud monitoring for Coronavirus Relief Funds (CRF) pursuant to the CARES, Consolidated Appropriation and ARPA Acts for multiple NJ state agencies as well as construction integrity and compliance monitoring engagements.
- ***David Solomon*** has 8+ years of experience in project management relating to business systems implementation, auditing and reporting, and previously performed and managed compliance and integrity oversight monitoring for DCA, DOC, DOH, DOS, and NJDOE, specific to the use of Coronavirus Relief Funds (CRF) pursuant to ARPA, CARES, and Consolidated Appropriations Acts. David has also worked in the public sector for the Florida Division of Emergency Management (FDEM), and the Florida Department of Financial Services in the Bureau of Auditing (DFS). He has expertise auditing state and federally procured contracts and payments, and leading business systems process mapping and process improvement.

The **Subject Matter Experts (SMEs)** selected for this NJDOL engagement are ***Rochell Cottingham, Orterio Villa and Shih-Hsien Yang.***

- ***Rochell Cottingham, CCSA, CFE, CGAP, CIA, CISA, CRMA, PMP*** is a Director with 25+ years of experience providing project management and administration, program compliance, performance monitoring, revenue assurance, systems analysis and implementation, process improvement, fraud risk management, quality management, and audit and consulting services to state, federal and private sector clients. He is

experienced in engagement planning and budgeting, client communication and deliverables, project monitoring to ensure activities are compliant with federal, state, regulatory, program and contract requirements and are completed on time and on budget.

- ***Orterio Villa*** has 30+ years of IT and Lean Process Management experience – 17 years of this experience in project management, IT and reporting – design, creation, test and implementation, statistical analytics – model, pull test and outcomes, and projections – modeling, implementation and validation. He has led software and project launches, stabilization, steady-state and rescue, and has implemented controls to protect over a billion sensitive data points spread across vendors, states, systems and law enforcement agencies.
- ***Shih-Hsien Yang*** is a Data Analytics Manager, accomplished data scientist and fraud detection SME who brings 8+ years of data science expertise to this engagement with proven success in implementing and deploying machine learning (ML) algorithms into production environments. He has investigated potential fraud rings using data science and has presented his findings to authorities for data-driven decision-making.

  Shih-Hsien has been instrumental in developing Machine Learning algorithms for fraud detection and duplicate detection to combat fraud, waste and abuse for recovery programs in the States of Texas and Connecticut.

CohnReznick's team of professionals brings experience in the ***three areas crucial to compliant outcomes***:

Key Personnel Chart

The ***Key Personnel*** chart we have developed is included to familiarize the NJDOL with our engagement team and highlight their relevant IOM and compliance experience. Our team is fully staffed with professionals experienced in performing the work as outlined in this EQ, and the team structure is designed to be flexible and efficient in order to adhere to the turnaround times and completion deadline requirements of this EQ for NJDOL.

Please note the badges that have been added to our staff bios to denote those professionals who have demonstrated and proven experience with the State of New Jersey, with COVID-19 relief experience, and/or is a certified Anti-Fraud monitor.

Member	Functional Role	Experience
TOTAL PARTNER HOURS (EXECUTIVE OVERSIGHT PROVIDED AT NO CHARGE TO NJDOL): 50		
 **Frank Banda, CPA, CFE, CGMA, PMP** *Partner*	**Partner**   	▸ Frank has 35+ years of management, audit, accounting and consulting experience, with expertise in fraud prevention and detection, audit readiness, internal controls, compliance and monitoring, disaster recovery and grant management ▸ Proven ability to plan and implement large programs while managing risks and resolving issues; well versed in public policy and audit/fraud prevention ▸ Served as Integrity Monitor for ~$3 billion of Community Development Block Grant – Disaster Recovery (CDBG-DR) funding for ***New Jersey's Department of Community Affairs (DCA)*** ▸ Engagement Partner on multiple ***NJ Integrity Monitoring COVID-19 Relief Fund projects including OMB, NJDOE, NJDOH, NJDOS, NJDOC and NJDCA***
TOTAL PROGRAM MANAGER HOURS: 158		
 **Ron Frazier, J.D.** *Senior Manager*	**Program Manager**  	▸ Ron has 20+ years of accounting, compliance and monitoring experience, specializing in providing integrity monitoring and grants management services for state agencies and private entities ▸ Licensed attorney and lead for both integrity and compliance monitoring engagements ▸ Performed as contract and performance manager for ***NJ IM Coronavirus Relief Fund projects including NJDOE, NJDOH and NJDCA as well as the TX TDHCA HAF program***

