

**DISCLAIMER:** This document is an unofficial comparison version of revisions proposed by the Office of Management and Budget (OMB) in October 2023 to guidance in parts 1, 25, 175, 180, 182, 183, 184, and 200 of title 2 of the Code of Federal Regulations (CFR). While we have taken steps to ensure the accuracy of this comparison version, it is not the official version for purposes of proposal and comment. There may be minor differences between the proposed revisions shown below and the proposed revisions in the official version published in the *Federal Register (FR)*. Please refer to the official version, which also includes a preamble summarizing OMB’s proposal and request for comments. The official version also appears on Regulations.gov (<https://www.regulations.gov/>) and may be found by searching for the following docket: “OMB-2023-0017.”

**NOTE:** With the exception of Appendix I to Part 200 (Full Text of Notice of Funding Opportunity), this unofficial comparison version does not show OMB’s proposed revisions to other appendices in 2 CFR part 200, which are set forth in the official version in the *FR*.

Title 2—~~Grants and Agreements~~Federal Financial Assistance

Subtitle A—Office of Management and Budget Guidance for ~~Grants and~~

~~Agreements~~Federal Financial Assistance

PART 1—ABOUT TITLE 2 OF THE CODE OF FEDERAL REGULATIONS AND

SUBTITLE A

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~~governmentwide policies ~~and procedures~~ for the award and administration of ~~grants and agreements~~Federal financial assistance; and

(b) Federal agency regulations implementing that OMB guidance.

§ 1.105 Organization and subtitle content.

(a) This title is organized into two subtitles.

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(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~~awards Federal financial assistance 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 OMB guidance).~~. See also § 1.220.

### § 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~~governmentwide policies and procedures for the management of the agencies' ~~grants and agreements.~~Federal financial assistance.

~~(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).~~

~~(e) 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~~Federal financial assistance.**

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, and some portions also apply to other types of Federal 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 Federal financial assistance ~~and other nonprocurement transactions~~, and not just to grants and cooperative agreements.

(b) Cost principles in ~~parts 220, 225 and 230~~subpart E of part 200 of this subtitle apply to procurement contracts issued under a Federal award, as well as to Federal financial assistance, ~~although those~~ Cost principles are implemented for Federal agencies' direct procurement contracts through the Federal Acquisition Regulation in title 48 of the CFR, rather than through Federal agency regulations on ~~grants and agreements~~Federal financial assistance in this title.

**§ 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~~other entities through each Federal ~~agency's~~agency's implementation of the guidance, portions of which may apply to—:

(1) The ~~agency's~~agency's awarding or administering officials;

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(2) ~~Non-Federal entities~~ Recipients and subrecipients that receive or apply for the ~~agency's grants or agreements~~ agency's Federal financial assistance or receive subawards under ~~those~~ grants or cooperative 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:~~

<del>Guidance</del> <del>in * * *</del>	<del>On</del> <del>* * *</del>	<del>Previously</del> <del>was in * * *</del>
(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

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Guidance  <u>in * * *</u>	On  <u>* * *</u>	Previously  <u>was in * * *</u>
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~~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”.~~

### § 1.220 Federal agency implementation of this subtitle.

A Federal agency that awards ~~grants and agreements~~Federal financial assistance subject to the OMB guidance in this subtitle implements the guidance in agency regulations in subtitle B of this title and ~~or~~ in guidance documents, policy documents, and procedural issuances, such as internal instructions to the ~~agency's~~agency's awarding and administering officials. An applicant ~~or~~, recipient, or subrecipient 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.

**§ 1.231 Severability.**

The provisions of this subtitle are separate and severable from one another. If any provision of this subtitle is held invalid or unenforceable as applied to a particular person or circumstance, the provision should be construed so as to continue to give the maximum effect permitted by law as applied to other persons not similarly situated or to dissimilar circumstances. If any provision is determined to be wholly invalid and unenforceable, it should be severed from the remaining provisions of this part, which should remain in effect.

**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~~governmentwide compliance with the guidance in this subtitle~~;~~ and
- (e) Performing other OMB functions specified in this subtitle.

**§ 1.305 Federal agency responsibilities.**

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The head of each Federal agency that awards and administers ~~grants and agreements~~Federal financial assistance 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~~Federal agency complies with ~~the agency's~~their implementation of the guidance~~;~~;

(c) Coordinating with the Council on Federal Financial Assistance, the Grants Quality Service Management Office, and other governance committees as appropriate; and

(d) Performing other functions specified in this subtitle.

## PART 25—UNIQUE ENTITY IDENTIFIER AND SYSTEM FOR AWARD MANAGEMENT

### Subpart A—General

#### § 25.100 ~~Purposes~~Purpose of this part.

This part provides guidance to Federal ~~awarding~~ agencies ~~to establish~~that:

(a) The unique entity identifier ~~as a~~(UEI) is the universal identifier for Federal financial assistance applicants, as well as recipients and their direct subrecipients, and;

(b) The System for Award Management (SAM) ~~as.gov~~ is the repository for standard information about applicants and recipients.

#### § 25.105 ~~Types of awards to which this part applies~~Applicability.

(a) This part applies to a Federal ~~awarding agency's grants, cooperative agreements, loans, and other types of agency's~~ Federal financial assistance as defined in § 25.406.

#### ~~§ 25.110 Exceptions to this part.~~

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~~(a) General. Through a Federal awarding agency's implementation of the guidance in this part, this 400. This part applies to all applicants for and recipients of Federal awards, other than those financial assistance unless exempted by Federal statute or exempted in paragraphs (b) and (c) of this section that apply for or receive agency awards. §25.110.~~

~~(b) Exceptions for individuals. None of the requirements in this part (b) Subrecipients are required to obtain a UEI in accordance with subpart C. This part does not apply to subrecipients of subrecipients (second-tier subrecipients) or contractors under Federal awards.~~

~~(c) This part does not 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 hean individual owns or she may own or operate in his or her name). operates).~~

~~(d) Because this part applies to loan guarantees and other guaranteed programs, recipients of the guarantee from the Federal agency (for example, lenders of guaranteed loans) are required to complete entity validations and acquire a UEI. Additionally, at the Federal agency's discretion, non-individual beneficiary borrowers (for example, small businesses or corporations) may be required by the Federal agency to obtain a UEI or register in SAM.gov.~~

### § 25.110 Exceptions to this part.

~~(e) Other (a) General exceptions.~~

(1) Under a condition identified in paragraph ~~(ea)~~(2) of this section, a Federal awarding agency may exempt an applicant or recipient ~~from an applicable~~of Federal financial assistance ~~from the~~ requirement to obtain a ~~unique entity identifier and~~UEI, register in ~~the~~ SAM.gov, or both.



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(i) ~~In that case, the~~ If a Federal ~~awarding~~ agency grants an exception under paragraph (a)(2) of this section, it must use a generic ~~unique~~ entity identifier in the data it reports to *USAspending.gov* if reporting for a prime award of Federal financial assistance to the recipient is required by the Federal Funding Accountability and Transparency Act (Pub. L. 109--282, as amended, hereafter cited as “Transparency Act”). Granting an exception under paragraph (a)(2) of this section does not impact a Federal agency’s responsibility for reporting under the Transparency Act, except that it may use a generic entity identifier in the circumstances described.

(ii) Federal ~~awarding agency~~ agencies should use ~~of a~~ generic ~~unique~~ entity ~~identifier~~ should be used ~~identifiers~~ rarely ~~for prime award reporting because as~~ it prevents ~~prime awardees~~ recipients from ~~being able to fulfill the~~ fulfilling reporting requirements such as subaward or executive compensation reporting required by the Transparency Act.

(2) ~~The conditions under which a~~ Federal ~~awarding~~ agency may exempt either an applicant or recipient ~~are—~~ when:

(i) ~~For any applicant or recipient, if the~~ 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~~ entity’s ~~staff or clients,~~ partners, beneficiaries, and participants;

(ii) ~~For~~ (A) All of the following conditions are met:

(1) the entity is a foreign organization or foreign public entity ~~applying for or receiving a~~

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~~(2) the~~ Federal award or subaward ~~for a project or program will be~~ performed outside the United States ~~valued at~~;

~~(3) the Federal award or subaward will be~~ less than \$25,000;

~~and, if~~

~~(5) the Federal~~ ~~awarding~~-agency deems it to be impractical for the entity to comply with the ~~requirement(s). This requirements of this part.~~

~~(B) The Federal agency must determine 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~~; ~~or~~

(iii) For ~~an applicant, if applicants,~~ the Federal ~~awarding~~-agency ~~makes a determination~~determines that there are exigent circumstances that prohibit the applicant from receiving a ~~unique entity identifier~~UEI and ~~completing~~registering in SAM ~~registration prior to.gov before~~ receiving a Federal award. In these instances, Federal ~~awarding~~-agencies must require the recipient to obtain a ~~unique entity identifier~~UEI and complete registration in SAM registration.gov 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)(b)~~ *Class exceptions.* OMB may ~~allow~~approve additional exceptions for classes of Federal awards, applicants, ~~and/or~~ recipients subject to the requirements of this part when exceptions are not prohibited by statute.

## Subpart B—Policy

### § 25.200 Requirements for notice of funding opportunities, regulations, and application instructions.

(a) ~~Each~~A Federal ~~awarding~~ agency that ~~awards the types of issues~~ Federal financial assistance ~~defined in~~(see § 25.406400) must include the requirements ~~described in~~of 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.~~the effective date of this guidance. A notice of funding opportunity is any paper or electronic issuance that a Federal 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 any other term.

(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.gov before submitting an application ~~or plan~~;
- (2) Maintain ~~an a current and~~ active ~~SAM~~ registration ~~with current in SAM.gov at all~~ times during which it has an active Federal award or an application under consideration by a Federal agency. The applicant must review and update its information, including information on a recipient's in SAM.gov annually from the date of initial registration or subsequent updates to ensure it is current, accurate, and complete. If applicable, this includes identifying the applicant's immediate and highest-level owner and subsidiaries, as well as providing information on all predecessors that have been awardedreceived a Federal award or contract ~~or grant~~ within the last

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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; and~~

(3) ~~Provide~~Include its ~~unique entity identifier~~UEI in each application ~~or plan~~ it submits to the Federal ~~awarding~~ agency.

(c) For the purposes of this policy:

(1) The applicant meets the Federal ~~awarding agency's~~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~~UEI. If a consortium is eligible to receive funding under a Federal ~~awarding~~ agency program, but the ~~agency's~~agency's policy is to make the Federal award to a lead entity for the consortium, the ~~unique entity identifier~~UEI of the lead applicant ~~will~~must 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.~~

**§ 25.205 Effect of noncompliance with a requirement to obtain a ~~unique entity identifier~~UEI or register in ~~the~~ SAM.gov.**

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~~(a) A~~(a) Unless an entity is exempt under § 25.110, a Federal ~~awarding~~ agency may not ~~make issue~~ a Federal award or ~~financial modification to amend~~ an existing Federal award ~~to an applicant or recipient until~~ if the entity ~~has complied~~ is not in compliance 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) of this part. This does not apply to amendments to terminate or close out a Federal award.~~

(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~~ the requirements to ~~provide obtain~~ a ~~unique entity identifier or UEI and~~ maintain an active ~~SAM~~ registration in SAM.gov 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~~ agency may make a Federal award to another applicant.

### § 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~~ UEI field to information collections previously approved by OMB, ~~without having to obtain~~ with no further approval ~~to add the field~~ required.

### § 25.215 Requirements for agency information systems.

Each Federal ~~awarding~~ agency that awards Federal financial assistance (~~as defined in~~ see § 25.406 ~~400~~) must ensure that ~~systems processing its~~ information ~~related to the Federal awards, and other systems as appropriate,~~ systems are able to both accept and ~~use~~ transmit the ~~unique~~

~~entity identifier~~UEI as the universal identifier for Federal financial assistance applicants and recipients.

**§ 25.220 Use of award term.**

(a) ~~To accomplish the purposes described in § 25.100, a~~ A Federal ~~awarding~~ agency must include ~~in each Federal award (as defined in § 25.405)~~ the award term in ~~appendix A~~ Appendix A in all Federal financial assistance agreements (see § 25.400) ~~to this part to accomplish the purpose of § 25.100.~~

(b) A Federal ~~awarding~~ agency may use different letters and numbers than those in ~~appendix~~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.~~

**Subpart ~~C~~—Recipient Requirements of Subrecipients**

**§ 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 not~~ obtained a UEI and provided it to the recipient ~~a unique entity identifier.~~ Subrecipients are not required to complete full ~~SAM~~ registration in SAM.gov to obtain a ~~unique entity identifier~~UEI.

