

The Office of Management and Budget is submitting the proposed guidance below for publication in the Federal Register (FR). OMB released this pre-publication internet version on September 21, 2023. While we have taken steps to ensure the accuracy of this pre-publication internet version of the proposed guidance, it is not the official version of the proposed guidance for purposes of the Code of Federal Regulations, nor does it constitute publication of the proposed guidance in the FR for purposes of calculating the comment period. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDsys website (<https://www.gpo.gov/fdsys/>). It will also appear on Regulations.gov (<https://www.regulations.gov/>). The official version may include technical or other revisions that are not reflected below. Once the official version of this document is published in the FR, this version will be removed from the internet and replaced with a link to the official version.

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 1, Chapter I, and Chapter II

Guidance for Grants and Agreements

AGENCY: Office of Federal Financial Management, Office of Management and Budget

ACTION: Proposed rule; notification of proposed guidance.

SUMMARY: The Office of Management and Budget (OMB) is proposing to revise sections of OMB Guidance for Grants and Agreements. This proposed revision reflects comments received from Federal agencies and those received in response to the OMB Notice of Request for Information published in the Federal Register in February 2023. In response to Federal agency and public input, OMB is proposing revisions intended in many cases to reduce agency and recipient burden. OMB proposes both policy changes and clarifications to existing guidance including plain language revisions. OMB also proposes to update the guidance to reflect recent OMB priorities related to Federal financial assistance. Finally, OMB is proposing revisions to improve Federal financial assistance management, transparency, and oversight through more accessible and readily comprehensible guidance.

DATES: OMB invites interested persons and organizations to submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments on this proposal must be submitted electronically before the comment closing date to *www.regulations.gov*. In submitting comments, please search for recent submissions by OMB to find docket *OMB-2023-XXXX*, which includes the full text of the proposed revisions and submit comments there. Please provide clarity as to the section of the guidance that each comment is referencing by beginning each comment with the section number in brackets. *For example; if the comment is on 2 CFR 200.1 include the following before the comment [200.1]*. The public comments received by OMB will be posted at *http://www.regulations.gov* and be a matter of public record. Accordingly, please do not include in your comments any confidential business information or information of a personal-privacy nature. In general, responses to the comments will be summarized and included in the preamble of the final guidance.

FOR FURTHER INFORMATION CONTACT: Andrew Reisig or Steven Mackey at the OMB Office of Federal Financial Management via e-mail at *MBX.OMB.OFFM.Grants@OMB.eop.gov*.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Office of Management and Budget (OMB) proposes to revise several parts of the OMB Guidance for Grants and Agreements located in title 2 of the Code of Federal Regulations (CFR) to further clarify and update guidance to Federal agencies on the consistent and efficient

use of Federal financial assistance. This document includes proposed revisions to Part 1 (About Title 2 of the Code of Federal Regulations and Subtitle A); Part 25 (Universal Identifier and System for Award Management); Part 170 (Reporting Subaward and Executive Compensation Information), Part 175 (Award Term for Trafficking in Persons); Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)); Part 182 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)); Part 183 (Never Contract with the Enemy); and Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

As explained in further detail below, OMB proposes revising 2 CFR for reasons including: (1) incorporating statutory requirements and administration priorities; (2) reducing agency and recipient burden; (3) clarifying sections that recipients or agencies have interpreted in different ways; and (4) rewriting applicable sections in plain language, improving flow, and addressing inconsistent use of terms. Consistent with these objectives, OMB proposes both policy changes and clarifications to existing guidance including plain language revisions. OMB also proposes to update the guidance to reflect recent OMB priorities related to Federal financial assistance. Finally, OMB's proposed revisions are also intended to improve Federal financial assistance management, transparency, and oversight through more accessible and readily comprehensible guidance.

OMB summarizes its proposals for policy changes in this document below. OMB also explains its general methodology for plain language revisions. OMB sought to maintain the existing structure of the 2 CFR guidance, which remains generally intact and mostly consistent with earlier iterations of the guidance—for example, in terms of the structure of parts, structure

of subparts, and section numbering. Except in cases where OMB proposes policy changes or other edits for consistency with statutory requirements, OMB also generally sought to maintain the existing content of the 2 CFR guidance. In many cases throughout the guidance, however, OMB proposes plain language revisions to simplify the guidance text, avoid or reduce technical jargon where feasible, provide greater consistency, and make the text more succinct.

The proposed revisions align with OMB's authority to: (i) issue guidance promoting consistent and efficient use of Federal financial assistance instruments; and (ii) provide overall direction and leadership to Federal agencies on policies and requirements related to Federal financial assistance. *See* 31 U.S.C. 6307 and 31 U.S.C. 503(a)(2). Additional authorities for the proposed revisions are set forth below. Many of the proposed revisions reflect comments received from Federal agencies and those received from the public in response to the OMB Notice of Request for Information published in the Federal Register in February 2023. *See* 88 FR 8480 (Feb. 9, 2023).