TOTAL PROJECT MANAGER HOURS: 438

Anna Fomina, CPA
Manager

Project Manager

NJ EXPERIENCE

COVID RELIEF EXPERIENCE

- Anna has 18+ years of extensive auditing, consulting, integrity monitoring, fraud investigation, financial accounting and reporting, SOX 404 compliance, internal controls experience in private and public sector
- Manages Integrity Monitoring for ***NJDOE, NJDOH, NJ Treasury OMB and NJDCA projects including Program and Performance Monitoring, Financial Monitoring, Grant Management and Anti-Fraud Monitoring for Coronavirus Relief Funds (CRF) pursuant to the CARES, Consolidated Appropriation, American Rescue Plan Acts***

David Solomon
Manager

Project Manager

NJ EXPERIENCE

COVID RELIEF EXPERIENCE

- David has 8+ years' experience in government auditing and emergency management in the public sector, most recently with the Florida Division of Emergency Management, assisting with the State's implementation of the CARES and ARPA (SLFRF) programs
- Has performed and managed compliance and integrity monitoring services for the State of New Jersey including on ***NJDOC, NJDOH, NJDOS, NJDOE, Treasury & Taxation, and NJDCA.***

TOTAL SUBJECT MATTER EXPERT HOURS: 79

Rochell Cottingham, CCSA, CFE, CGAP, CIA, CISA, CRMA, PMP
Director

Subject Matter Expert – Grant Compliance Monitoring Services

COVID RELIEF EXPERIENCE

- Director with 25+ years of experience providing project management and administration, program compliance, performance monitoring, revenue assurance, systems analysis and implementation, process improvement, fraud risk management, quality management, and audit and consulting services to state, federal and private sector clients
- ***Provides comprehensive quality management and grant compliance monitoring services*** to the Louisiana Office of Community Development/ Disaster Recovery Unit (OCD/DRU), and conducts agreed-upon procedures (AUP) for the Texas Water Development Board (TWDB)
- Experienced in engagement planning and budgeting, client communication and deliverables, project monitoring to ensure activities are compliant with federal, state, regulatory, program and contract requirements and are completed on time and on budget

Orterio Villa
Senior Manager

Subject Matter Expert – Quality Control

COVID RELIEF EXPERIENCE

- Orterio has 30+ years of IT and Lean Process Management experience, 17 years of experience in project management, ***IT and reporting / analytics***, as well as multi-billion-dollar disaster operations, IT program startup and execution
- ***Orchestrated software and project launch, stabilization, steady-state and rescue***; has implemented controls to protect over a billion sensitive data points spread across vendors, states, systems and law enforcement agencies; spearheaded process and system design for several catastrophe claims management systems, government, business and individual entities across private, state, and federal programs
- Established a PMO enabling ***continuous improvement and efficiency*** across portfolios, and creating a culture of continuous improvement

Shih-Hsien Yang
Manager

Subject Matter Expert – Data Analytics

NJ EXPERIENCE

COVID RELIEF EXPERIENCE

- Shih-Hsien is an experienced ***data analytics manager with proven success in helping government and public sector clients*** make near-real time, data-driven decisions. Much of his work is focused on safe-guarding financial payments and direct deposit transactions made by the federal government
- Instrumental ***role in developing Machine Learning algorithms for fraud and duplicate detection*** to combat fraud, waste and abuse for recovery programs in the States of Texas and Connecticut
- Investigated potential fraud rings using data science and has presented the findings for data-driven decision-making

TOTAL CONSULTANT HOURS: 398

Brian Livian
Senior Consultant

Consultant

- Brian is a data scientist with 2 years of experience with ***expertise in data analysis, machine learning and statistical modeling***
- Committed to ***delivering data-driven insights and solutions to drive business growth and improve decision-making processes***

Tzu-Yu Wang
Senior Consultant

Consultant

- Tzu-Yu had 8 years of experience in data science, and is expert in machine learning, deep learning and Artificial Intelligence (AI)
- Has ***experience designing, developing and validating machine learning models*** to solve real-life problems and extract information from large datasets
- Also has ***experience working closely with government entities*** providing insight for policy making, resource usage and fraud detection