(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~~ obtains and provides a UEI to the recipient.

**Subpart ~~D~~—Definitions**

**§ 25.400 ApplicantDefinitions.**

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~~*Applicant*, for the purposes of Terms not defined in this part, shall have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:~~

~~*Applicant* means any entity that applies for a non-Federal entity or award directly to a Federal agency that applies for Federal awards.~~

~~§ 25.401~~ *Entity* includes:

~~(1) Whether for profit or nonprofit:~~

~~(i) A corporation;~~

~~(ii) An association;~~

~~(iii) A partnership;~~

~~(iv) A limited liability company;~~

~~(v) A limited liability partnership;~~

~~(vi) A sole proprietorship;~~

~~(vii) Any other legal business entity;~~

~~(viii) Another grantee or contractor that is not excluded by subparagraph (b); and~~

~~(ix) Any State or locality;~~

~~(2) Does not include:~~

~~(i) An individual recipient of Federal financial assistance; or~~

~~(ii) A Federal **Awarding Agency** employee.~~

~~*Federal Awarding Agency* has the meaning given in 2 CFR 200.1.~~

~~§ 25.405~~ *Federal Award.*

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~~*Federal Award*, for the purposes of this part,~~ means an award of Federal financial assistance that ~~a non-Federal~~an entity ~~or Federal agency received~~receives from a Federal ~~awarding~~ agency.

### ~~§ 25.406 Federal financial assistance.~~

~~(a) Federal financial assistance, for the purposes of this part, means:~~

~~(1) Means~~ assistance that entities ~~received~~receive or administer in the form of: a:

~~(1i)~~ Grant;

~~(2ii)~~ Cooperative ~~agreements~~agreement (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;~~

~~(4iii)~~ Loan ~~guarantees;~~;

~~(5) Subsidies;~~

~~(6(iv))~~ Loan guarantee;

~~(v)~~ Subsidy;

~~(vi)~~ Insurance;

~~(7vii)~~ Food ~~commodities~~commodity;

~~(8viii)~~ Direct ~~appropriations~~appropriation;

~~(9ix)~~ Assessed or voluntary ~~contributions~~contribution; or

~~(10x)~~ Any other financial assistance transaction that authorizes the ~~non-Federal~~  
~~entity's~~entity's expenditure of Federal funds.



~~(b) Federal financial assistance, for~~(2) For the purposes of this part, the term “Federal financial assistance” does not include:

- ~~(4i)~~ Technical assistance, ~~which that~~ provides services in lieu of money; and
- ~~(2ii)~~ 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~~ an entity that receives or administers a Federal financial assistance awards on behalf of Award directly from a Federal agency.

**~~§ 25.410~~ System for Award Management (SAM):**

~~System for Award Management (SAM) has the meaning given in paragraph C.1 of .gov)~~ means the Federal repository into which an entity must provide the award term in appendix A to this part. information required for the conduct of business as a recipient.

**~~§ 25.415~~ Unique entity identifier:**

~~Unique entity means the universal 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 replacedassigned by a successor and includes any predecessors of the predecessor. SAM.gov to uniquely identify an entity.~~

**~~§ 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 ([SAM.gov](https://www.sam.gov)) and Universal Identifier Requirements**

**~~A.(a) Requirement for System for Award Management.~~**

~~(1) Unless you are exempted~~exempt from this requirement under 2 CFR 25.110, you ~~as the recipient~~ must maintain a ~~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 and active registration in SAM.gov. Your registration must always be current and active until you submit all final reports~~ required under

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this Federal award or receive the final payment, whichever is later. ~~This requires that you~~ You must review and update ~~the~~ your information in SAM.gov at least annually ~~after~~ from the date of your initial registration, or any subsequent updates to ensure it is current, accurate, and complete. If applicable, this includes identifying your immediate and highest-level owner and subsidiaries and ~~more frequently if required by changes in your providing~~ information ~~or another~~ about your predecessors that have received a Federal award ~~term, or contract~~ within the last three years.

### ~~B.(b)~~ Requirement for Unique Entity Identifier (UEI).

(1) If you are authorized to make subawards under this Federal award, you:

~~1.(i)~~ 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~~ UEI to you.

~~2.(ii)~~ May not make a subaward to an entity unless the entity has provided its ~~Unique Entity Identifier~~ UEI to you. Subrecipients are not required to complete full registration in SAM.gov to obtain ~~an active SAM registration, but must obtain a Unique Entity Identifier, a~~ UEI.

### ~~C.(c)~~ Definitions.

For ~~the~~ purposes of this award term:

~~1.~~ System for Award Management (SAM.gov) means the Federal repository into which a recipient must provide the information required for the conduct of business as a recipient. Additional information about registration procedures may be found ~~at the~~ in SAM ~~internet site.gov~~ (currently at <https://www.sam.gov>).

~~2. Unique Entity Identifier~~ entity identifier means the universal identifier assigned by SAM.gov to uniquely identify ~~business entities~~ an entity.

~~3. Entity includes non-Federal entities as is~~ defined at 225 CFR 200.1400 and ~~also~~ includes all of the following, ~~for purposes of this part:~~ types as defined in 2 CFR 200.1:

~~a. A foreign~~ (1) Non-Federal entity;

(2) Foreign organization;

~~b. A foreign~~ (3) Foreign public entity;

~~c. A domestic~~ (4) Domestic for-profit organization; and

~~d. A~~ (5) Federal agency.

~~4. Subaward~~ has the meaning given in 2 CFR 200.1.

~~5. Subrecipient~~ has the meaning given in 2 CFR 200.1.

## PART 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

### Subpart A—General

#### § 170.100 ~~Purposes~~ Purpose of this part.

This part provides guidance to Federal ~~awarding~~ agencies on ~~reporting Federal awards to establish~~ establishing requirements for ~~recipients' reporting~~ recipients of Federal awards to report information on subawards and executive total compensation, as required by the Federal Funding Accountability and Transparency Act of 2006 (~~Pub. L.~~ Public Law 109–282), as amended by ~~section 6202~~ the Digital Accountability and Transparency Act of 2014 (Public Law 113-101), hereafter referred to as “the “Transparency Act”.”

#### § 170.105 ~~Types of awards to which this part applies~~ Applicability.

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~~(a) This part applies to Federal awarding agency's grants, cooperative agreements, loans, and other forms of a Federal agency's Federal financial assistance subject to the Transparency Act, as defined in § 170.320.~~

~~§ 170.110 Exceptions to which this~~ 300. This part applies:

~~(a) General. Through a Federal awarding agency's implementation of the guidance in this part, this part applies to to all recipients, other than those exempted by law or excepted in accordance with paragraphs (b) and (e) subrecipients of this section, that —~~

~~(1) Apply for or receive Federal awards; or~~

~~(2) Receive subawards under Federal awards.~~

~~(b) Exceptions:~~

~~(1) None of who meet the reporting requirements in this of paragraph (c), unless exempt under Federal statute or by paragraph (d).~~

~~(b) This part does not apply to an individual who applies for or receives a Federal award financial assistance as a natural person (i.e., that is, unrelated to any business or nonprofit organization he or she may own or operate in his or her name), an individual owns or operates).~~

~~(2) None of the requirements regarding reporting (c) Reporting Requirements.~~

~~(1) The names and total compensation of a non-Federal entity's an entity's five most highly compensated executives apply unless in the non-Federal entity's must be reported if:~~

~~(i) In the entity's preceding fiscal year, it received —:~~

~~(iA) 80 percent or more of its annual gross revenue in Federal procurement contracts (and subcontracts) and Federal financial assistance awards (and subawards) subject to the Transparency Act, as defined at § 170.320 (and subawards); 300; and~~

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(~~HB~~) \$25,000,000 or more in annual gross revenue from Federal procurement contracts (and subcontracts) and Federal ~~financial assistance~~ awards (and subawards) subject to the Transparency Act, as defined at § 170.~~320~~300; and

(~~3ii~~) The public does not have access to information about the compensation of senior executives, ~~unless otherwise publicly available, of the entity~~ 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.

(~~e~~) ~~Exceptions~~ d) Class exceptions. OMB may approve additional 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 Federal statute.

### Subpart B—Policy

#### § 170.200 Federal ~~awarding~~ agency reporting requirements.

(a) Federal ~~awarding~~ agencies ~~are required to~~must publicly report Federal awards that equal or exceed the micro-purchase threshold ~~and~~(see 2 CFR 200.1). Federal agencies must publish the required Federal award information on ~~a public-facing, OMB-designated, governmentwide website and follow OMB-USAspending.gov in accordance with the guidance to support Transparency~~ provided by OMB and the U.S. Department of the Treasury's DATA Act implementation. Information Model Schema (DAIMS).

(b) Federal ~~awarding agencies that obtain post-award data on subaward obligations outside of this policy~~agencies 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; ~~do not require recipients~~ to submit data that is the same as or similar to data ~~multiple times required by the Transparency Act~~ during a given reporting period.

**§ 170.210 Requirements for notices of funding opportunities, regulations, and application instructions.**

(a) ~~Each~~A Federal ~~awarding~~ agency that makes ~~awards of~~ Federal ~~financial assistance awards~~ subject to the Transparency Act must include the requirements ~~described in~~of 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.~~ . A notice of funding opportunity is any paper or electronic issuance that a Federal 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 any other term.

(b) The notice of funding opportunity, regulation, or other issuance must require each ~~non-Federal entity that~~applicant, to which this part 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~~this part if they receive a Federal ~~funding~~award.

**§ 170.220 Award Use of award term.**

~~(a) To accomplish the purposes described in § 170.100,~~ (a) A Federal ~~awarding~~ agency must include the award term in ~~appendix~~Appendix A to this part in each Federal award to a



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recipient under which the total funding is anticipated to equal or exceed \$30,000 in Federal funding.

(b) ~~A Federal awarding agency, consistent~~Consistent with paragraph (a) ~~of this section,~~, a Federal agency is not required to include the award term in ~~appendix A to this part if it determines that there is no possibility that~~Appendix A if the total amount of Federal funding under the Federal award will not 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~~increases to the Federal funding ~~under~~result in the award ~~is anticipated to equal~~equaling or ~~exceed~~exceeding \$30,000 ~~during the period of performance.~~

(c) A Federal agency may use different letters and numbers than those in Appendix A to designate the paragraphs of the award term.

### Subpart C— Definitions

#### § 170.300 ~~Federal agency.~~Definitions

~~Federal agency means a Federal agency as~~ Terms not defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

#### § ~~170.301~~ Federal awarding agency.

~~Federal awarding agency~~ has in this part shall have the same meaning ~~given as provided~~ in 2 CFR part 200.4-, subpart A. As used in this part:

§ ~~170.305~~ Applicant means any entity that applies for a Federal award.

directly from a Federal ~~award,~~agency.

Entity includes:

(1) Whether for ~~the purposes~~profit or nonprofit:

- (i) A corporation;
- (ii) An association;
- (iii) A partnership;
- (iv) A limited liability company;
- (v) A limited liability partnership;
- (vi) A sole proprietorship;
- (vii) Any other legal business entity;
- (viii) Another grantee or contractor that is not excluded by subparagraph (2) or (3); and
- (ix) Any State or locality;
- (2) Does not include:
  - (i) An individual recipient of this part, Federal financial assistance; or
  - (ii) A Federal employee.

Federal Award means an award of Federal financial assistance that ~~a recipient~~ an entity receives ~~directly~~ from a Federal ~~awarding~~ agency.

**~~§ 170.307 Foreign organization.~~**

~~Foreign organization has the meaning given in 2 CFR 200.1.~~

**~~§ 170.308 Foreign public entity.~~**

~~Foreign public entity has the meaning given in 2 CFR 200.1.~~

**~~§ 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.~~

**§ 170.315 Executive.**

*Executive* means ~~officers~~ an officer, managing ~~partners~~ partner, or any other ~~employees~~ in employee holding a management ~~positions.~~ position.

**§ 170.320 Federal financial assistance subject to the Transparency Act.**

*Federal financial assistance subject to the Transparency Act* means:

(1) Means assistance that ~~non-Federal~~ entities ~~described in § 170.105~~ receive or administer in the form of— a:

~~(a) Grants;~~ i) Grant;

~~(bii)~~ Cooperative ~~agreements~~ agreement (which does not include a cooperative research and development ~~agreements~~ agreement pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a)) ~~);~~ ;

~~(c) Loans;~~

~~(diii)~~ Loan ~~guarantees;~~ ;

~~(e) Subsidies;~~

~~(f)(iv)~~ Loan guarantee;

(v) Subsidy;

(vi) Insurance;

~~(gvii)~~ Food ~~commodities~~ commodity;

~~(hvihi)~~ Direct ~~appropriations~~ appropriation;

~~(ix)~~ Assessed ~~and/or~~ voluntary ~~contributions;~~ and contribution; or

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~~(j) Other~~ (x) Any other financial assistance ~~transaction~~ transaction that ~~authorize~~ authorizes the ~~non-Federal entities'~~ entity's expenditure of Federal funds.