Background

Between 2012 and 2013, OMB worked with Federal agencies to revise and streamline existing guidance to develop the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) located in part 200 of 2 CFR. 79 FR 78589 (Dec. 26, 2013). This effort was intended to assist programs in delivering better outcomes on behalf of the American people while simultaneously reducing administrative burden and the risk of fraud, waste, and abuse. The Uniform Guidance in part 200, which OMB established in 2013, consolidated, streamlined, and superseded requirements from several earlier OMB Circulars and guidance documents related to grants management and implementation of the

Single Audit Act. OMB explained in 2013 that its guidance intended to improve both the clarity and accessibility of these requirements across the Federal government. Federal award-making agencies implemented the Uniform Guidance through an interim final rule, which became effective on December 26, 2014. 79 FR 75867 (Dec. 19, 2014).

OMB generally reviews the Uniform Guidance every five years in accordance with 2 CFR 200.109. OMB made further revisions to the Uniform Guidance in 2020. 85 FR 49506 (Aug. 13, 2020). The 2020 revisions addressed topics including program development and design, as well as measuring recipient performance to assist Federal awarding agencies and non-Federal entities to improve program goals and objectives, share lessons learned, and adopt of promising performance practices.

Based on feedback and ongoing engagement with Federal agencies and the broader Federal financial assistance community, OMB believes that additional revisions are now warranted to the Uniform Guidance in part 200 to further streamline, clarify, and update the guidance, including raising certain thresholds, where permissible under law, in recognition of inflation over time. Further information on OMB's objectives for the proposed revisions is provided below.

In addition to proposed revisions in part 200, OMB also proposes revisions to other parts in subtitle A of 2 CFR for similar reasons, including parts 1, 25, 170, 175, 180, 182, and 183. OMB established these parts at different times in the last 20 years. See, for example, 69 FR 26276 (May, 11, 2004) (establishing 2 CFR for guidance on grants and other financial assistance and nonprocurement agreements); 70 FR 51863 (Aug. 31, 2005) (establishing part 180); 75 FR 55671 (Sep. 14, 2010) (establishing part 25); and 75 FR 55663 (Sep. 14, 2010) (establishing part 170).

OMB Objectives

OMB's objectives for the current proposed revisions to several parts of subtitle A of 2 CFR include: (1) incorporating statutory requirements and administration priorities; (2) reducing agency and recipient burden; (3) clarifying sections that recipients or agencies have interpreted in different ways; and (4) rewriting applicable sections in plain language, improving flow, and addressing inconsistent use of terms.

The proposed revisions to the Uniform Guidance in part 200 and other parts of 2 CFR generally support these four objectives. In support of objective (1), OMB proposes to implement changes throughout the Uniform Guidance and other parts to ensure consistency with statutory authorities. For example, OMB proposes to revise Parts 25, 170, and 175 to ensure its guidance properly aligns with underlying statutes, as amended. These potential revisions would reduce inconsistencies between OMB's guidance and authorizing statutes to ensure proper implementation. OMB has also made several structural changes to individual parts within Chapter I to provide further structural consistency throughout OMB's guidance in 2 CFR.

In support of objective (2), OMB proposes to increase several monetary thresholds that have not been updated for many years. For example, OMB proposes increasing the single audit threshold from \$750,000 to \$1,000,000 and increasing the threshold from \$5,000 to \$10,000 for determining items that are considered to be equipment. OMB reviewed previous increases to the thresholds and considered current economic data when making its determinations. In further support of reducing burden, OMB is proposing a complete revision to the template text for a Notice of Funding Opportunity (NOFO) located in Appendix I of the Uniform Guidance in part

200. With this revision, OMB intends to reduce administrative burden and unnecessary obstacles for applying to Federal financial assistance.

In support of objective (3), OMB proposes revisions to 2 CFR to clarify areas of misinterpretation. Many of these clarifications do not represent a change in policy but serve to explain the intent of specific sections of the Uniform Guidance in part 200, and other parts in 2 CFR, with greater precision and clarity. OMB received feedback from Federal agencies and the public stating that Federal agencies and the recipient community interpret many sections differently. As one example, OMB clarifies that Federal agencies approve costs requiring prior approval when the Federal award is issued if the costs were included in the recipient's proposal, and do not require subsequent approval prior to expenditure.

In support of objective (4), OMB proposes to revise the guidance to follow plain language principles. Plain language principles OMB focused on included using simple words and phrases, avoiding jargon, using terms consistently, and being concise.