Grace Wandling, CPA
Senior Consultant

Consultant

- Grace has 20+ years of accounting and auditing experience in the private and government sectors
- Currently supporting CohnReznick's compliance and monitoring engagements in the ***State of New Jersey for OMB, NJDOE and NJDCA***
- Specializes in discrepancy and fraud investigation as well as discovery and remediation; has held roles in Federal Deposit Insurance Corporation – Office of Inspector General (OIG) as well as leadership positions in the United States Government Accountability Office (GAO)

Andrew Barchenko
Senior Consultant

Consultant

- Andrew has 6+ years of experience in the areas of auditing, advisory consulting, and integrity monitoring with specific experience in compliance and monitoring, fraud prevention and detection, assessment of internal controls, and grant management
- Supports clients in the commercial real estate, financial services, retail and consumer products, healthcare and not-for-profit industries
- Has served as an integrity monitor on several NJ engagements including ***NJDOE, NJDCA and NJ Treasury OMB***

Thomas Mammen
Senior Consultant

Consultant

NJ EXPERIENCE

COVID RELIEF EXPERIENCE

- Thomas has 15+ years of industry experience with accounting and finance, reconciliation, internal controls and audit, and revenue assurance in both the government and public sector
- Currently performing as an integrity monitor on several NJ engagements including ***NJDOE, NJDCA, NJ Treasury – OMB, NJ Division of Taxation and NJ Department of State Travel & Tourism***

Tiffany Thompson
Senior Consultant

Consultant

NJ EXPERIENCE

COVID RELIEF EXPERIENCE

- Tiffany has 10+ years of experience performing routine and special audits, as well as preparing reports of audit results, recommending improvements in accounting methods and internal controls, and assisted in developing efficient operations by preparing internal controls, systems, and procedures
- Evaluated compliance and finalized deliverables on Integrity Monitoring engagements with ***NJDOH, NJDOC and NJDCA***
- Previously served in the Florida Office of the Attorney General conducting financial and compliance audits, and with the Florida Department of Agriculture and Consumer Services as a compliance officer identifying and presenting business risks and irregularities for $1.2 billion in annual USDA grants

Erin White
Senior Consultant

Consultant

NJ EXPERIENCE

COVID RELIEF EXPERIENCE

- Erin has 6+ years of governmental accounting and auditing experience including pre-audit and post-audit reviews of Florida state agency payments and contracts
- Provided integrity monitoring services such as risk assessment and finalizing deliverables for ***NJDOE, NJDOH and NJDOC***
- Experienced in developing and implementing CRF and Non-CRF federally funded grant programs