~~(k) (2) For the purposes of this part, the term “Federal financial assistance subject to the Transparency Act,” does not include—:~~

~~(1) Technical assistance, which that~~ (i) Technical assistance, which that 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 Federal 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. Public Law 111—5).~~

### ~~§ 170.322 Recipient.~~

~~Recipient, for the purposes of this part, means a non-Federal an entity or Federal agency that received receives or administers a Federal Award directly from a Federal award agency.~~

### ~~§ 170.325 Subaward.~~

~~Subaward has the meaning given in 2 CFR 200.1.~~

### ~~§ 170.330 Total compensation.~~

~~Total Compensation has the meaning given in paragraph e.5 of the award term in Appendix A to this part.~~

~~Total Compensation means the cash and noncash dollar value an executive earns during an entity's preceding fiscal year. This includes all items of compensation as prescribed in 17 CFR 29.402(c)(2).~~

## Appendix A to Part 170—Award Term

## I. Reporting Subawards and Executive Compensation

~~(a.) Reporting of first-tier subawards.~~

~~(1) 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~~an entity or Federal agency ~~(see definitions. You must subsequently report an action if increases to the Federal funding results in paragraph e. of this award term).~~the subaward equaling or exceeding \$30,000.

~~2. Where and when to report.~~

~~(2) Reporting Requirements.~~

~~(i.)~~ The ~~non-Federal~~ entity or Federal agency must report each ~~obligating actions~~subaward described in paragraph ~~(a.)(1.)~~ of this award term to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at <http://www.fsrc.gov>.

~~(ii.)~~ For subaward information, report no later than the end of the month following the month in which the ~~obligations~~subaward was made. (For example, if the ~~obligations~~subaward was made on November 7, ~~2010~~2025, the ~~obligations~~subaward must be reported by no later than December 31, ~~2010.~~2025).

~~3. What to report. You must report the information about each obligating action that the submission instructions posted at~~ <http://www.fsrc.gov> ~~specify.~~

~~(b.) Reporting total compensation of recipient executives for non-Federal entities.~~

~~(1.) Applicability and what to report.~~ You must report the total compensation for each of your five most highly compensated executives for the preceding completed fiscal year; if—:

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~~(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~~awards (and subawards) 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~~awards (and subawards) 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 after receiving this subaward. (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) Reporting Requirements. 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) No later than the month following the month in which this Federal award is made, and annually after that. (For example, if this Federal award was made on November 7, 2025, the executive total compensation must be reported by no later than December 31, 2025.)

(c) Reporting of total compensation of subrecipient executives.

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(1) Applicability. Unless a first-tier subrecipient is exempt as provided in paragraph (d) of this award term, you must report the executive total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

(i) The total Federal funding authorized to date under the subaward equals or exceeds \$30,000;

(ii) 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 awards (and subawards) subject to the Transparency Act; and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal awards (and subawards) subject to the Transparency Act; 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 1986after receiving this subaward. (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/excomp.htm>.)

(2. ~~Where and when to report. You~~) Reporting Requirements. Subrecipients must report to you, the recipient, their executive total compensation described in paragraph b-(c)(1-) of this award term:

i. ~~As part of your registration profile at https://www.sam.gov.~~

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~~ii. By.~~ You are required to submit this information to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at <http://www.fsrs.gov> no later than the end of the month following the month in which ~~this award is made, and annually thereafter.~~

### ~~e. 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/excomp.htm>.)~~

~~2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:~~



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~~i. To the recipient.~~

~~ii. By the end of the month following the month during which you make the subaward.~~  
~~was made. (For example, if at the subaward is obligated was made 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. 7, 2025, the~~  
~~subaward must be reported by no later than December 31, 2025).~~

~~(d.) Exemptions.~~

~~(1) 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 Entity includes:~~

~~(1) Whether for profit or nonprofit organization; and,;~~

~~iv. (i) A domestic corporation;~~

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(ii) An association;

(iii) A partnership;

(iv) A limited liability company;

(v) A limited liability partnership;

(vi) A sole proprietorship;

(vii) Any other legal business entity;

(viii) Another grantee or foreign for-profit organization contractor that is not excluded by subparagraph (2); and

~~3-(ix) Any State or locality;~~

(2) Does not include:

(i) An individual recipient of Federal financial assistance; or

(ii) A Federal employee.

*Executive* means ~~officers~~an officer, managing ~~partners~~partner, or any other ~~employees in~~employee holding a management positions-position.

~~4. Subaward:~~

~~i. This term means a legal instrument to provide support for has 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 meaning given in 2 CFR 200.331-1).~~

~~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 has the meaning given in 2 CFR 200.1.~~

- ~~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~~Compensation means the cash and noncash dollar value ~~earned by~~ the executive earns during ~~the recipient's or subrecipient's~~ an entity's preceding fiscal year ~~and. This includes the following (for more information see all items of compensation as prescribed in 17 CFR 229.402(c)(2)).~~

## PART 175—AWARD TERM FOR TRAFFICKING IN PERSONS

### Subpart A—General

#### § 175.~~5100~~ Purpose of this part.

This part establishes a ~~Governmentwide~~ Federal award term for grants and cooperative agreements to implement the ~~requirement~~ requirements in ~~paragraph (g) of section 106 of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)).~~ 22 U.S.C. 7104(g).

#### § 175.~~40105~~ Statutory requirement.

~~In (a) Federal agencies are required to include in each agency award (i.e., Federal 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 Federal agency to terminate the award, without penalty, if the private entity receiving funds under the award as a recipient or a subrecipient— engages in:~~

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- ~~(a) Engages in severe~~(1) Severe forms of trafficking in persons ~~during the period of time that the award is in effect;~~
- ~~(b) Procures~~(2) The procurement of a commercial sex act during the period of time that the ~~award~~grant or cooperative agreement is in effect; ~~or~~
- ~~(c) Uses~~(3) The use of forced labor in the performance of the ~~award or subawards under the award~~grant or cooperative agreement; or
- (4) Acts that directly support or advance trafficking in persons, including the following acts:
- (i) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;
- (ii) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:
- (A) exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant or cooperative agreement;
- or
- (B) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;
- (iii) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;
- (iv) Charging recruited employees a placement or recruitment fee; or

(v) Providing or arranging housing that fails to meet the host country's housing and safety standards.

(b) Compliance plan and certification requirement.

(1) Certification. Prior to receiving a grant or cooperative agreement, if the estimated value of services required to be performed under the grant or cooperative agreement outside the United States exceeds \$500,000, a recipient must certify that:

(i) The recipient has implemented a plan to prevent the activities described in paragraph (a) of this section, and is in compliance with this plan;

(ii) The recipient has implemented procedures to prevent any activities described in paragraph (a) of this section and to monitor, detect, and terminate any subcontractor, subgrantee, or employee of the recipient engaging in any activities described in paragraph (a); and

(iii) To the best of the recipient's knowledge, neither the recipient, nor any subcontractor or subgrantee of the recipient or any agent of the recipient or of such a subcontractor or subgrantee, is engaged in any of the activities described in paragraph (a).

(2) Annual certification. If the recipient receives the award, it must submit an annual certification consistent with paragraph (1) for each year the award is in effect.

(3) Compliance plan. Any plan or procedures implemented pursuant to paragraph (b) must be appropriate to the size and complexity of the grant or cooperative agreement and to the nature and scope of its activities, including the number of non-United States citizens expected to be employed.

(4) Copies of the compliance plan. The recipient must provide a copy of the plan to the grant officer upon request, and as appropriate, must post the useful and relevant contents of the plan or related materials on its website and at the workplace.

(5) Minimum requirements of the compliance plan. The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform recipient employees about the Government's policy prohibiting trafficking-related activities described in paragraph (a), the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employees or potential employees and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the recipient, subrecipient, contractor, or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents, subrecipients, contractors, or subcontractors at any tier and at any dollar value from engaging in trafficking in persons, including activities in paragraph

(a), and to monitor, detect, and terminate any agents, subgrants, or subrecipient, contractor, or subcontractor employees that have engaged in such activities.

(c) Notification to Inspectors General and cooperation with government. The head of a Federal agency making or awarding a grant or cooperative agreement must require that the recipient of the grant or cooperative agreement:

(1) Immediately inform the Inspector General of the Federal agency of any information it receives from any source that alleges credible information that the recipient, any subcontractor or subgrantee of the recipient, or any agent of the recipient or of such a subcontractor or subgrantee, has engaged in conduct described in paragraph (a); and

(2) Fully cooperate with any Federal agencies responsible for audits, investigations, or corrective actions relating to trafficking in persons.

## **Subpart B—Guidance**

### **§ 175.15 ~~Award-200~~ Use of award term.**

(a) To implement the ~~trafficking in persons requirement in section 106~~requirements of 22 U.S.C. 7104(g) of the TVPA, as amended, a Federal ~~awarding~~ agency must include the award term in ~~paragraph (b)~~Appendix A of this ~~section in—~~part for the following Federal awards:

(1) A grant or cooperative agreement to a private entity, as defined in § 175.~~25(d);300;~~  
and

(2) A grant or cooperative agreement to a State, local government, Indian ~~tribe or~~Tribe, foreign public entity, or any other recipient if funding under the award could be provided ~~under the award~~ to a subrecipient that is a private entity~~as a subrecipient.~~

(b) The A Federal agency may use different letters and numbers than those in Appendix A to designate the paragraphs of the award term.

**§ 175.205 Referral.**

A Federal agency official should inform the agency's suspension and debarment official if an award is terminated based on a violation of a prohibition in the award term under Appendix A.

**Subpart C—Definitions**

**§ 175.300 Definitions.**

Terms not defined in this part shall have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:

Abuse or threatened abuse of law or legal process means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that an agency must person to take some action or refrain from taking some action.

Coercion means:

(1) threats of serious harm to or physical restraint against any person;

(2) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) the abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.



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Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Involuntary servitude includes a condition of servitude induced by means of:

(1) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(2) the abuse or threatened abuse of the legal process.

Private Entity means any entity, including for-profit organizations, nonprofit organizations, institutes of higher education, and hospitals. The term does not include foreign public entities, Indian Tribes, local governments, or states as defined in 2 CFR 200.1.

Recruitment Fee means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for:

(i) Advertising;

(ii) Obtaining permanent or temporary labor certification, including any associated fees;

(iii) Processing applications and petitions;

(iv) Acquiring visas, including any associated fees;

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(v) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vi) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(vii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(viii) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(ix) Government-mandated fees, such as border crossing fees, levies, or worker welfare fund;

(x) Transportation and subsistence costs:

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xi) Security deposits, bonds, and insurance; and

(xii) Equipment charges.

(2) A recruitment fee, as described in paragraph (a) of this section, is the introductory text of this definition, is a recruitment fee, regardless of whether the payment is:

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

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(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including,

but not limited to:

(A) Agents;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/affiliates of the employer;

(F) Any agent or employee of such entities; and

(G) Subcontractors at all tiers.

Severe forms of trafficking in persons means:

(1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such act has not attained 18 years of age; or

(2) 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.

Sex trafficking means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

### **Appendix A to Part 175—Award Term**

#### **I. Trafficking in persons.**

~~(a-)~~ *Provisions applicable to a recipient that is a private entity.*

## Unofficial Comparison Version

~~1. You~~(1) Under this award, you as the recipient, your employees, subrecipients under this award, and ~~subrecipients'~~subrecipient's employees may not— engage in:

~~(i. Engage in severe)~~ Severe forms of trafficking in persons ~~during the period of time that the award is in effect;~~;

~~(ii. Procure)~~ The procurement of a commercial sex act during the period of time that ~~the~~this award ~~is in effect;~~ or any subaward is in effect;

~~(iii. Use)~~ The use of forced labor in the performance of ~~the award or subawards under the~~this award. ~~or any subaward;~~ or

~~2.(iv)~~ Acts that directly support or advance trafficking in persons, including the following acts:

(A) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents;

(B) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:

(1) exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant or cooperative agreement; or

(2) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action;

(C) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment;

## Unofficial Comparison Version

(D) Charging recruited employees a placement or recruitment fee; or

(E) Providing or arranging housing that fails to meet the host country's housing and safety standards.