Related to OMB's plain language revisions, throughout subparts A to E of part 200, OMB proposes to use the terms "recipient," "subrecipient," or both in place of "non-Federal entity." OMB believes that the existing usage of "non-Federal entity" in subparts A through E of the existing CFR text in part 200 presents challenges to readers and makes it difficult to quickly understand what entity is being addressed, especially in situations in which Federal agencies apply part 200 to Federal agencies, for-profit organizations, foreign public entities, or foreign organizations under 2 CFR 200.101. In the revisions to part 200, OMB uses the term "non-Federal entity," as defined in section 200.1, only when that entity is specifically intended, such as in subpart F implementing the Single Audit Act. In many cases in part 200 OMB

proposes to replace “non-Federal entity” with either “recipient and subrecipient” or “recipient or subrecipient.” In cases where the guidance in part 200 relates specifically to only either “recipients” or “subrecipients,” but not both, OMB refers specifically to the applicable entity. OMB invites comments on this proposal and any effects it may have on specific sections or paragraphs of the guidance in part 200.

OMB notes that these revisions related to the use of the terms “non-Federal entity,” “recipient,” and “subrecipient” do not directly change the existing scope of applicability of the guidance. The applicability provision for part 200 at section 200.101, continues to provide Federal agencies with discretion on whether to apply subparts A through E of part 200 to Federal agencies, for-profit entities, foreign public entities, or foreign organizations. In the same section, OMB proposes to encourage Federal agencies to apply the requirements in subparts A to E of part 200 to all recipients in a consistent and equitable manner, but does not require them to do so. In cases in which Federal agencies apply part 200 to such entities, OMB’s proposal further clarifies how the guidance applies to those entities as either recipients or subrecipients.

As another example of plain language revisions, OMB proposes to replace the use of the general term “OMB designated governmentwide systems” with more specific terms to reduce ambiguity for those unfamiliar with the Uniform Guidance. In this proposed revisions OMB specifically mentions the appropriate system, such as SAM.gov, USASpending.gov, the Contractor Performance Assessment Reporting System (CPARS), or Grants.gov.

The overall goal of OMB’s plain language revision effort is to make the Uniform Guidance more accessible to the general public and ensure more equitable access to Federal

funding opportunities by making the guidance on that topic easier to understand. OMB does not directly address the proposed plain language revisions in this preamble unless a revision represents a material change to the Uniform Guidance. However, OMB invites comment on whether any of its plain language revisions in part 200, or other parts, may have unintended consequences. OMB also invites comments on whether further modifications or additional precision is needed in any specific instance, such as in the case of OMB's proposed use of the terms "recipient," "subrecipient," or both in particular sections of the guidance.

Statutory Authority for OMB Guidance for Grants and Agreements

The Director of OMB is authorized under 31 U.S.C. 6307 to "issue supplementary interpretative guidelines to promote consistent and efficient use of ... grant agreements ... and cooperative agreements." The Deputy Director for Management of OMB is authorized under 31 U.S.C. 503 to, among other things, provide "overall direction and leadership to the executive branch on financial management matters by establishing financial management policies and requirements." 31 U.S.C. 503(a)(2).

OMB also relies on authorities including the Single Audit Act Amendments of 1996 (Pub. L. 104-156, as amended, codified at 31 U.S.C. 7501-7507); the Federal Funding Accountability and Transparency Act of 2006 (FFATA or the Transparency Act) (Pub. L. 109-282), as amended; the Digital Accountability and Transparency Act of 2014 (DATA Act of 2014) (Pub. L. 113-101), as amended; 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); the Office of Federal Procurement Policy Act (codified at 41 U.S.C. 1101-

1131); the Budget and Accounting Procedures Act of 1950, as amended (codified at 31 U.S.C. 1101-1126); the Chief Financial Officers Act of 1990 (codified at 31 U.S.C. 503-504); the Trafficking Victims Protection Act of 2000 (TVPA), as amended (codified at 22 U.S.C. 7101-7115); 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.”

Request for Information Issued by OMB in February 2023

On February 9, 2023, OMB published a Notice of Request for Information (RFI) in the Federal Register. 88 FR 8480 (Feb. 9, 2023). OMB received approximately 1,250 individual comments from all sources, including 113 submissions from the public containing multiple comments in each. In response to Federal agency and public input, OMB is proposing the revisions discussed below.

Part-by-Part Discussion of the Proposed Revisions:

OMB invites comments on the proposed revisions throughout subtitle A of 2 CFR. OMB identifies areas below where comments may be particularly useful.

Part 1 — About Title 2 of the Code of Federal Regulations and Subtitle A

OMB proposes to revise the headings of title of 2 CFR and Subtitle A and Chapter I to replace “Grants and Agreements” with “Federal Financial Assistance.” This revision will help to ensure that the Uniform Guidance is understood to be applicable beyond just grants and cooperative agreements, unless noted differently in the applicability provision for the Uniform Guidance at section 200.101 or relevant provisions in others parts in chapter I.