BUDGET
to Perform Scope of Work

Price Sheet to Perform the SOW

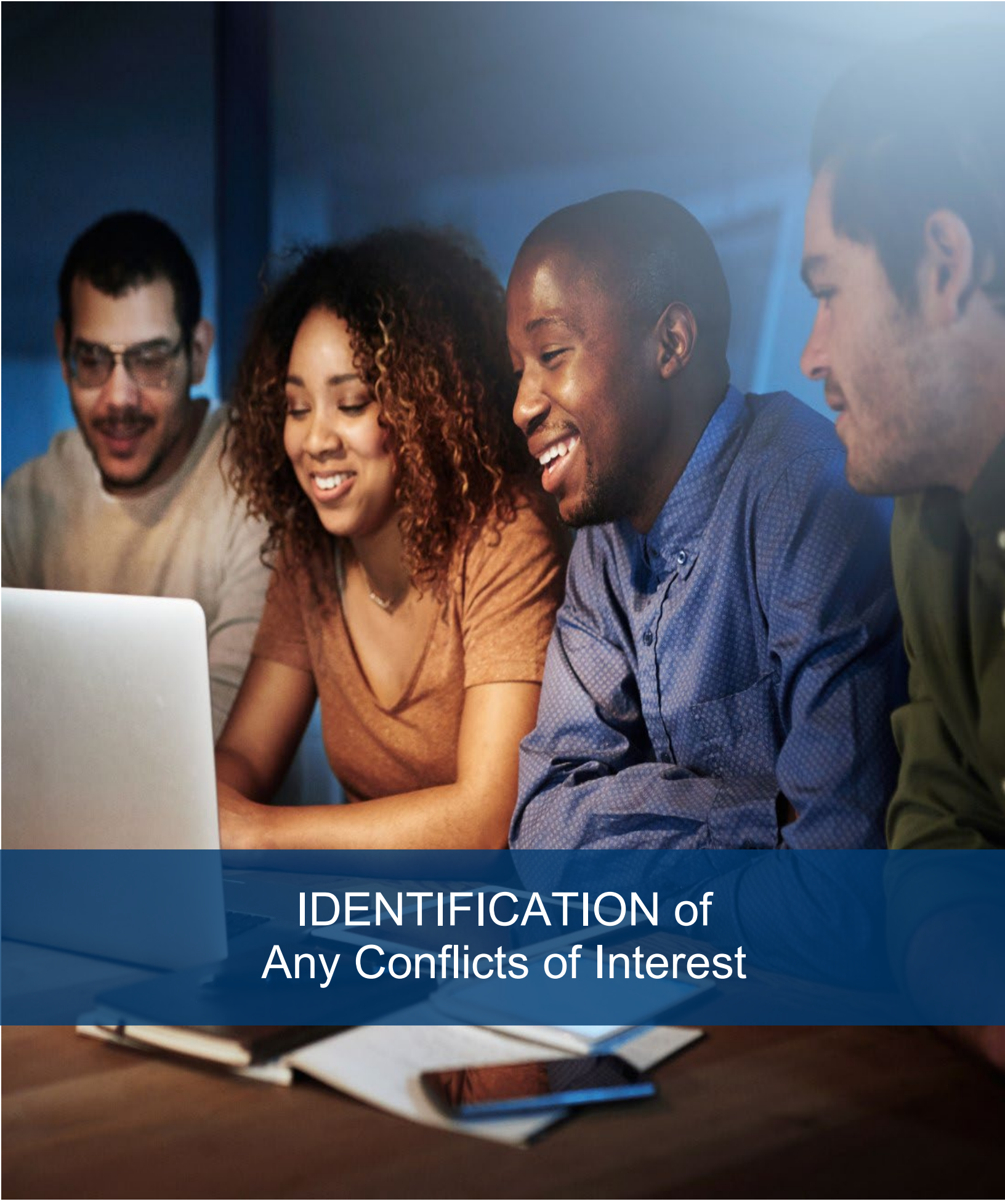
Please note the Total Cost (non-discounted) shown is the cost calculated prior to any discounts applied – however being keenly aware of the State's efforts to remain under budget we have discounted our pricing to present our best value to the NJ Department of Labor.

Our Price Sheet to perform the SOW (following page) reflects the contract expiration deadline of ***December 31, 2024***. Our staff will complete all tasks pursuant to the Quarterly and Final Report deadlines, and the project deliverables will be completed and submitted to the NJDOL based on those requirements in the EQ.

With this response we believe we have shown CohnReznick is more than qualified and capable of providing the services as outlined in the EQ and Scope of Work. Our experience helping numerous states and municipalities, along with our proven track record of providing industry-leading audit and advisory services, demonstrates how we are uniquely suited in aiding the NJDOL. In addition, if required CohnReznick has the capacity to engage with local resources to provide on-site monitoring as needed.

CohnReznick has repeatedly shown our approach to compliance and monitoring recovery programs is focused on partnering with our clients ensuring successful program outcomes, and we look forward to working with the NJDOL and continuing to offer expert advisory support to the State of New Jersey.