(2) We as the ~~Federal~~-awarding Federal agency may unilaterally terminate this award, without penalty, if ~~you or a subrecipient that is a~~any private entity ~~—~~under this award:

(i-) Is determined to have violated a prohibition in paragraph (a-)(1) of this award term; or

(ii-) Has an employee ~~who~~that 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 the 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~~Government-wide 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., for example, “2 CFR part XX”)*].

(b-) *Provision applicable to a recipient other than a private entity.*

(1) We as the ~~Federal~~-awarding Federal agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity— under this award:

~~1-~~(i) Is determined to have violated ~~an applicable~~a prohibition in paragraph (a-)(1) of this award term; or

## Unofficial Comparison Version

~~2.(ii)~~ Has an employee ~~who~~that is determined ~~by the agency official authorized to terminate the award~~ to have violated ~~an applicable~~a prohibition in paragraph ~~(a.)(1)~~ of this award term through conduct that is either—:

~~i.(A)~~ Associated with the performance under this award; or

~~ii.(B)~~ 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~~Government-wide 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., for example, “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 terminate this award as~~ described in ~~paragraph-paragraphs (a.)(2) or (b)(1)~~ of this section:

~~(i.)~~ Implements ~~section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (the requirements of 22 U.S.C. 7104(g)), 78,~~ 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.*

## Unofficial Comparison Version

For purposes of this award term:

~~1. “Employee”~~ means either:

~~i. (1)~~ An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

~~ii. (2)~~ 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”~~Private Entity 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, including for-profit organizations, nonprofit organizations, institutions of higher education, and hospitals. The term does not include foreign public entity, entities, Indian Tribes, local governments, or states as those terms are defined in 2 CFR 175.25. 200.1.~~

~~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~~The terms “severe forms of trafficking in persons,” “commercial sex act,” ~~and~~ “coercion,” “sex trafficking,” “Abuse or threatened abuse of law or legal process,” “coercion,” “debt bondage,” and “involuntary servitude” 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.~~



## Unofficial Comparison Version

~~(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.~~

## Unofficial Comparison Version

~~(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 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENT-WIDE**

#### **DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

##### **§ 180.5 What does this part do?**

This part provides ~~Office of Management and Budget (OMB)~~ guidance for Federal agencies on how to implement the ~~governmentwide~~government-wide debarment and suspension system for nonprocurement programs and activities.

## § 180.10 How is this part organized?

This part is organized ~~in~~into 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~~government-wide 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~~government-wide 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~~This part provides guidance ~~provides OMB guidance only~~ to Federal agencies. Publication of ~~the~~this guidance in the Code of Federal Regulations (CFR) does not change its nature—it is guidance and not regulation. Federal agencies' implementation of ~~the~~this 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. Executive Order~~ 12549 requires, 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~~agency's implementing regulation:

(a) Must establish policies and procedures for that Federal agency's nonprocurement debarment and suspension programs and activities ~~that are~~ consistent with ~~the~~this guidance.

When adopted by a Federal agency, the provisions of the guidance have a regulatory effect ~~for on~~ that Federal 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 Federal 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) ~~ana~~ Federal 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 the 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~~must require Federal agency officials; to communicate that requirement when entering into covered transactions with primary tier participants; ~~to communicate that requirement~~.

(c) May also, at the Federal 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~~in § 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.

**§ 180.30 Where does a Federal agency implement these guidelines?**

Each Federal agency that participates in the ~~governmentwide~~government-wide 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.~~Executive Order 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 the System for Award Management (SAM.gov)

Exclusions; and

(2) State the 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 <del>of this part.</del>
B	the types of transactions that are covered by the <del>Governmentwide</del> <u>government-wide</u> 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. <u>gov</u> 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) <del>an</del> 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, must be read together, as they are 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~~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~~meanings. 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~~Regulations (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 the reciprocal exclusion of persons who have been excluded under the Federal Acquisition ~~Regulation~~, Regulations 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~~ for 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 from Federal programs.

(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 Federal agency head or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the ~~governmentwide~~government-wide 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~~When a 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~~Federal Acquisition Regulations. Therefore, an exclusion under this part has a reciprocal effect ~~in on~~ 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~~When a Federal agency excludes a person under the Federal Acquisition Regulations (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 a reciprocal effect ~~in on~~ 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 (SAM.gov) Exclusions (~~SAM Exclusions~~) to determine whether a person is excluded. The General Services Administration (GSA) maintains ~~the~~ SAM.gov Exclusions and makes it available, as detailed in ~~Subpart~~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.gov Exclusions.

## 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~~ this part's prohibitions ~~of this part.~~ It may be a transaction at—:

(a) The primary tier, between a Federal agency and a person (see ~~appendix~~ Appendix to this part); or

(b) A lower tier<sup>7</sup> 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~~when 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.

## Unofficial Comparison Version

(d) A transaction that a Federal agency needs to respond to a national or agency-recognized emergency or disaster.

(e) A permit, license, certificate<sup>2</sup>, or similar instrument issued as a means to regulate public health, safety<sup>2</sup>, 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<sup>2</sup>, 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~~SAM.gov Exclusions-~~List~~ on the basis of involvement in activities that violate arms control, nonproliferation or disarmament agreements<sup>2</sup>, or commitments with the United States~~, pursuant to (see~~ section 1290 of the National Defense Authorization Act for Fiscal Year 2017~~, unless the). The~~ head of a Federal agency ~~grants~~may grant an exception ~~pursuant to this requirement under~~ 2 CFR 180.135 and with the concurrence of the OMB Director.

### § 180.220 Are any procurement contracts included as covered transactions?

## Unofficial Comparison Version

(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~~under 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 amount 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, is~~ always ~~is~~ a covered transaction, ~~and it does not matter~~ regardless of the amount or 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~~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~~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.

**§ 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 of the Federal agency regulations governing the transaction, ~~the~~ 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.gov Exclusions; or
- (b) Collecting a certification from that person; or
- (c) Adding a clause or condition to the covered transaction with that person.

**§ 180.305 May I enter into a covered transaction with an excluded or disqualified person?**

(a) ~~You as~~ As a participant, you 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~~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~~As a participant, you may continue covered transactions with an excluded person if the transactions were in existence when the Federal agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should ~~make a decision about~~decide 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~~As a participant, you may continue to use the services of an excluded person as a principal under a covered transaction if you were using ~~that person's~~ that person's 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~~decide 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?**

(a) Yes, ~~you as~~. As a participant, you are responsible for determining whether ~~any of~~ your principals of your covered transactions ~~is~~are excluded or disqualified from participating in the transaction.

(b) You may decide the method and frequency by which you do so. You may, but ~~you are~~ not required to, check SAM.gov Exclusions.

**§ 180.325 What happens if I do business with an excluded person in a covered transaction?**

~~If as~~As a participant, if 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~~participating 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<sub>2</sub> as the participant<sub>2</sub> must notify the Federal agency office that is entering into the transaction with you<sub>2</sub> 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<sub>2</sub> or local) with the 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~~disclosing 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 Federal agency will consider the information when

~~it determines~~determining whether to enter into the covered transaction. The Federal 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 Federal 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~~When 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~~As a Federal agency official, you 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~~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<sup>7</sup>; 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<sup>2</sup> as a Federal agency official<sup>2</sup> may not approve a participant's use of an excluded person as a principal under that transaction<sup>7</sup>; 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~~As a Federal agency official, you may continue covered transactions with an excluded person<sup>7</sup>; or under which an excluded person is a principal<sup>7</sup>; if the transactions were in existence when the person was excluded. ~~You~~However, you are not required to continue the transactions, ~~however,~~ and you may consider termination. You should ~~make a decision about~~decide whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper<sup>7</sup>; and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person<sup>7</sup>; or under which an excluded person is a principal<sup>7</sup>; 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~~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 Federal agency's approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if your Federal 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~~As a Federal agency official, you must check SAM.gov Exclusions when you take any action listed in § 180.425.

(b) You must review the 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~~As a Federal agency official, you 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~~As a Federal agency official, if you 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~~As a Federal agency official, if you 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 (SAM.gov) Exclusions**

**§ 180.500 What is the purpose of the System for Award Management (SAM.gov) Exclusions ~~(SAM Exclusions)~~??**

The SAM.gov 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.gov Exclusions?**

(a) Federal agency officials use SAM.gov 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.gov 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~~The SAM.gov Exclusions are available to the general public.

**§ 180.510 Who maintains SAM.gov Exclusions?**

~~The General Services Administration (GSA)~~ maintains SAM.gov 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.gov Exclusions.

**§ 180.515 What specific information is in SAM.gov Exclusions?**

(a) At a minimum, SAM.gov Exclusions ~~indicates—~~indicate:

(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<sup>7</sup> of the excluded or disqualified person, if available.

(b)

(1) The ~~database for~~ SAM.gov Exclusions includes a field for the Taxpayer Identification Number (TIN)~~(-), or~~ the social security number (SSN) for an individual<sup>2</sup>, of an excluded or disqualified person.

(2) Agencies disclose ~~thean individual's~~ SSN ~~of an individual~~ to verify ~~thean individual's~~ 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).

#### **§ 180.520 Who places the information into SAM.gov 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.gov 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 the 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.

#### **§ 180.525 Whom do I ask if I have questions about a person in SAM.gov Exclusions?**

If you have questions about a listed person in SAM.gov Exclusions, ask the point of contact for the Federal agency that placed the person's name into SAM.gov Exclusions. You may find the Federal agency point of contact from SAM.gov Exclusions.

## § 180.530 Where can I find SAM.gov Exclusions?

You may access SAM.gov Exclusions through the Internet, currently at

<https://www.sam.gov>.

## 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 <del>in</del> <del>eligibility</del> ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal <del>proceedings</del> or debarment proceeding	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must—:	
(1) <del>Have</del> have adequate evidence that there may be a cause for debarment of a person; and	
(2) <del>Conclude</del> 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 Federal 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~~organization's knowledge, approval or acquiescence. The ~~organization's~~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, corporation, company, or similar arrangement or with the organization's knowledge, approval, or acquiescence, 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~~ resolve an administrative action in lieu of debarment or suspension ~~action~~?**

Yes, ~~a.~~ A Federal agency may ~~settle a~~ resolve an administrative action in lieu of debarment or suspension ~~action by entering into an agreement~~ at any time if it is in the Federal Government's best interest ~~of the Federal Government.~~

**§ 180.640 May ~~a settlement~~ an agreement to resolve an administrative action include a voluntary exclusion?**

Yes, ~~if.~~ If a Federal agency enters into ~~a settlement~~ an agreement to resolve an administrative action with you in which you agree to be excluded, it is called a voluntary exclusion and has ~~governmentwide~~ a government-wide effect.

**§ 180.645 Do other Federal agencies know if an agency agrees to a voluntary exclusion?**

(a) Yes,~~the.~~ The Federal agency agreeing to the voluntary exclusion enters information about it into SAM.gov 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.~~ A Federal agency may enter into an administrative agreement with you as part of the settlement of a debarment or suspension action.

**§ 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~~ in SAM.gov within three business days after entering into the agreement. The suspending and debarring official must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in SAM.gov. This information is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (41 U.S.C. 2313).

**§ 180.660 Will administrative agreement information about me in ~~the designated integrity and performance system accessible through SAM~~ SAM.gov be corrected or updated?**

Yes,~~the.~~ The suspending or debarring official who entered information into ~~the designated integrity and performance system~~ SAM.gov about an administrative agreement with you:



## Unofficial Comparison Version

(a) Must correct the information within three business days if ~~he or she~~ the official subsequently ~~learns~~ learn that any ~~of the~~ information is erroneous.

(b) Must correct in ~~the designated integrity and performance system~~ SAM.gov, 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: in SAM.gov within three business days.

(d) Is strongly encouraged to amend the information in ~~the designated integrity and performance system~~ SAM.gov in a timely way to incorporate any update that ~~he or she~~ the official obtains and that could be helpful to Federal ~~awarding~~ agencies who must use the system.

### 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?

## Unofficial Comparison Version

(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~~

~~(b) In making this assessment~~determination, the suspending official may examine:

~~(1) the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents—;~~

~~(b) An~~2) an indictment, criminal information, 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; and

(3) other indicators of adequate evidence that may include, but are not limited to, warrants and their accompanying affidavits.