OMB proposes to revise section 1.200 to remove paragraphs (b) and (c), which are no longer accurate. When OMB first established part 1 in 2004, see 69 FR 26276 (May, 11, 2004),

it implemented the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107). That legislation ceased to be effective on November 20, 2007 based on a sunset date included in the law. In addition, chapter II of subtitle A in 2 CFR, which now contains part 200, was initially intended to contain OMB guidance in its “initial form” before it was “finalized.” That statement no longer accurately reflects the structure of subtitle A of 2 CFR nor status of the OMB guidance in part 200.

OMB proposes to provide a more succinct statement in section 1.215 explaining that some of the guidance was organized differently within previous OMB circulars or other guidance documents before establishment of title 2 of the CFR. Because 2 CFR has now existed for almost 20 years in its current format and location, OMB does not believe it is necessary to continue to include the table showing earlier sources of certain elements of the OMB guidance in 2 CFR. The Federal Register notice establishing 2 CFR in 2004, see 69 FR 26276 (May, 11, 2004), and other subsequent Federal Register notices establishing and revising particular parts and provisions of subtitle A in 2 CFR, include that information.

OMB also proposes to revise section 1.305 to further clarify Federal agency responsibilities, such as coordinating with the Council on Federal Financial Assistance (see OMB Memorandum M-23-19), the Grants Quality Service Management Office (QSMO), and other governance committees.

OMB also proposes to add section 1.231 to clarify its intent that if any provision of this guidance, as finalized, were held to be invalid or unenforceable, such provision, or combination of provisions, are severable from the remaining provisions of the guidance, as finalized.

Part 25 — Unique Entity Identifier and System for Award Management

OMB proposes to revise the guidance in this part to ensure it properly aligns with the authorizing statutes, as amended, including the Transparency Act and the DATA Act of 2014. OMB first revises the title of Part 25 to replace “universal identifier” with “unique entity identifier.” In section 25.105, which is renamed “Applicability,” OMB proposes to clarify that the requirement to obtain a Unique Entity Identifier (UEI) and register in SAM.gov does not apply to second-tier subrecipients or contractors. In support of Federal agency requests, OMB proposes to clarify that recipients of loan guarantees must obtain a UEI and register in SAM.gov, while a Federal agency may use discretion when determining to apply the requirements to beneficiary borrowers.

In section 25.110, OMB proposes to clarify that, even if an exception is granted, a Federal agency remains responsible for reporting data to comply with the Transparency Act, as amended, except that it may use a generic entity identifier in the circumstances described.

Although not included in the proposed guidance in this document, OMB is also considering other ways of reducing the administrative burden associated with obtaining a UEI and registering in SAM.gov for foreign organizations or foreign public receiving Federal awards between \$25,000 (the Transparency Act threshold for a “Federal award”) and \$250,000 (the simplified acquisition threshold). Federal agencies have explained to OMB that the process for obtaining a UEI and registering in SAM.gov can present significant challenges for some of their applicants for, and recipients of, awards in this limited category. Based on this feedback, OMB is considering establishing a new exception in section 25.110 that would allow an agency to grant a one-time exception from the requirement to obtain a UEI, register in SAM.gov, or both for foreign organizations or foreign public entities applying for or receiving an award between

\$25,000 and \$250,000 for a project or program performed outside the U.S. OMB will work with Federal agency partners to determine if this proposal can be implemented in a way that is consistent with Transparency Act reporting requirements. If included in the final revisions to the guidance, OMB will also consider incorporating further limits or safeguards in this exception to mitigate risk, such as not allowing its application to awards that will include subawards above \$30,000—the threshold for subaward reporting established based on the pilot program in section 5(b) of the Transparency Act, as amended by the Data Act of 2014. Pub. L. 113-101; 85 FR 49506 (Aug. 13, 2020); 2 CFR 170.220. This proposed change would provide more flexibility—as needed—to agencies operating in overseas environments where SAM.gov registration presents particular challenges. If finalized, the exception would only be available on a case-by-case basis in situations in which the agency has conducted a risk-based analysis and deemed it impractical for the entity to comply with the requirements(s). This proposed change would only be finalized in a way that would allow agencies to continue following Transparency Act reporting requirements for this limited category of awards.

Related to the above analysis, OMB is also considering expanding the exigent circumstances exception in section 25.110 to provide recipients with additional time to obtain a UEI and complete SAM.gov registration if exigent circumstances persist beyond 30 days. This proposal is not included in the proposed guidance in this document, but OMB is considering ways to provide this additional flexibility in the final guidance. When exigent circumstances exist, the current guidance at section 25.110 allows agencies to provide recipients up to 30 days after the Federal award date to obtain a UEI and complete SAM.gov registration. In recognition of the issues that sometimes arise when organizations attempt to register in SAM.gov,

particularly for new or inexperienced applicants, OMB's proposal would provide Federal agencies with the option to provide recipients an additional 90 days if exigent circumstances persist. OMB will work with Federal agency partners to determine if this proposal can be implemented in a way that is consistent with Transparency Act reporting requirements. If included in the final revisions to the guidance, OMB proposes to further clarify that Federal agencies should not issue payments to a recipient that is unable to obtain a UEI or complete registration in SAM.gov. OMB also proposes to clarify that Federal agencies should include an award term expressly providing that the recipient's eligibility to receive any future payments under the award (such as outlays of cash) would be contingent on the recipient receiving a UEI and completing registration. Again, this proposed change would only be finalized in a way that would allow agencies to continue following Transparency Act reporting requirements for this limited category of awards.

