

conditions does not provide that recipients will use any program income as cost sharing or matching.

§ 1128.630 Valuation of services or property contributed or donated by recipients or subrecipients.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.306(d) specifies:

(1) That values for recipients' and subrecipients' contributions of services or property toward cost sharing or matching must be established in accordance with the cost principles in Subpart E of 2 CFR part 200; and

(2) Types of projects or programs under which recipients' or subrecipients' donations of buildings or land are allowable as cost sharing or matching, with the prior approval of the Federal awarding agency, and how the donations are to be valued in those cases.

(b) *DoD implementation.* DoD implements the guidance in 2 CFR 200.306(d) through award terms and conditions, with the following clarifications:

(1) *Cost principles to be used for valuation.* (i) Values for recipients' and subrecipients' contributions of services or property toward cost sharing or matching must be established in accordance with the cost principles applicable to the entity making the contribution.

(ii) Consistent with the cost principles, what generally should be charged to awards for real property and equipment is depreciation rather than allowing a recipient's or subrecipient's donation of the property (*i.e.*, counting the full value of the property toward cost sharing or matching). However, depreciation included in a recipient's or subrecipient's indirect costs is not appropriate for counting as cost sharing or matching under an individual award.

(2) *Donations of property to projects or programs under awards.* (i) In addition to donations of buildings or land described in 2 CFR 200.306(d), recipients and subrecipients may, with the prior approval of the DoD Component, donate other capital assets described in the cost principles in 2 CFR 200.439(b)(1) through (3). The basis for clarifying that recipients may donate other capital assets to projects or programs under awards is that, with the DoD Component's approval:

(A) Capital expenditures to acquire those types of capital assets are allowable as direct charges to awards; and

(B) The costs therefore satisfy the allowability criterion in 2 CFR 200.306(b)(4) and can qualify as cost sharing or matching if they meet the other criteria listed in 2 CFR 200.306(b).

(ii) However, when there are alternative ways for recipients to meet requirements for cost sharing or matching, DoD Components should not approve donations of capital assets to projects or programs under awards. Inclusion of the full value of a donated asset as project costs in the approved budget of an award is analogous to inclusion of the acquisition cost for an asset that is purchased under the award. Through the donation, the Federal Government acquires an interest in the donated asset that must be resolved at time of disposition of the asset, which is best avoided if possible.

(iii) Whenever a DoD Component permits a recipient to donate a capital asset to a project or program under an award, the DoD Component should inform the cognizant Federal agency that negotiates the indirect cost rate for that recipient. Doing so enables the cognizant agency to take the donation into account when it establishes the recipient's indirect cost rate, given that the recipient may not include depreciation for the donated asset as indirect costs that enter into the computation of that rate.

(c) *Award terms and conditions—(1) General.* A DoD Component's general terms and conditions must use the wording appendix F to this part provides as Section E of FMS Article VI.

(2) *Exception.* A DoD Component's general terms and conditions may reserve paragraph E.2 of the wording appendix F to this part provides if the DoD Component does not allow recipients to donate buildings, land, or other capital assets to projects or programs under awards using those terms and conditions.

§ 1128.635 Valuation of third-party in-kind contributions.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.306(e) through (j) and 2 CFR 200.434(b) through (g) specifies how to value and document various types of

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third-party in-kind contributions for cost sharing or matching purposes.

(b) *Award terms and conditions*—(1) *General*. To implement the OMB guidance described in paragraph (a) of this section as it applies to valuation and documentation of third-party in-kind contributions, a DoD Component's general terms and conditions must use the wording Section VI of appendix F to this part provides as Section F of FMS Article VI.

(2) *Exception*. A DoD Component's general terms and conditions may reserve any paragraph of the wording appendix F to this part provides for Section F of FMS Article VI if the DoD Component determines that there will be no possibility of third-party in-kind contributions under awards using those terms and conditions.

Subpart G—Program Income (FMS Article VII)

§ 1128.700 Purpose of FMS Article VII.

FMS Article VII of the general terms and conditions specifies requirements for program income that recipients earn. The article thereby implements OMB guidance in 2 CFR 200.80 and 200.307.

§ 1128.705 Content of FMS Article VII.

(a) *Requirement*. A DoD Component's general terms and conditions must address the kinds of income included as program income, the way or ways in which a recipient may use it, the duration of the recipient's accountability for it, and related matters.

(b) *Award terms and conditions*. A DoD Component's general terms and conditions must include as FMS Article VII the wording appendix G to this part provides, unless, as authorized by §§ 1128.710 through 1128.725, there are revisions to the wording of Sections A and E of the article or Section D is reserved.

§ 1128.710 What program income includes.

(a) *OMB guidance*. Under the definition of “program income” at 2 CFR 200.80 and related OMB guidance at 2 CFR 200.307, an agency's regulations or terms and conditions of grants and co-

operative agreements may include as program income:

(1) Rebates, credits, discounts, and interest earned on any of them; and

(2) Taxes, special assessments, levies, fines and other similar revenue raised by a governmental recipient.

(b) *DoD implementation*. Unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment specifies otherwise, each DoD Component must exclude the types of income listed in paragraphs (a)(1) and (2) of this section from program income for which recipients are accountable to the Federal Government.

(c) *Award terms and conditions* — (1) *General*. Except as provided in paragraph (c)(2) of this section, a DoD Component must use the wording provided in appendix G to this part as Section A of FMS Article VII in its general terms and conditions. Doing so excludes the types of income listed in paragraphs (a)(1) and (2) of this section from program income for which recipients are accountable to the Federal Government.

(2) *Exceptions*. If a DoD Component has a statutory or regulatory basis for including either or both types of income described in paragraphs (a)(1) and (2) of this section, it may do so by appropriately revising the wording appendix G provides for Section A of FMS Article VII. For example, to include as program income:

(i) Rebates, credits, discounts, and interest earned on them, a DoD Component would reserve paragraph A.3.c and insert the wording of that paragraph as a new paragraph at the end of section A.2, thereby adding them to the list of items included as program income subject to FMS Article VII.

(ii) Taxes, special assessments, levies, fines and other similar revenue raised by a governmental recipient, a DoD Component would reserve paragraph A.3.d and insert that wording as a new paragraph at the end of section A.2, thereby adding them to the list of items included as program income subject to FMS Article VII.