

(d) *Private entity.* (1) This term means any entity other than a State, local government, Indian tribe, or foreign public entity.

(2) This term includes:

(i) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe in paragraph (b) of this section.

(ii) A for-profit organization.

(e) *State*, consistent with the definition in section 103 of the TVPA, as amended (22 U.S.C. 7102), means:

(1) Any State of the United States;

(2) The District of Columbia;

(3) Any agency or instrumentality of a State other than a local government or State-controlled institution of higher education;

(4) The Commonwealths of Puerto Rico and the Northern Mariana Islands; and

(5) The United States Virgin Islands, Guam, American Samoa, and a territory or possession of the United States.

## **PART 176—AWARD TERMS FOR ASSISTANCE AGREEMENTS THAT INCLUDE FUNDS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, PUBLIC LAW 111–5**

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### **Subpart D—Single Audit Information for Recipients of Recovery Act Funds**

176.200 Procedure.

176.210 Award term—Recovery Act transactions listed in Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Subrecipients.

AUTHORITY: American Recovery and Reinvestment Act of 2009, Public Law 111–5; Federal Funding Accountability and Transparency Act of 2006, (Pub. L. 109–282), as amended.

SOURCE: 74 FR 18450, Apr. 23, 2009, unless otherwise noted.

#### **§ 176.10 Purpose of this part.**

This part establishes Federal Governmentwide award terms for financial assistance awards, namely, grants, cooperative agreements, and loans, to implement the cross-cutting requirements of the American Recovery and

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Reinvestment Act of 2009, Public Law 111-5 (Recovery Act). These requirements are cross-cutting in that they apply to more than one agency's awards.

### § 176.20 Agency responsibilities (general).

(a) In any assistance award funded in whole or in part by the Recovery Act, the award official shall indicate that the award is being made under the Recovery Act, and indicate what projects and/or activities are being funded under the Recovery Act. This requirement applies whenever Recovery Act funds are used, regardless of the assistance type.

(b) To maximize transparency of Recovery Act funds required for reporting by the assistance recipient, the award official shall consider structuring assistance awards to allow for separately tracking Recovery Act funds.

(c) Award officials shall ensure that recipients comply with the Recovery Act requirements of Subpart A. If the recipient fails to comply with the reporting requirements or other award terms, the award official or other authorized agency action official shall take the appropriate enforcement or termination action in accordance with 2 CFR 215.62 or the agency's implementation of the OMB Circular A-102 grants management common rule. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(d) The award official shall make the recipient's failure to comply with the reporting requirements a part of the recipient's performance record.

### § 176.30 Definitions.

As used in this part—

*Award* means any grant, cooperative agreement or loan made with Recovery Act funds. Award official means a person with the authority to enter into, administer, and/or terminate financial assistance awards and make related determinations and findings.

*Classified* or "*classified information*" means any knowledge that can be communicated or any documentary material, regardless of its physical form or characteristics, that—

(1)(i) Is owned by, is produced by or for, or is under the control of the United States Government; or

(ii) Has been classified by the Department of Energy as privately generated restricted data following the procedures in 10 CFR 1045.21; and

(2) Must be protected against unauthorized disclosure according to Executive Order 12958, Classified National Security Information, April 17, 1995, or classified in accordance with the Atomic Energy Act of 1954.

*Recipient* means any entity other than an individual that receives Recovery Act funds in the form of a grant, cooperative agreement or loan directly from the Federal Government.

*Recovery funds* or *Recovery Act funds* are funds made available through the appropriations of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

*Subaward* means—

(1) A legal instrument to provide support for the performance of any portion of the substantive project or program for which the recipient received this award and that the recipient awards to an eligible subrecipient;

(2) The term does not include the recipient's procurement of property and services needed to carry out the project or program (for further explanation, see § 176.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations"). OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

(3) A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

*Subcontract* means a legal instrument used by a recipient for procurement of property and services needed to carry out the project or program.

*Subrecipient* or *Subawardee* means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a