OMB also proposes several clarifications in the part, such as a proposed revision in section 25.205 explaining that the requirement to have an active UEI does not apply to amendments to terminate or close a Federal award.

Part 170 — Reporting Subaward and Executive Compensation Information

OMB proposes to revise the guidance in this part to ensure it properly aligns with the authorizing statutes, as amended, including the Transparency Act and the DATA Act of 2014. OMB proposes to clarify the specific Federal agency reporting requirements and to revise the award term to resolve issues related to which entities the award term applies to. OMB also proposes to revise certain sections to clarify their intended meaning. For example, OMB

proposes to move certain requirements currently contained in section 170.110 to section 170.105, which OMB proposes to rename “Applicability.”

Part 175 — Award Term for Trafficking in Persons

OMB proposes to revise the guidance in part 175 to ensure it properly aligns with the authorizing statutes that have been amended since it was published. See the TVPA of 2000, as codified at 22 U.S.C. 7101 to 7115. OMB proposes to update the policy and Award Term to ensure alignment with the current statute and to further align with the format of the CFR. For example, at section 175.105, OMB proposes adding provisions related to a compliance plan and requiring notification to Inspectors General under certain circumstances to further align with statute.

Part 180 — OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)

OMB proposes minimal revisions to this part based on feedback received from the Interagency Suspension and Debarment Committee (ISDC) in accordance with section 180.40. Considering the role of the ISDC in recommending changes, OMB does not propose extensive plain language revisions through this document in part 180. Sections in part 180 that OMB proposes to revise include sections 180.635 and 180.640 to clarify available administrative actions in lieu of debarment. OMB proposes amending section 180.705 to include “other indicators of adequate evidence that may include, but are not limited to, warrants and their accompanying affidavits” for officials to consider before initiating a suspension. OMB proposes additional clarifying edits to sections 180.710, 180.815, and 180.860, including adding text to section 180.860 to address factors influencing a debarment decision; this revision proposes to

add text on “whether your business, technical, or professional license(s) has been suspended, terminated, or revoked.” OMB proposes changes to this part generally in response to an ISDC recommendation to provide additional clarifications to 2 CFR to reflect current practice. OMB is not proposing to establish new policy in part 180 that would negatively impact the ability of Federal agencies or recipients to adhere to this guidance.

Part 182 — Government-wide Requirements for Drug-Free Workplace (Financial Assistance)

OMB proposes limited plain language revisions to this part.

Part 183 — Never Contract With The Enemy

OMB proposes limited plain language revisions to this part.

Part 184 — Buy America Preferences for Infrastructure Projects

OMB established this part on Buy America preferences for infrastructure projects through a separate process. 88 FR 57750 (Aug. 23, 2023). OMB does not propose changes to part 184 through this document. OMB notes, however, that it may potentially make minor, non-substantive changes to part 184 through its final guidance if necessary to ensure consistency with any changes to the definitions in section 200.1. OMB notes that part 184, at section 184.3, states that acronyms and terms not defined in part 184 have the same meaning as provided in section 200.1. Certain terms used in part 184, such as “Federal awarding agency,” may be affected by OMB’s proposed changes under this notice. Thus, it may be necessary to make minor conforming changes to part 184 to ensure consistent use of terms.

Part 200 — Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards

In the paragraphs below, OMB discusses proposed changes to each subpart of the Uniform Guidance in 2 CFR part 200.

Subpart A — Acronyms and Definitions

OMB proposes to update section 200.0 to remove acronyms that either appear only once or are used infrequently in the Uniform Guidance. At the same time, OMB proposes to add several acronyms that are used more frequently, but have been omitted from this section in past updates, such as Unique Entity Identifier (UEI).

In section 200.1, OMB proposes to remove several definitions that were used only once or on a limited basis and instead move such definitions to the appropriate section of the Uniform Guidance where they appear. OMB proposes this change to ease the experience of the reader and avoid the need to review Subpart A for an understanding of a single section or small set of sections. For example, OMB proposes moving the definition of “Cooperative audit resolution” to the text of Subpart F. OMB also proposes deleting the definition of “Federal awarding agency,” which OMB now proposes to incorporate within the definition of “Federal agency.”

OMB also proposes adding several new definitions of commonly used terms based on feedback from agencies and the RFI. Proposed new definitions include “continuation funding,” “for-profit organization,” “key personnel,” “participant,” and “prior approval.”