(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—;

## Unofficial Comparison Version

- (a) That you have been suspended;
- (b) That your suspension is based on—:
  - (1) An indictment;
  - (2) A criminal information;
  - (3) A conviction;
  - ~~(3)~~(4) A civil judgment;
  - (5) Other adequate evidence that you have committed irregularities ~~which~~that seriously reflect on the propriety of further Federal Government dealings with you; or
- (46) Conduct of another person that has been imputed to you; or your affiliation with a suspended or debarred person;
- (c) Of any other irregularities supporting your suspension in terms sufficient to put you on notice without disclosing certain evidence in the Federal Government's ~~evidence~~pending or contemplated legal proceedings;
- (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 Federal agency procedures governing suspension ~~decisionmaking~~decision-making; and
- (g) Of the ~~governmentwide~~government-wide effect of your suspension from procurement and nonprocurement programs and activities.

### § 180.720 How may I contest a suspension?

~~If you as~~As a respondent, if you 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~~. While oral statements may be a part of the official record, 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~~ 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 Federal 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 Federal 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 Federal 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;

## Unofficial Comparison Version

(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)~~ Your submission must also identify any of the paragraphs in § 180.730(a) that do not apply to you.

(c) If you fail to disclose this information<sub>7</sub> or provide false information, the Federal agency taking the action may seek further criminal, civil<sub>2</sub> 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~~As a respondent, you 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~~findings 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 the information contained in the Notice of Suspension;

## Unofficial Comparison Version

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are ~~not~~no 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~~As a respondent, you 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 if proceedings are not initiated.

(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 Federal, State, or local 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;



Unofficial Comparison Version

(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~~ violating Federal criminal tax laws, 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~~ a Federal 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;

## Unofficial Comparison Version

(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~~other agreement that resolves 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~~that is so serious or compelling ~~in~~in 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~~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~~The cause(s) under § 180.800 upon which the debarring official relied for proposing your debarment;

(d) ~~Of the~~The applicable provisions of this subpart, subpart F of this part, and any other Federal agency procedures governing debarment; and

(e) ~~Of the governmentwide~~The government-wide effect of a debarment from procurement and nonprocurement programs and activities.

#### **§ 180.810 When does a debarment take effect?**

Unlike a 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~~As a respondent, if you 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~~. While oral statements may be a part of the official record, 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 Federal 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 Federal 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 Federal 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?**

## Unofficial Comparison Version

(a) ~~You as~~As a respondent, you 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 the 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<sub>2</sub> as a respondent<sub>2</sub> 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 on 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~~government-wide 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 implemented remedial or protective measures, ~~such as establishing ethics training in the form of procedures, policies, and implementing~~ programs to ~~prevent recurrence~~ effectively address the activity cited as a basis for the debarment.

(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)~~ Whether your business, technical, or professional license(s) has been suspended, terminated, or revoked.

(t) 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~~Regulations (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~~. 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~~submit 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~~. 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 with 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, or 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~~1986 (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~~Regulations (48 CFR chapter 1). A person so excluded is debarred.

**§ 180.930 Debarring official.**

*Debarring official* means ~~an~~ a Federal 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));~~3142);

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368~~)),~~ and Executive Order 11738 (~~3 CFR, 1973 Comp., p. 799~~38 FR 25161).

**§ 180.940 Excluded or exclusion.**

*Excluded or exclusion* means—:

(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

**§ 180.945 System for Award Management (SAM.gov) Exclusions~~-(SAM Exclusions)-.~~**

*System for Award Management (SAM.gov) 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~~ persons.

**§ 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 agency. For the purposes of this part, other agencies of the Federal Government are not considered “agencies” ~~for the purposes of this part~~ unless they issue regulations adopting the governmentwide government-wide Debarment and Suspension system under Executive Orders 12549 and 12689.

**§ 180.955 Indictment.**

*Indictment* means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense ~~shall~~will be given the same effect as an indictment.

**§ 180.960 Ineligible or ineligibility.**

*Ineligible or ineligibility* means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

**§ 180.965 Legal proceedings.**

*Legal ~~proceedings~~proceeding* means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

**§ 180.970 Nonprocurement transaction.**

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to <sup>2</sup> the following:

- (1) Grants<sup>2</sup>
- (2) Cooperative agreements<sup>2</sup>
- (3) Scholarships<sup>2</sup>
- (4) Fellowships<sup>2</sup>
- (5) Contracts of assistance<sup>2</sup>
- (6) Loans<sup>2</sup>
- (7) Loan guarantees<sup>2</sup>

(8) Subsidies~~;~~

(9) Insurances~~;~~

(10) Payments for specified uses~~;~~ and

(11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

**§ 180.975 Notice.**

*Notice* means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by 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~~regardless of how organized.

**§ 180.990 Preponderance of the evidence.**

*Preponderance of the evidence* means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

**§ 180.995 Principal.**

*Principal* means~~—;~~



(a) An officer, director, owner, partner, principal investigator, or ~~other~~another person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—:

- (1) Is in a position to handle Federal funds;
- (2) Is in a position to influence or control the use of those funds; or,
- (3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

**§ 180.1000 Respondent.**

*Respondent* means a person against whom ~~an~~a Federal agency has initiated a debarment or suspension action.

**§ 180.1005 State.**

(a) *State* means—:

- (1) Any of the states of the United States;
- (2) The District of Columbia;
- (3) The Commonwealth of Puerto Rico;
- (4) Any territory or possession of the United States; or
- (5) Any agency or instrumentality of a ~~state~~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~~ Federal 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~~ Regulations (48 CFR chapter 1) for a temporary period, pending completion of ~~an~~ Federal agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

#### **§ 180.1020 Voluntary exclusion or voluntarily excluded.**

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

(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

### **PART 182—~~GOVERNMENTWIDE~~ GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)**

#### **§ 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~~ 8101–8106),

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 ~~into~~ two segments.

(a) Sections 182.5 through 182.40 contain general policy direction for Federal agencies' use of the uniform policies and procedures in subparts A through F ~~of this part~~.

(b) Subparts A through F ~~of this part~~ contain uniform ~~governmentwide~~government-wide policies and procedures for Federal agency use to specify the—:

- (1) Types of awards that are covered by drug-free workplace requirements;
- (2) Drug-free workplace requirements with which a recipient must comply;
- (3) Actions required of ~~an~~ Federal agency awarding official; and
- (4) Consequences of a violation of drug-free workplace requirements.

#### **§ 182.15 To whom does the guidance apply?**

This part provides ~~OMB~~ guidance ~~only~~ to Federal agencies. Publication of this guidance in the Code of Federal Regulations (CFR) does not change its nature—it is guidance and not regulation. Federal agencies' implementation of ~~the~~this guidance governs the rights and responsibilities of other persons affected by the drug-free workplace requirements.

#### **§ 182.20 What must a Federal agency do to implement the guidance?**

To comply with the requirement in Section 41 U.S.C. ~~705~~8106 for ~~Governmentwide~~government-wide regulations, each Federal agency that awards grants or cooperative agreements or makes other financial assistance awards that are subject to the drug-

free workplace requirements in subparts A through F of the guidance must issue a regulation consistent with those subparts.

**§ 182.25 What must a Federal agency address in its implementation of the guidance?**

Each Federal agency's implementing regulation:

(a) Must establish drug-free workplace policies and procedures for that Federal agency's Federal awards ~~that are~~ consistent with ~~the~~this guidance ~~in this part.~~ When adopted by a Federal agency, the provisions of the guidance have a regulatory effect ~~for on~~ that Federal agency's awards.

(b) Must address some matters for which the guidance in this part gives the Federal agency discretion. Specifically, the regulation must—:

(1) State whether the Federal agency:

(i) Has a central point to which a recipient may send the notification of a conviction that is required under § 182.225(a) or § 182.300(b); or

(ii) Requires the recipient to send the notification to the Federal agency awarding official or their designee for each ~~agency~~Federal award, ~~or to his or her official designee.~~

(2) Either:

(i) State that the Federal agency head is the official authorized to determine under § 182.500 or § 182.505 that a recipient has violated the drug-free workplace requirements; or

(ii) Provide the title of the official designated to make that determination.

(c) May also, at the Federal agency's option, identify any specific types of financial assistance awards, in addition to grants and cooperative agreements, to which the Federal agency makes this guidance applicable.

### **§ 182.30 Where does a Federal agency implement the guidance?**

Each Federal agency that awards grants or cooperative agreements or makes other financial assistance awards that are subject to the drug-free workplace guidance in this part must issue a regulation implementing the guidance within its chapter in subtitle B of this title of the Code of Federal Regulations.

### ~~§ 182.35 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, must be read together, as they are 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 Federal agency head, or ~~his or her~~their designee, determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

**§ 182.125 Does this part affect the Federal contracts that I receive?**

This part will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 182.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of

1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in ~~chapter~~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~~ the employee:

- (1) Will abide by the terms of the statement; and
- (2) Must notify you in writing if ~~he or she~~ the employee is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

**§ 182.210 To whom must I distribute my drug-free workplace statement?**

You must require that a copy of the statement described in § 182.205 be given to each employee who will be engaged in the performance of any Federal award.

**§ 182.215 What must I include in my drug-free awareness program?**

You must establish an ongoing drug-free awareness program to inform employees about—:

- (a) The dangers of drug abuse in the workplace;
- (b) Your policy of maintaining a drug-free workplace;
- (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

**§ 182.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?**

If you are a new recipient that does not already have a policy statement as described in § 182.205 and an ongoing awareness program as described in § 182.215, you must publish the statement and establish the program by the time given in the following table:



If * * *	Then you * * *
(a) the performance period of the award is less than 30 days	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(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 <u>Federal</u> 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 <u>Federal agency</u> awarding official.

### § 182.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 182.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must—:

- (1) Be in writing;
- (2) Include the employee's position title;
- (3) Include the identification number(s) of each affected award;
- (4) Be sent within ten calendar days after you learn of the conviction; and
- (5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every Federal agency awarding official or ~~his or her official~~their designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either—:

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State, or local health, law enforcement, or ~~either~~another appropriate agency.

#### **§ 182.230 How and when must I identify workplaces?**

(a) You must identify all known workplaces under each Federal agency award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces—:

(1) To the Federal agency awarding official that is making the Federal award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the Federal award, in which case you must make the information available for inspection upon request by agency officials or their designated representatives.

(b) Your workplace identification for ~~an~~ Federal award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (~~e.g., for example,~~ all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the Federal agency awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the Federal award, you must inform the Federal agency awarding official.

### **Subpart C—Requirements for Recipients Who Are Individuals**

#### **§ 182.300 What must I do to comply with this part if I am an individual recipient?**

As a condition of receiving a Federal ~~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 Federal award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any Federal award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the Federal agency awarding official or ~~other~~their designee for each Federal award that you currently have, unless the agency designates a central point for the receipt of the notices, either in the award document or its regulation implementing the guidance in this part. When notice is made to a central point, it must include the identification number(s) of each affected Federal award.

### **Subpart D—Responsibilities of Federal Agency Awarding Officials**

#### **§ 182.400 What are my responsibilities as ~~ana~~ Federal agency awarding official?**

As a Federal agency awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—:

- (a) Subpart B ~~of this part~~, if the recipient is not an individual; or
- (b) Subpart C ~~of this part~~, if the recipient is an individual.

## **Subpart E—Violations of This Part and Consequences**

### **§ 182.500 How are violations of this part determined for recipients other than individuals?**

A recipient other than an individual is in violation of the requirements of this part if the Federal agency head or ~~his or her~~their 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?**

~~A~~A recipient who is an individual ~~recipient~~ is in violation of the requirements of this part if the Federal agency head or ~~his or her~~their designee determines, in writing, that—:

- (a) The recipient has violated the requirements of subpart C ~~of this part~~; or
- (b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

### **§ 182.510 What actions will the Federal Government take against a recipient determined to have violated this part?**

If a recipient is determined to have violated this part, as described in § 182.500 or § 182.505, the Federal agency may take one or more of the following actions—:

- (a) Suspension of payments under the award;
- (b) Suspension or termination of the award; and
- (c) Suspension or debarment of the recipient under the Federal agency's regulation implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180~~);~~) for a period not to exceed five years.

**§ 182.515 Are there any exceptions to those actions?**

~~The~~For a particular award, the Federal 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~~government-wide rule that implements OMB Circular A–102 (for availability of OMB circulars, see 5 CFR 1310.3) and specifies uniform administrative requirements.

- (b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (~~i.e., that is,~~ any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

**§ 182.610 Controlled substance.**

*Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

**§ 182.615 Conviction.**

*Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

**§ 182.620 Cooperative agreement.**

*Cooperative agreement* means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 182.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

**§ 182.625 Criminal drug statute.**

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

**§ 182.630 Debarment.**

*Debarment* means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and Federal agency regulations implementing the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180, which implements Executive Orders 12549 and 12689).

