

§ 1128.210

management; frequency of payment requests; and matters related to recipients' depositories, including interest earned on advance payments.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must include the wording appendix B to this part provides for FMS Article II with appropriate additions, deletions, and substitutions as described in §§ 1128.210 through 1128.220.

§ 1128.210 Payment requirements for States.

(a) *Policy.* Payments to States are subject to requirements in Department of the Treasury regulations at 31 CFR part 205 that implement the Cash Management Improvement Act. Those regulations are in two subparts with distinct requirements that apply to different programs:

(1) Subpart A of 31 CFR part 205 contains requirements for payments to States under "major programs," as defined in that part. The Department of the Treasury negotiates Treasury-State agreements for major programs. Those agreements specify the appropriate timing and amounts of payments. They further specify a State's interest liability if it receives an advance payment too many days before it disburses the funds for program purposes, as well as the Federal Government's interest liability if it reimburses the State too many days after the State disburses the funds. Most DoD awards to States are not under major programs, so Subpart A applies relatively infrequently.

(2) Subpart B of 31 CFR part 205 applies to all other DoD grants and cooperative agreements to States—*i.e.*, awards that are not under major programs.

(b) *Award terms and conditions*—(1) *General.* Because few DoD awards to States are under major programs, appendix B to this part includes wording for Section A of FMS Article II that specifies the requirements of Subpart B of 31 CFR part 205. A DoD Component's general terms and conditions must include this wording for Section A of FMS Article II if no award using those terms and conditions will be made to a State under a program designated as a

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major program in the applicable Treasury-State agreement.

(2) *Exception for awards under major programs.* If a DoD Component is establishing general terms and conditions that will be used for awards to States, only some of which are subject to requirements for major programs in Subpart A of 31 CFR part 205, then the DoD Component should:

(i) Use appendix B's wording for Section A of FMS Article II in its general terms and conditions; and

(ii) In each award subject to Subpart A of 31 CFR part 205, include award-specific terms and conditions that make payments to the recipient subject to the requirements in Subpart A of 31 CFR part 205 and the applicable Treasury-State agreement, thereby overriding the wording of Section A of FMS Article II.

§ 1128.215 Payment requirements for institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

(a) *Policy.* OMB guidance in 2 CFR 200.305 addresses the use of three payment methods for grants and cooperative agreements—advance payments, reimbursement, and working capital advances. Two of the methods pertain to a DoD Component's general terms and conditions, as described in paragraphs (a)(1) and (2) of this section.

(1) *Advance payments.* With the possible exception of construction awards, as provided in paragraph (a)(2) of this section, a DoD Component's general terms and conditions must authorize each recipient to request payments in advance as long as the recipient maintains, or demonstrates the willingness to maintain, both:

(i) Written procedures that minimize the time elapsing between its receipt of funds from the Federal Government and its disbursement of the funds for project or program purposes; and

(ii) Financial management systems that meet the standards for fund control and accountability specified in the wording of FMS Article I (see Subpart A and appendix A to this part).

(2) *Reimbursement.* A DoD Component's general terms and conditions may specify the reimbursement method if the awards using those terms and