OMB proposes to revise several definitions to incorporate threshold increases referenced in other sections, such as the threshold increase for “equipment” to \$10,000, the threshold for “supply” to \$10,000, and the definition of “Modified Total Direct Costs,” which now proposes to exclude subaward costs above \$50,000, as compared to \$25,000 in the existing guidance.

OMB also proposes to revise several definitions for other reasons. For example, OMB proposes to shorten the definition of “improper payment” to ensure that the definition references the appropriate source in Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement. OMB proposes to update the definition of “intangible property” to include more information related to date and licenses. OMB also proposes to clarify “participant support costs” with additional explanatory information and expand the definition of “questioned costs” to provide greater understanding of the terms throughout the Uniform Guidance. In addition, other definitions that OMB proposes altering include “cost sharing” (discussed below under section 200.306), “Federal agency,” “Federal award date,” “financial obligations,” “Indian tribe,” “period of performance,” “prior approval,” “real property,” “recipient,” “special purpose equipment,” “subaward,” and “termination.”

OMB also proposes a minor change to the definition of the term “Federal financial assistance.” OMB proposes the term to include assistance received or administered by “recipients or subrecipients”— as compared to assistance received or administered by “non-Federal entities” in the existing guidance. In cases in which Federal agencies apply subparts A through E of part 200 to for-profit organizations, use of the terms “recipients or subrecipients” in this definition may provide further clarity on the applicability of the Build America, Buy America Act (BABA) (Public Law 117–58, 135 Stat. 429, 70901-70927, Nov. 15, 2021) to Federal awards made by that agency to for-profit organizations. Section 70912(4) of BABA incorporates the definition of Federal financial assistance from 2 CFR 200.1 or successor regulations. For additional information on BABA and OMB’s guidance in 2 CFR part 184, see 88 FR 55750 (Aug. 23, 2023). OMB does not, however, propose to materially change the

sentence in the applicability section at 200.101(a)(2) providing Federal agencies with discretion on whether to apply the guidance to for-profit organizations.

Subpart B — General Provisions

OMB proposes to revise this subpart, in section 200.101, to clarify the applicability of the Uniform Guidance. In OMB’s proposal, all subparts of part 200 continue to apply to Federal agencies that make Federal awards to “non-Federal entities.” Federal agencies also retain discretion on whether to apply subparts A through E of part 200 to Federal agencies, for-profit entities, foreign public entities, or foreign organizations—which are not included in the definition of the term “non-Federal entity.” OMB proposes to add language encouraging agencies to apply the requirements in subparts A through E of part 200 to all recipients in a consistent and equitable manner to the extent permitted within applicable statutes, regulations, and policies.

In support of plain language principles, OMB proposes to convert the applicability table in paragraph (b) of section 200.101 into paragraph form.

OMB proposes multiple clarifying revisions in section 200.102 to improve agency and recipient understanding of the availability and use of exceptions to, or deviations from, OMB’s Uniform Guidance in part 200.

In section 200.104, OMB proposes to provide a more succinct statement that part 200 supersedes previous OMB guidance issued in 2 CFR on topics including cost principles and audits for Federal financial assistance. Because part 200 has now existed for 10 years in its current format and location, OMB does not believe it is necessary to continue to include the

detailed list identifying elements of the Uniform Guidance in part 200 previously contained in OMB Circulars or other parts of 2 CFR, subtitle A, chapter II.

In section 200.111 OMB proposes new guidance to permit Federal agencies to request, receive, and distribute Federal award information in a language other than English when it is appropriate for a specific program or Federal award. This proposal would allow for more flexibility when working in international environments or in communities where English is the not the primary language.

Finally, based on feedback from the oversight community, OMB proposes to revise the section on mandatory disclosure to clarify that recipients and subrecipients must promptly disclose any credible evidence of a violation of Federal criminal law potentially affecting the Federal award. OMB also proposes to revise this section to require recipients and subrecipients to provide written disclosure to the agency's Office of Inspector General. OMB believes the proposed "credible evidence" standard is more appropriate because it would not require recipients, subrecipients, and applicants to make a legal determination that a criminal law has been violated before they are required to make a disclosure of "credible evidence" of such a violation to the Federal agency, pass-through entity (if applicable), and the agency's Office of Inspector General.

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

OMB proposes to revise this subpart to clarify certain requirements for fixed amount awards. For example, OMB proposes to clarify in section 200.201 that recipients are entitled to any unexpended funds under a fixed amount award if the required activities were completed in accordance with the terms and conditions of the award. In the same section, OMB also proposes

to clarify record retention and post award certification requirements. In addition—although no specific language is proposed in this document—OMB is considering requiring additional pre-award certifications for fixed amount awards to address the potential increased risk of fraud under fixed amount awards. OMB invites comments on appropriate pre-award certifications for fixed amount awards and notes that it may include a requirement for such certifications in the final guidance document. OMB also proposes to more specifically identify certain prior approval requirements that specifically relate to fixed amount awards.