**§ 182.635 Drug-free workplace.**

*Drug-free workplace* means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

**§ 182.640 Employee.**

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—:

- (1) All direct charge employees;
- (2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance ~~of~~ the award; and
- (3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (~~e.g., for~~ example, volunteers, even if used to meet a matchingcost sharing requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

**§ 182.645 Federal agency or agency.**

*Federal agency or agency* means any United States executive department, military department, government corporation, government-controlled corporation, any other establishment in 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~~regardless of how it is organized, that receives an award directly from a Federal agency.

**§ 182.665 State.**

*State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

**§ 182.670 Suspension.**

*Suspension* means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered 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 Federal 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.

9. Revise part 183, consisting of §183.5 through appendix A to part 183, to read as follows:

**PART 183—NEVER CONTRACT WITH THE ENEMY**

**§ 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~~820 of the National Defense Authorization Act for Fiscal Year ~~2020~~2023 (Pub. L. ~~116-92~~.117-263), hereafter cited as “Never Contract with the Enemy”).

**§ 183.10 Applicability.**

(a) This part applies only to grants and cooperative agreements that are expected to exceed \$50,000 and that are performed outside the United States, including U.S. territories, and that are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. It does not apply to the authorized intelligence or law enforcement activities of the Federal Government.

(b) All elements of this part are applicable until the date of expiration as provided in law.

**§ 183.15 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 for Award Management (SAM.gov) Exclusions.

(b) The Federal ~~awarding~~ agency may include the award term provided in ~~appendix A of this part~~Appendix A 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~~no funds, including goods and services, received under ~~an executive agency's~~ 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, or contract to a covered person or entity upon becoming aware that the recipient has failed to exercise due diligence to ensure that ~~none of the~~no award funds are provided directly or indirectly to a covered person or entity.

(3) Void in whole or in part any grant, cooperative agreement, or contracts of the executive agency concerned upon a written determination by the head of contracting activity or ~~other~~another 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, or both. The agency must also notify the recipient in writing about the recipient's right to request an administrative review (using the agency's procedures) of the restriction, termination, or void of the grant or cooperative agreement within 30 days of receiving notification.

**§ 183.20 Reporting responsibilities of Federal ~~awarding~~ agencies.**

## Unofficial Comparison Version

(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.gov Exclusions as a prohibited or restricted source pursuant to ~~Subtitle E, Title VIII of~~ Never Contract with the NDAA for FY 2015 (Pub. L. 113-291) ~~Enemy~~.

(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 action as a termination ~~as a Termination~~ for ~~Material Failure~~ material failure to ~~Comply~~ comply in ~~the Office of Management and Budget (OMB) designated integrity and performance system accessible through~~ SAM ~~(currently the gov. Federal Awardee agencies must use the Contractor Performance and Integrity Information Assessment Reporting System (FAPHS))~~ CPARS to enter or amend information in SAM.gov.

(c) The Federal ~~awarding~~ agency ~~shall~~ must document and report to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies):

(1) Any action to restrict all future awards or to terminate or void an award with a covered person or entity.

(2) Any decision not to restrict all future awards, terminate, or void an award along with the agency's reasoning for not taking one of these actions after the agency became aware that a person or entity is a prohibited or restricted source.

(d) Each report referenced in paragraph (c)(1) of this section ~~shall~~ must include the following:

(1) The executive agency taking such action.

- (2) An explanation of the basis for the action taken.
- (3) The value of the terminated or voided grant or cooperative agreement.
- (4) The value of all grants and cooperative agreements of the executive agency with the person or entity concerned at the time the grant or cooperative agreement was terminated or voided.

(e) Each report referenced in paragraph (c)(2) of this section ~~shall~~must include the following:

- (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,~~for example, 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~~Appendix A to this part.

(b) Recipients must also flow down the provisions in award terms covered in ~~appendix~~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, 101(a)(13)~~, 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, 12301(a)~~, 12302, 12304, 12304a, 12305, 12406 of 10 U.S.C. chapter 15, 14 U.S.C. ~~7123713~~ 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:

##### I. *Term 1*

##### — *Prohibition on Providing Funds to the Enemy*

- (a) ~~The recipient~~ You must ~~—~~:

## Unofficial Comparison Version

(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~~the System for Award Management (SAM.gov) 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~~You 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 you have~~ 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)

## II. 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 of your records ~~of and~~ the ~~recipient and its~~ records of your 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 the 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~~ must 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)

**PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES,  
AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

**Subpart A—Acronyms and Definitions**

**Acronyms**

**§ 200.0 Acronyms.**

**~~Acronym Term~~**

CAS Cost Accounting Standards

## Unofficial Comparison Version

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

~~FAPHS Federal Awardee Performance and Integrity Information System~~

FAR Federal Acquisition Regulation

FASB Financial Accounting Standards Board

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—(; section 3 of Public Law 113-101; section 2(a) of Public Law 117-40 (See 31 U.S.C. 6101)

~~FICA Federal Insurance Contributions Act, statutory note~~

FOIA Freedom of Information Act

FR Federal Register

~~FTE Full-time equivalent~~

GAAP Generally Accepted Accounting Principles

GAGAS Generally Accepted Government Auditing Standards

## Unofficial Comparison Version

GASB Government Accounting Standards Board

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

NOFO Notice of Funding Opportunity

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 ([SAM.gov](https://sam.gov))

~~SFA Student Financial Aid~~

~~SNAP Supplemental Nutrition Assistance Program~~

~~SPOC Single Point of Contact~~

~~TANF Temporary Assistance for Needy Families~~

~~TFM Treasury Financial Manual~~

UEI Unique Entity Identifier

U.S.C. United States Code

VAT Value Added Tax

## § 200.1 Definitions.

~~These are the~~ The following is a list of definitions ~~for~~of key terms frequently used in ~~this~~2 CFR part. ~~Different definitions may be~~ 200. Definitions 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 take precedence over the following definitions. However, where the following definitions implement specific statutory requirements that apply government-wide, such as the Single Audit Act, the following definitions take precedence over Federal regulations.~~

For purposes of this part, the following definitions apply:—

*Acquisition cost* means the (total) cost of the asset including the cost to ready the asset for its intended use. ~~Acquisition~~For example, 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~~include 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~~recipient's or subrecipient'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 and~~ payment ~~schedule, method~~ before the ~~non-Federal entity~~recipient or subrecipient 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~~Listings refer 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).~~ (GSA) at SAM.gov.

*Assistance* ~~listing~~Listing number means a unique number assigned to identify ~~a Federal~~an Assistance ~~Listings, formerly known as the CFDA Number.~~ Listing.

*Assistance* ~~listing~~Listing program title means the title that corresponds to the ~~Federal~~ Assistance ~~Listings Number, formerly known as the CFDA program title.~~ Listing number.

*Audit finding* means deficiencies which the auditor is required ~~by § 200.516(a)~~ to report in the schedule of findings and questioned costs. (See § 200.516(a))

*Auditee* means any non-Federal entity that ~~expends Federal awards which~~ must be audited under ~~subpart F of~~ this part. (See § 200.501)

## Unofficial Comparison Version

*Auditor* means an auditor who is a public accountant or a Federal, State, local government, or Indian ~~tribe~~Tribes audit organization, ~~which that~~ 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 and subrecipients are authorized to ~~expend~~incur financial obligations of 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~~ Tribe to its departments and agencies on a centralized basis. 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~~ recipient or group of ~~non-Federal entities~~ recipients 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~~ clusters,” 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~~ when determining major programs, as described in § 200.518, and, with the exception of R&D as described in § 200.501~~(e)~~, 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~~ Tribes: Appendix VII ~~to this part~~, paragraph D.1.

*Compliance supplement* means an annually updated authoritative source of information for auditors that ~~serves to identify~~ identifies 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~~ that 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~~.

*Continuation funding* means a discretionary decision by a Federal agency to fund a second or subsequent budget period within the period of performance.

## Unofficial Comparison Version

*Cooperative agreement* means a legal instrument of financial assistance between a Federal ~~awarding~~ agency ~~and a recipient or a~~ pass-through entity and a recipient or 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:~~

## Unofficial Comparison Version

~~(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 a 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, and capital projects, ~~etc.~~ A cost objective may be a major function of the ~~non-Federal entity~~ recipient or subrecipient, 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). This term includes matching, which refers to required levels of cost share that must be provided. 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~~cost* 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~~that equals or exceeds the lesser of the capitalization level established by the ~~non-Federal entity~~recipient or subrecipient for financial statement purposes, or \$510,000. See ~~also the~~this section’s 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~~recipient or subrecipient 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~~recipient or subrecipient 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~~has the meaning in paragraph (2) of this definition unless the context clearly indicates that the more general meaning in paragraph (1) is intended:

(1) an “agency” as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f)-;  
or  
(2) an “agency” as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f) that  
provides a Federal award directly to a recipient.  
See also definitions of Federal award and recipient.

*Federal Audit Clearinghouse (FAC)* means the ~~clearinghouse designated by OMB as the~~  
repository of record designated by OMB where non-Federal entities ~~are required to~~must 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.

## Unofficial Comparison Version

(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-government-~~ owned, contractor- operated (GOCO) 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* signed (physically or digitally) the Federal award or when an alternative binding agreement, consistent with the Federal agency that provides a Federal award directly to a non-Federal entity.~~ requirements of 31 U.S.C. 1501, is reached with the recipient.

*Federal financial assistance* means:

(1) Assistance that ~~non-Federal entities~~ recipients or subrecipients 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~~recipients or subrecipients 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~~recipients or subrecipients 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 paid using Federal funds.

~~*Federal share* means the portion of the Federal award costs that are paid using Federal funds.~~

*Final cost objective* means a cost objective ~~which~~that has allocated to it both direct and indirect costs and, in the ~~non-Federal entity's~~recipient's or subrecipient'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-~~recipient or subrecipient. 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 by a recipient or subrecipient under a Federal award that result in expenditures by a recipient or subrecipient under a Federal award.

*Fixed amount ~~awards~~award* means a type of grant or cooperative agreement ~~underpursuant to~~ which the Federal ~~awarding~~ agency or pass-through entity provides a specific ~~level~~amount of ~~support~~funding 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-recipient or subrecipient and the~~ 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.

*For-profit organization* generally means an organization or entity organized for the purpose of earning a profit. The term includes but is not limited to:

- (1) An “S corporation” incorporated under Subchapter S of the Internal Revenue Code;
- (2) A corporation incorporated under another authority;
- (3) A partnership;
- (4) A limited liability company or partnership; and
- (5) A sole proprietorship.

*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~~the country ~~of domicile and operation, where it is~~ registered and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, an 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~~that 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 Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (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~~apply to financial audits.

*Grant agreement* or grant means a legal instrument of financial assistance between a Federal ~~awarding~~-agency or pass-through entity and a ~~non-Federal entity~~recipient or subrecipient 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.

## Unofficial Comparison Version

*Highest-level owner* means the entity that owns or controls an immediate owner of ~~the offeror, an applicant~~ or that owns or controls one or more entities that control an immediate owner of ~~the offeror, an applicant~~. 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~~State or a facility operated as a hospital by the United States, a ~~state~~State, or a subdivision of a ~~state~~State.

*Improper payment* means:

~~(1) Any~~ a payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. The term improper payment includes: any payment to an ineligible recipient; any payment for an ineligible good or service; any duplicate payment; any payment for a good or service not received, except for those payments where authorized by law; any payment that is not authorized by law; and any payment that does not account for credit for applicable discounts. See OMB Circular A-123 Appendix C, Requirements for Payment Integrity Improvement for additional definitions and guidance on the requirements for payment integrity.

~~(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).~~

## Unofficial Comparison Version

~~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.~~

## Unofficial Comparison Version

~~(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~~Tribe* means any Indian ~~tribe~~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 ~~(. See 25 U.S.C. 450b5304(e)). See). This includes any Indian Tribe identified in the~~ annually published Bureau of Indian Affairs list of ~~“Indian Entities Recognized and Eligible to Receive Services-” and other entities that qualify as an Alaska Native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act.~~

~~*Institutions of Higher Education (IHEs)* is defined at 20 U.S.C. 1001.~~

*Indirect (facilities & administrative (F&A)) ~~costs~~cost* 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~~It may be necessary to establish multiple pools of indirect costs 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/recipient to substantiate its request ~~for the establishment of to establish~~ an indirect cost rate as described in appendices III through VII and ~~appendix~~ 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.