	Staffing Category	Hourly Billing Rate ($)	Hours	Amount ($)	Total Cost ($)	Hourly Discounted Billing Rate ($)	Amount ($)	Total Cost (discounted) ($)
Risk Assessment	Partner/Principal/Director	$ 295.00	5	$1,475.00	$19,460.00	$ -	$0.00	$17,985.00
	Program Manager	$ 275.00	15	$4,125.00		$ 275.00	$4,125.00	
	Project Manager	$ 252.00	50	$12,600.00		$ 252.00	$12,600.00	
	Supervisory/Sr. Consultant	$ 204.00	0	$0.00		$ 204.00	$0.00	
	Consultant	$ 153.00	0	$0.00		$ 153.00	$0.00	
	Associate/Staff	$ 133.00	0	$0.00		$ 133.00	$0.00	
	Subject Matter Expert	$ 252.00	5	$1,260.00		$ 252.00	$1,260.00	
	Administrative Support	$ 76.00	0	$0.00		$ 76.00	$0.00	
			75					
Work Plan Development	Partner/Principal/Director	$ 295.00	5	$1,475.00	$19,460.00	$ -	$0.00	$17,985.00
	Program Manager	$ 275.00	15	$4,125.00		$ 275.00	$4,125.00	
	Project Manager	$ 252.00	50	$12,600.00		$ 252.00	$12,600.00	
	Supervisory/Sr. Consultant	$ 204.00	0	$0.00		$ 204.00	$0.00	
	Consultant	$ 153.00	0	$0.00		$ 153.00	$0.00	
	Associate/Staff	$ 133.00	0	$0.00		$ 133.00	$0.00	
	Subject Matter Expert	$ 252.00	5	$1,260.00		$ 252.00	$1,260.00	
	Administrative Support	$ 76.00	0	$0.00		$ 76.00	$0.00	
			75					
On-going Monitoring	Partner/Principal/Director	$ 295.00	25	$7,375.00	$173,843.00	$ -	$0.00	$166,468.00
	Program Manager	$ 275.00	98	$26,950.00		$ 275.00	$26,950.00	
	Project Manager	$ 252.00	248	$62,496.00		$ 252.00	$62,496.00	
	Supervisory/Sr. Consultant	$ 204.00	0	$0.00		$ 204.00	$0.00	
	Consultant	$ 153.00	398	$60,894.00		$ 153.00	$60,894.00	
	Associate/Staff	$ 133.00	0	$0.00		$ 133.00	$0.00	
	Subject Matter Expert	$ 252.00	64	$16,128.00		$ 252.00	$16,128.00	
	Administrative Support	$ 76.00	0	$0.00		$ 76.00	$0.00	
			833					
Reports	Partner/Principal/Director	$ 295.00	15	$4,425.00	$36,615.00	$ -	$0.00	$32,190.00
	Program Manager	$ 275.00	30	$8,250.00		$ 275.00	$8,250.00	
	Project Manager	$ 252.00	90	$22,680.00		$ 252.00	$22,680.00	
	Supervisory/Sr. Consultant	$ 204.00	0	$0.00		$ 204.00	$0.00	
	Consultant	$ 153.00	0	$0.00		$ 153.00	$0.00	
	Associate/Staff	$ 133.00	0	$0.00		$ 133.00	$0.00	
	Subject Matter Expert	$ 252.00	5	$1,260.00		$ 252.00	$1,260.00	
	Administrative Support	$ 76.00	0	$0.00		$ 76.00	$0.00	
			140					
	Allowance for Travel Expenses and Reimbursement if on-site monitoring required			**$10,000.00**				
	Total Cost (non-discounted)				**$249,378.00**			
	Total Cost (if discounted)							**$234,628.00**



IDENTIFICATION of Any Conflicts of Interest

Our Written Notification of No Known Conflicts at This Time

Per the requirements outlined in the New Jersey Treasury's Engagement Query to retain a Category 3: Integrity Monitoring/Anti-Fraud Integrity Monitor for the New Jersey Department of Labor to conduct monitoring of the Unemployment Insurance Information Technology Modernization Program, this is our written notification that CohnReznick has conducted an internal conflict check and that it produced no known conflicts at this time.

If selected as the vendor of choice for this Integrity Monitoring engagement, CohnReznick will monitor for potential conflicts of interest that may arise throughout contract performance, disclose any conflicts that may arise, and work with NJ Treasury and the NJ Department of Labor to effectively resolve such conflicts.

ENGAGEMENTS
Under G4018 with Other State Agencies

Existing NJ Treasury Engagements Under G4018

Below is a listing of CohnReznick's existing engagements under NJ Treasury Contract G4018, as requested.

G4018 Integrity Monitoring Engagements				
Vendor Name: CohnReznick LLP				
State Department or Agency	**Engagement Category (1, 2, 3)**	**Program & Description**	**Program Federal Funding Source**	**Amount of Funding**
Department of Education	3	Integrity Oversight Monitoring: ESSERF	CARES, CRRSA, ARPA	$4,270,000,000
Department of Education	3	Integrity Oversight Monitoring: Emergency Assistance to Nonpublic Schools Program	CRRSA, ARPA	$139,342,838


CohnReznick
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Thank you!