OMB also proposes to expand section 200.202 on program planning and design to encourage agencies to encourage recipients to engage members of the community that will benefit from or be impacted by a Federal financial assistance program. OMB also proposes to encourage Federal agencies to develop programs in consultation with the communities that will benefit from or be impacted by a program. In section 200.202, OMB also proposes to underscore that Federal agencies should consider all available data and evaluation results from past programs and coordinate with other agencies during program planning and design.

OMB proposes to revise section 200.203 on Assistance Listings to reinforce the importance of communicating in plain language and highlighting any program-related customer service initiatives.

OMB proposes to revise section 200.204 on notices of funding opportunities in a number of ways to encourage Federal agencies to focus more on communicating requirements to the public in an accessible and comprehensible manner. For example, OMB proposes to include an Executive Summary requirement and to encourage agencies to use plain language when publishing opportunities. OMB also proposes that agencies should communicate program

requirements specifically and clearly, as well as limit the length of program announcements. As noted in the proposed changes to the guidance, this is particularly important in consideration of applicants with less experience applying for Federal financial assistance, such as applicants from underserved communities. OMB also proposes to encourage Federal agencies to identify all eligible applicants in the funding opportunity—for example, by providing greater specificity on different types of nonprofit organizations such as labor unions. In proposing these revisions, OMB aims to make notices of funding opportunities more consistent and transparent. OMB also aims to ensure that applicants are not unintentionally excluded from funding opportunities.

OMB also proposes additional changes in section 200.204, such as encouraging agencies to provide an anticipated award date and providing additional clarifying guidance on the availability period for funding opportunities.

In section 200.205 OMB proposes to clarify that a Federal agency should consider diversity when developing policies and procedures for merit review panels.

In section 200.206 OMB proposes to revise the section regarding risk evaluation by using the term risk assessment as a standard term and clarifying agency requirements to appropriately review eligibility qualifications and financial integrity information. OMB also proposes to clarify that agency processes may consider any risk criteria pertinent to a program, such as cybersecurity risk or impacts on local jobs and the community. OMB further proposes to clarify that an agency may modify its risk assessment at any time during the lifecycle of an award.

OMB also proposes to clarify in section 200.209 that those entities who are exempt from the requirements of 2 CFR part 25 must still complete the certifications and representations by submitting the appropriate assurance form.

OMB also proposes to include several additions to section 200.216 on the prohibition of certain telecommunications and video surveillance services or equipment to expand the guidance by incorporating additional information from OMB’s Frequently Asked Questions document.

Lastly, OMB proposes to include a new section 200.217 to expand on the whistleblower protections and requirements for recipients of Federal financial assistance, which had previously been referenced in section 200.300.

Subpart D — Post Federal Award Requirements

OMB proposes to retain the guidance in section 200.300 on statutory and national policy requirements, which explains the need to administer Federal awards in full accordance with the U.S. Constitution, applicable Federal statutes and regulations, and requirements of part 200.

OMB proposes to streamline section 200.300 and to reinforce existing nondiscrimination requirements under the Constitution and other applicable law, consistent with Executive Order 13988 of January 20, 2021 (“Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation”), and Executive Order 14075 of June 15, 2022 (“Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals”).

In section 200.305 on Federal payment, OMB proposes to provide additional flexibilities for recipients when interest bearing accounts are not accessible in a foreign country; and to provide a specific link for returning funds to the Payment Management System, rather than including the more extensive instructions in the guidance itself.

OMB proposes to revise section 200.306 on cost sharing, as well as the definition of cost sharing itself, to clarify that “matching” is one category of cost sharing overall—thus eliminating the need to repeat the term “matching” throughout. In the same section, OMB also proposes to

provide additional guidance on voluntary uncommitted cost sharing for institutes of higher education.

OMB proposes to revise section 200.307 on program income by providing clarifications in paragraph (a) regarding use and expenditure of program income, including allowing program income for certain closeout costs. OMB also proposes to revise and provide further clarifying guidance in paragraph (b) for each of the three methods for use of program income.

OMB proposes changes to section 200.308 on revision of budget and program plans by combining the requirements for construction and non-construction awards to provide greater uniformity in the requirements for all award types. OMB proposes to clarify that recipients do not need approval of individual subrecipients under all circumstances, but only when making subawards of programmatic activities not proposed by the recipient in the application for an award. A Federal agency may also require prior approval of subrecipients through the terms and conditions of a Federal award. OMB proposes to further clarify that agencies should not require approval of a change in a proposed subrecipient unless the initial inclusion of a subrecipient was a determining factor in the agency's merit review process. This change is proposed to reinforce the role of the recipient as responsible for the efficient and effective administration of the Federal award including the selection of a qualified and capable subrecipient. OMB also proposes to identify other items requiring prior approval, including requesting additional funds, transferring funds, and no-cost extensions. OMB proposes to clarify that no-cost extensions are different from one-time extensions, which an agency is permitted to authorize a recipient to do without prior approval.