*Institution of Higher Education (IHE)* is defined at 20 U.S.C. 1001.

*Intangible property* means property having no physical existence, such as trademarks, copyrights, ~~patents and~~ data (including data licenses), websites, IP licenses, trade secrets, patents, patent applications, and property, such as loans, notes and other debt instruments, lease agreements, ~~stock~~ stocks and other instruments of property ownership ~~(whether the property is of either tangible or intangible).~~

property ownership, such as intellectual property, software, or software subscriptions/licenses. *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~~ this section's definitions of *cost objective* and *final cost objective* ~~in this section~~.

*Internal ~~controls~~ control* for ~~non-Federal entities~~ recipients and subrecipients means:

(1) Processes designed and implemented by ~~non-Federal entities~~ recipients and subrecipients 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~~ Key Personnel means any individuals (including employees and contractors) working under a Federal award that are ~~required~~ designated in the Federal award as being particularly integral or meaningful to follow internal control compliance requirements in OMB Circular No. A-123, Management's Responsibility for Enterprise Risk Management and Internal Control. the program.

*Loan* means a Federal loan or loan guarantee received or administered by a ~~non-Federal entity~~ recipient, except as used in ~~the~~ this section's 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~~ pledges for 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.

## Unofficial Comparison Version

(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~~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.

## Unofficial Comparison Version

*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 an individual procurement transaction for~~ 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~~ recipient's or subrecipient's small purchases using informal procurement methods as ~~defined~~ set forth in § 200.320.

*Micro-purchase threshold* means the dollar amount at or below which a ~~non-Federal entity~~ recipient or subrecipient 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~~ recipient or subrecipient 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 ~~\$2550~~,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~~50,000. 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<sub>2</sub>, and compliance requirements, such that in keeping with specific statutory authority<sub>1</sub>, the Federal agency has ~~no ability to~~cannot exercise ~~judgement~~judgment (“discretion”). A non-discretionary award amount could be ~~determined~~ specifically determined or by formula.

*Non-Federal entity (NFE)* means a State, local government, Indian ~~tribe~~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 organization's operations ~~of the organization; and~~
- (4) Is not an IHE.

*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, such as who is eligible to apply, the

evaluation criteria for ~~selection of an awardee~~, selecting a recipient or subrecipient, the 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~~ recipient or subrecipient 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~~ recipient or subrecipient, 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~~ that 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* generally means an individual who is not a recipient or subrecipient staff member or consultant, or an individual who is developing or leading the implementation of the Federal award; but rather attending, benefitting from, or is otherwise playing a role in the overall program activities. Examples include, community members participating in a community

outreach program, members of the public whose perspectives or input are sought as part of a program, exchange students, or conference attendees.

*Participant support costs* means direct costs ~~for items~~that support participants and their involvement in a Federal award, such as stipends ~~or~~, subsistence allowances, travel allowances, ~~and~~ registration fees, dependent care, and per diem paid directly 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~~recipient or subrecipient that provides a subaward to a subrecipient (including lower tier subrecipients) to carry out part of a Federal program.

*Performance goal* means a measurable 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., for example,~~ 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 during which the recipient and subrecipient must perform and complete the work authorized under the Federal award. It is the time interval between the start of an initial Federal award and the planned and~~ end date of a Federal award, which may include one or more funded portions, or budget periods. ~~Identification of the~~The period of performance ~~in the Federal award per § 200.211(b)(5)~~ does not commit the ~~awarding~~Federal 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.

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*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~~ Some 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~~. Public PII 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~~ attached to any single category of information or technology. ~~Rather~~ Instead, 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, could be used to identify an individual when combined with other available information, ~~could be used to identify an individual~~.

*Prior approval* means the written approval by an authorized official of a Federal agency or pass-through entity of certain costs or programmatic decisions.

*Program income* means gross income earned by the ~~non-Federal entity~~ recipient or subrecipient 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.)~~ c). Program income includes but is not limited to income from fees for services performed, the use or rental ~~or of~~ 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", which 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~~ this section's 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 type~~ type 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 definition does not include PII that ~~is required by law to~~ must be disclosed by law. See ~~also the~~ this section's definition of *Personally Identifiable Information (PII)* ~~in this section~~.

*Questioned cost* has the meaning given in paragraphs (1) through (3).

(1) *Questioned cost* means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted amount, expended or received from a violation or possible violation of a statute, regulation Federal award, that in the auditor's judgment:

(i) Is noncompliant or suspected noncompliant with Federal statutes, regulations, or the terms and conditions of the Federal award, including for funds used to match Federal funds;



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~~(2) Where the costs, at (ii) At the time of the audit, are not supported by~~ lacked adequate documentation to support compliance; or

~~(3) Where the costs incurred appear (iii) Appeared~~ unreasonable and ~~did~~ did 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).~~

~~(2) The questioned cost amount under (1)(ii) is calculated as if the portion of a transaction that lacked adequate documentation were confirmed noncompliant.~~

~~(3) There is no questioned cost solely because of:~~

~~(i) Deficiencies in internal control; or~~

~~(ii) Noncompliance with reporting requirements if this noncompliance does not affect the amount expended or received from the Federal award.~~

~~(4) Known questioned cost means a questioned cost specifically identified by the auditor. Known questioned costs are a subset of likely questioned costs.~~

~~(5) Likely questioned cost means the auditor's best estimate of total questioned costs, not just the known questioned costs. Likely questioned costs are developed by extrapolating from audit evidence obtained, for example, by projecting known questioned costs identified in an audit sample to the entire population from which the sample was drawn. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the likely questioned costs, not just the known questioned costs.~~

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*Real property* means land, including land improvements, structures ~~and~~, appurtenances thereto, and legal interests in land such as a fee title, licenses, rights of way, easements, 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. to carry out an activity under a Federal program. The term recipient does not include subrecipients or individuals that are participants and beneficiaries of the award.

*Renewal award* means an award made ~~subsequent to an expiring~~ after the expiration of a Federal award for which the start date is contiguous with, or closely follows, the end of the expiring Federal award. ~~A renewal award's~~ The start date ~~will begin of~~ a renewal award begins a new and distinct period of performance.

*Research and Development (R&D)* means all basic and applied research activities, ~~both basic and applied,~~ and all development activities ~~that are performed by non-Federal entities a recipient or subrecipient.~~ The term research also includes activities involving the training of individuals in research techniques where such activities ~~utilize~~ use 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~~ the 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 to produce~~ useful materials, devices, systems, or methods, including ~~design~~ designing and ~~development of developing~~ prototypes and processes.

*Simplified acquisition threshold* means the dollar amount below which a ~~non-Federal entity~~recipient or subrecipient may purchase property or services using small purchase methods (see § 200.320). ~~Non-Federal entities~~Recipients and subrecipients adopt small purchase procedures ~~in order~~ to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold ~~for set in the FAR at 48 CFR part 2, subpart 2.1 is~~ used in this part as the simplified acquisition threshold for secondary procurement activities administered under Federal awards ~~is set by the FAR at 48 CFR part 2, subpart 2.1.~~ The ~~non-Federal entity~~recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold, which is less than or equal to the dollar value established in the FAR, 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~~ Recipients and subrecipients should also determine if local government ~~laws on~~ purchasing laws apply. This threshold must never exceed the dollar value established in the FAR.

*Special purpose equipment* means equipment ~~which~~that 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, and associated software. See also the definitions of *equipment* and *general purpose equipment* in this section.

*State* means any ~~state~~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.

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*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 administers, 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~~ contribute to the goals and objectives of the project by carrying 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 beneficiary. 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, It~~ does not include an individual that is a Federal program beneficiary ~~of such award or participant~~. 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*~~ Supply means all tangible personal property other than those described in the equipment definition ~~of equipment in this section.~~ A computing device is a supply if the acquisition cost is ~~less than~~ below the lesser of the capitalization level established by the ~~non-~~

## Unofficial Comparison Version

~~Federal entity~~recipient or subrecipient for financial statement purposes or \$~~5~~10,000, regardless of the length of its useful life. See ~~also the~~this section's 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~~landlines, and ~~the~~ internet.

*Termination* means the ~~ending of~~action a Federal agency or pass-through entity takes to ~~discontinue~~ a Federal award, in whole or in part at any time ~~prior to~~before the planned end ~~date~~ of ~~the~~ period of performance. ~~A Termination does not include discontinuing a Federal award (for example, not issuing continuation funding which is at the discretion of a Federal agency), or a lack of available funds is not a termination.~~

*Third-party in-kind contributions* means the value of non-cash contributions (~~i.e., meaning~~ property or services) that—:

- (1) Benefit a federally-assisted project or program Federal award; and
- (2) Are contributed by non-Federal third parties, without charge, to a ~~non-Federal~~ entityrecipient or subrecipient under a Federal award.

*Unliquidated financial* ~~obligations~~obligation means, ~~for financial reports prepared on a cash basis,~~ financial obligations incurred by the ~~non-Federal entity that have~~recipient or subrecipient but not ~~been~~ paid (liquidated)~~.) for financial reports prepared on a cash basis.~~ 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~~ recipient or subrecipient but not recorded.

*Unobligated balance* means the amount of funds under a Federal award that the ~~non-Federal entity~~recipient or subrecipient has not obligated. The amount is computed by subtracting the cumulative amount of the ~~non-Federal entity's~~recipient's or subrecipient'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~~recipient or subrecipient to obligate.

*Voluntary committed cost sharing* means cost sharing specifically pledged ~~on a voluntary basis~~voluntarily in the proposal's budget on the part of the ~~non-Federal entity and that~~recipient or subrecipient, which becomes a binding requirement of the Federal award. See ~~also~~ § 200.306.

## 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~~allowed 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~~with the policy for collecting and submitting information on all Federal financial assistance programs to the Office of Management and Budget (OMB). ~~and communicating this information to the public.~~ It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It

~~prescribes also sets forth how~~ 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~~ implement 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 Federal financial assistance. This includes establishing~~ requirements for Federal ~~awarding agency agencies~~ management of Federal ~~grant~~ financial assistance programs before ~~the~~ Federal award ~~has been~~ made, and ~~the~~ requirements that Federal ~~awarding~~ agencies may impose on ~~non-Federal entities in the~~ recipients and subrecipients throughout the lifecycle of a Federal award.

(c) *Cost principles.* Subpart E ~~of this part~~ establishes principles for determining ~~the~~ allowable costs incurred by ~~non-Federal entities~~ recipients and subrecipients under Federal awards. ~~The~~ These principles are for the purpose of cost determination ~~and are. They do not intended to identify~~ address the circumstances ~~or nor~~ dictate the extent of Federal Government ~~participation in the financing~~ funding 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~~ Subpart F sets forth the standards for ~~obtaining~~ achieving consistency and uniformity among Federal agencies for the audit of non-Federal entities ~~expending~~ administering Federal awards. ~~These~~

~~provisions~~ Subpart F also ~~provide~~provides the policies and procedures for Federal ~~awarding~~ agencies ~~and/or~~ 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.~~

#### **§ 200.101 Applicability.**

(a) *General applicability to Federal agencies.*

(1) ~~The requirements established in this part~~ Subparts A through F 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~~organizations, foreign public entities, or foreign organizations as permitted in agency regulations or program statutes, except ~~where the~~when a 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.~~laws of a foreign government. If a Federal agency does not apply subpart E to for-profit organizations, the cost principles of the Federal Acquisition Regulations (FAR) will apply. Subpart F only applies to non-Federal entities as defined in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507). Federal agencies should apply the requirements to all recipients in a consistent and equitable manner to the extent permitted within applicable statutes, regulations, and policies.

(b) *Applicability to different types of Federal awards.*



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(1) Throughout ~~this part when~~ subparts A through F, the word “must” ~~is used to~~ indicates a requirement. ~~Whereas, use of the~~ The word “should” or “may” indicates a ~~best practice or~~ recommended approach ~~rather than a requirement~~ and permits discretion.

(2) ~~The following table describes~~ Paragraphs (3) through (6) of this section describe what portions of this part apply to ~~which~~ specific types of Federal ~~awards, financial assistance.~~ The terms and conditions of Federal awards ~~(including and the requirements of 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~~ indicated otherwise. ~~This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient statute, regulation, or subrecipient the terms and conditions 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~~ and any ~~requirements in this part~~ other sections directed ~~towards~~ Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award ~~indicate otherwise toward~~ pass-through entities.

Table 1 to Paragraph (b)

<b>The following portions of this Part</b>	<b>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):</b>	<b>Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:</b>
Subpart A—Acronyms and Definitions	—All	
Subpart B—General Provisions, except for §§ 200.111 English Language, 200.112 Conflict of	—All	

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<del>The following portions of this Part</del>	<del>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):</del>	<del>Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:</del>
<del>Interest, 200.113 Mandatory Disclosures</del>		
<del>§§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures</del>	<del>—Grant Agreements and cooperative agreements</del>	<del>—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.</del>
<del>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</del>	<del>—Grant Agreements and cooperative agreements</del>	<del>—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.</del>
<del>§ 200.203 Requirement to provide public notice of Federal financial assistance programs</del>	<del>—Grant Agreements and cooperative agreements —Agreements for loans, loan guarantees, interest subsidies and insurance</del>	<del>—Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.</del>
<del>§§ 200.303 Internal controls, 200.331–333 Subrecipient Monitoring and Management</del>	<del>—All</del>	
<del>Subpart E—Cost Principles</del>	<del>—Grant Agreements and cooperative agreements, except</del>	<del>—Grant agreements and cooperative agreements</del>

Unofficial Comparison Version

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:
	those providing food commodities —All procurement contracts under the Federal Acquisition Regulations except those that are not negotiated	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 contracts 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.

(3) Subparts A and B apply to all Federal financial assistance with the following exceptions:

(i) Sections 200.111, 200.112, and 200.113 do not apply to agreements for loans, loan guarantees, interest subsidies, insurance, and procurement contracts under the FAR and subcontracts under those contracts.

(4) Subparts C and D *apply only* to grants and cooperative agreements with the following exceptions:

(i) Section 200.203 also *applies* to agreements for loans, loan guarantees, interest subsidies, and insurance;

(ii) Section 200.216 also applies to loans and loan guarantees; and

(iii) Sections 200.303 and 200.331 through 200.333 also *apply* to all types of Federal financial assistance.

(5) Subpart E *applies* to grants, cooperative agreements, and certain procurement contracts under the FAR but *does not apply* to the following:

(i) Grants and Cooperative Agreements providing food commodities;

(ii) Fixed Amount Awards;

(iii) Agreements for loans, loan guarantees, interest subsidies, and insurance;

(iv) Procurement contracts under the FAR that are not negotiated; and

(v) Federal awards to hospitals (See Appendix IX – Hospital Cost Principles)

(6) Subpart F *only applies* to the following:

(i) Grants and cooperative agreements (including fixed amount awards);

(ii) Contracts and subcontracts awarded under the FAR (except for fixed price contracts and subcontracts);

(iii) Agreements for loans, loan guarantees, interest subsidies, and insurance; and

(iv) Any other form of Federal financial assistance as defined by the Single Audit Act Amendment of 1996.

(c) *Federal award of a cost-reimbursement contract under the Federal Acquisition Regulations (FAR) to a non-Federal entity.* When a non-Federal entity is awarded a cost-reimbursement contract under the FAR, 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~~. The requirements of subparts D, E, and F are supplementary to the FAR and the contract. In cases of conflict, the FAR and the terms and conditions of the contract awarded under the FAR shall prevail over the incorporated requirements from this part. When the Cost Accounting Standards (CAS) are applicable to the contract, they also take precedence over the incorporated requirements ~~off from~~ this part, ~~including subpart F of this part, which are supplementary to the CAS requirements.~~ In addition, costs that are ~~made identified as~~ unallowable under 10 U.S.C. 2324(e) and 41 U.S.C. 4304(a) and as described stated 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~~ in any circumstances where they conflict with the provisions of this part. For agreements with Indian ~~tribes~~, Tribes, this includes the provisions of

the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, (see 25 U.S.C. ~~450-458~~ 5301-5423.

(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:

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(i) Temporary Assistance for Needy Families (~~title~~Title IV—A of the Social Security Act, 42 U.S.C. 601—619);

(ii) Child Support Enforcement and Establishment of Paternity (~~title~~Title IV—D of the Social Security Act, 42 U.S.C. 651—669b);

(iii) Federal Payments for Foster Care, Prevention, and Adoption Assistance (~~title~~Permanency (Title IV—E of the Act, 42 U.S.C. 670—679c);

(iv) Aid to the Aged, Blind, and Disabled (~~titles~~Titles I, X, XIV, and XVI—AABD of the Act, as amended);

(v) Medical Assistance (Medicaid) (~~title~~Title XIX of the Act, 42 U.S.C. 1396—1396w—5) not including the State Medicaid Fraud Control program authorized by section~~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~~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.~~Public Law 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~~Section~~ 4 of the Act, 42 U.S.C. 1753);

- (ii) Commodity Assistance (~~section~~Section 6 of the Act, 42 U.S.C. 1755);
  - (iii) Special Meal Assistance (~~section~~Section 11 of the Act, 42 U.S.C. 1759a);
  - (iv) Summer Food Service Program for Children (~~section~~Section 13 of the Act, 42 U.S.C. 1761); and
  - (v) Child and Adult Care Food Program (~~section~~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~~Section 3 of the Act, 42 U.S.C. 1772);
  - (ii) School Breakfast Program (~~section~~Section 4 of the Act, 42 U.S.C. 1773); and
  - (iii) State Administrative Expenses (~~section~~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~~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~~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~~Section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

#### **§ 200.102 Exceptions.**

- (a) ~~With the exception of OMB Exceptions. Except for~~ subpart F ~~of this part~~, OMB may allow either exceptions to or deviations from requirements of this part for classes of Federal awards ~~or non-Federal entities subject to the~~, or of recipients, subrecipients, or both, when not



prohibited by statute. For example, OMB may allow exceptions or deviations in support of innovative program designs or emergency situations. Deviation means applying more or less restrictive requirements to a class of Federal awards, recipients, or subrecipients.

(b) *Statutory Exceptions.* When required by Federal statute, a Federal agency does not need OMB approval to allow exceptions to or deviations from requirements of this part ~~when~~ (except for subpart F) for a class of Federal awards or recipients, subrecipients, or both.

(c) *Agency Exceptions.* Federal agencies may allow exceptions to requirements of this part for individual Federal awards, or recipients, or subrecipients on a case-by-case basis when the 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~~ and OMB approval is not expressly required by this part. Only the 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.~~ may authorize exceptions related to cost allocation plans or indirect cost rate proposals. A Federal ~~awarding~~ agency may also apply less restrictive requirements when ~~making~~issuing fixed amount awards ~~as defined in subpart A of this part, (see § 200.1),~~ 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.~~

### § 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); the Federal Program Information Act (Public Law 95-220 and Public Law 98-169, as amended, codified at 31 U.S.C. 6101-6106); the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95-224, as amended, codified at 31 U.S.C. 6301-6309); 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”); and 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–~~1125-1126~~); 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.” OMB also relies on authority under 31 U.S.C. 503 and 31 U.S.C. 6307.

(c) Subpart F ~~of this part~~ is authorized under the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507). OMB also relies on authority under 31 U.S.C. 503 and 31 U.S.C. 6307.

**§ 200.104 Supersession.**

~~As described in § 200.110, this~~ This part supersedes ~~the following previous~~ OMB guidance ~~documents and regulations issued~~ under ~~title~~ Title 2, subtitle A, chapter I of the Code of Federal Regulations:

- ~~(a) A–21, “Cost Principles related to uniform administrative requirements, cost principles, and audit requirements 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); awards.~~
- ~~(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.~~

**§ 200.105 Effect on other issuances.**

(a) *Superseding inconsistent requirements.* For Federal awards made subject to this part, all by a Federal agency, this part takes precedence over any administrative requirements,

program manuals, handbooks, and other non-regulatory materials that are inconsistent with the requirements of ~~this part must be superseded~~ those subparts upon implementation of this part by the Federal agency, except to the extent that they are required by statute or authorized in accordance with ~~the provisions in~~ § 200.102.

(b) *Imposition of requirements on recipients.* Agencies may only impose legally binding requirements on recipients only and subrecipients through ~~the notice~~:

(1) Notice and public comment ~~process~~ procedures through an approved agency process, including as authorized by this part, other statutes, or regulations; ~~or as incorporated~~

(2) Incorporating requirements into the terms and conditions of a Federal award. as permitted by Federal statute, regulation, or this part.

#### **§ 200.106 Agency implementation.**

The specific requirements and responsibilities of Federal agencies ~~and~~ non-Federal entities, recipients, and subrecipients 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.

#### **§ 200.107 OMB responsibilities.**

OMB will review Federal agency regulations and implementation of this part, ~~and~~ OMB will provide interpretations of policy requirements and assistance to ensure effective ~~and~~ efficient, and consistent implementation. Any exceptions will be subject to approval by OMB. ~~Exceptions will and only be made in particular cases where~~ with adequate justification ~~is presented from the Federal agency.~~

**§ 200.108 Inquiries.**

Inquiries from Federal agencies 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~~OMB. Inquiries from recipients or subrecipients should be addressed to the Federal ~~awarding~~ agency, the cognizant agency for indirect costs, the cognizant ~~or oversight~~ agency for audit, or the pass-through entity as appropriate.

**§ 200.109 Review date.**

OMB will review this part ~~at least every five years after December 26, 2013, periodically.~~

**§ 200.110 Effective/~~applicability~~ date.**

(a) The standards set forth in this part ~~that affect~~affecting 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~~the recipient's or subrecipient's fiscal year. Therefore, for indirect cost rates and cost allocation plans, the ~~revised Uniform Guidance~~revisions to this part (as of the publication date for revisions to ~~the~~this guidance) become effective in generating proposals and negotiating a new rate (when the rate is re-negotiated).

**§ 200.111 English language.**

(a) All Federal financial assistance announcements, applications, and Federal award information ~~must~~should be in the English language. ~~Applications must be submitted in the~~

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~~English language~~ and must be in ~~the~~ terms of U.S. dollars. ~~If the~~However, 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~~agencies, recipients, and subrecipients may ~~issue or~~ translate ~~the~~a Federal award ~~and/or~~ other documents into another language. ~~In the event of inconsistency between any~~A Federal agency may translate formal or informal announcements of the availability of Federal funding through a financial assistance program, such as a notice of funding opportunity, when translations may serve to increase the pool of applicants or the participation of a specific community (for example, programs administered in foreign countries where the primary language is not English). There must be official controlling English versions of announcements and award documents.

~~(b) Applications, reports, and official correspondence may be submitted in languages other than English if specified in the notice of funding opportunity or the terms and conditions of the Federal award~~and any translation into.

~~(c) In the event of inconsistency between English and~~ another language, the English language meaning will control. ~~Where~~When a significant portion of the ~~non-Federal entity's~~recipient's or subrecipient's employees ~~who are working on the~~administering a Federal award are not fluent in English, the ~~non-Federal entity must provide the~~ Federal award should be provided in English and the language(s) with which employees are more familiar.

### § 200.112 Conflict of interest.

~~The Federal~~ awarding agency/agencies must establish conflict of interest policies for Federal awards. ~~The non-Federal entity~~ A recipient or subrecipient must disclose in writing any potential conflict of interest to the Federal ~~awarding~~ agency or pass-through entity in accordance with ~~applicable~~ the established Federal ~~awarding~~ agency ~~policy~~ policies.

#### § 200.113 Mandatory disclosures.

~~The non-Federal entity or~~ An applicant for, recipient, or subrecipient of a Federal award must promptly disclose, ~~in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations~~ whenever they have credible evidence of a violation 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 (for example, fraud, embezzlement, bribery, gratuity violations, identity theft, or sexual assault and condition outlined in appendix XII to this part~~ exploitation) or a violation of the civil False Claims Act. (See also 2 CFR 175.105 regarding the obligation to report credible information related to conduct prohibited by the Trafficking Victims Protection Act, 22 U.S.C. 7104c). The disclosure must be made in writing to the Federal agency, pass-through entity (if applicable), and the agency's Office of Inspector General. Recipients and subrecipients are required to report ~~certain~~ civil, criminal, or administrative proceedings to SAM (currently FAPIIS)-matters related to recipient integrity and performance in accordance with Appendix XII of this part. 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.)

#### Subpart C — Pre-Federal Award Requirements and Contents of Federal Awards

##### § 200.200 Purpose.

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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)~~, grants, cooperative agreements, fixed amount awards, and contracts.**

(a) *Federal ~~award instrument~~awards*. The Federal ~~awarding~~ agency or pass-through entity must decide on the appropriate ~~instrument~~type of agreement for ~~the~~a Federal award (~~i.e., for example, a~~ grant ~~agreement~~, cooperative agreement, subaward, or contract) in accordance with this guidance. See the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301 ~~–08-6309~~).