In section 200.309 on modification to the period of performance, OMB proposes to provide additional clarification that when an agency decides not to continue an award with multiple budget periods, the period of performance should be amended to end at the completion of the currently authorized budget period. OMB also proposes to incorporate the definition of “renewal award” in this section.

In section 200.311, addressing real property, OMB proposes to include a new paragraph on appraisals to introduce additional guidance on standards for conducting independent appraisals consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 USC 4601-4655) except as provided in the implementing regulations at 49 CFR part 24, “Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs.” OMB also proposes to include a definition of the term “encumbrance” in sections 200.311, 200.313, and 200.315.

In section 200.313, relating to equipment, OMB proposes to increase the threshold value for equipment from \$5,000 to \$10,000 and to provide additional guidance on the meaning of a “conditional title.” Consistent with proposals in sections 200.311 and 200.315, OMB also proposes a definition of the term “encumbrance.” Consistent with the existing requirements for States, OMB also proposes to allow Indian Tribe to dispose of equipment in accordance with tribal law. OMB also proposes to clarify that agencies may permit the recipient to retain equipment with no further obligation to the Federal government when it is not prohibited by Federal statute or regulation. OMB also proposes to reinforce the responsibility of recipients to maintain updated records regarding equipment.

OMB proposes to revise section 200.314 on supplies to raise the threshold from \$5,000 to \$10,000. OMB also proposes to clarify that the requirements for unused supplies apply to the aggregate value of all supply types, and not just like-item supplies. OMB also proposes to include a definition of “unused supplies” in section 200.314.

In section 200.315 on intangible property, OMB proposes to reinforce the potential requirement for recipients and subrecipients to make intangible property publicly available on agency-designated websites. Consistent with proposals in sections 200.311 and 200.313, OMB also proposes a definition of the term “encumbrance.”

OMB proposes several revisions to the procurement standards in the Uniform Guidance. In recognition of Tribal sovereignty, and consistent with the existing requirements for States, in section 200.317 OMB proposes to allow Indian tribes to follow their own policies and procedures.

OMB also proposes to revise the procurement standards in section 200.318. These proposed revisions include providing additional guidance that contractors appropriately classify employees consistent with the Fair Labor Standards Act. See the Fair Labor Standards Act at 29 U.S.C. chapter 8.

OMB also proposes adding a new paragraph (l) in section 200.318 to clarify that that the procurement standards in part 200 do not prohibit recipients or subrecipients from using Project Labor Agreements or similar forms of pre-hire collective bargaining agreements; requiring commitments or goals to hire people residing in high-poverty areas, disadvantaged communities as defined by the Justice40 Initiative OMB Memorandum M-21-28, or high-unemployment census tracts within a region no smaller than the county where a federally funded construction

project is located, consistent with the policies and procedures of the recipient or subrecipient, provided that a recipient or subrecipient may not prohibit interstate hiring; requiring commitments or goals to individuals with barriers to employment (as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. § 3102(24)), including women and people from underserved communities as defined by Executive Order 13985; using agreements intended to ensure uninterrupted delivery of services; using agreements intended to ensure community benefits; or offering employees of a predecessor contractor rights of first refusal under a new contract. The proposed paragraph explains that Federal agencies may consider allowing recipients or subrecipients to use such practices if consistent with the U.S. Constitution, applicable Federal statutes and regulations, the objectives and purposes of the Federal financial assistance program, and other requirements of part 200. For example, any hiring preference for a class or groups of persons would be permissible only to the extent that it is consistent with the equal protection requirement of the U.S. Constitution.

In section 200.319, OMB proposes to remove the prohibition in the Uniform Guidance on using geographic preference requirements. In the same section, OMB also proposes to state that subpart D does not prohibit recipients and subrecipients from incorporating a scoring mechanism that rewards bidders committing to specific numbers and types of U.S. jobs, as well as certain compensation and benefits. OMB cautions, however, that any geographic preferences or scoring mechanisms must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award. OMB also proposes to clarify that any such scoring mechanism must be consistent with established practices and legal requirements applicable to the recipient or subrecipient.

In section 200.320 on procurement methods, OMB proposes to change “small purchases” to “simplified acquisitions” to further align with standard terminology. In paragraph (a), OMB proposes to clarify that “micro-purchases” and “simplified acquisitions” are types of “informal procurement methods for small purchases.” OMB also proposes to remove the requirements that local and tribal governments must open sealed bids in public; this requirement may be inconsistent with State or tribal policies and procedures.

In section 200.321, OMB proposes to add “veteran-owned business” to the types of businesses that recipients and subrecipients are encouraged to consider for procurement contracts under a Federal award.

OMB proposes to add a new paragraph (b) in section 200.323. Executive Order 14057 of December 8, 2021 (“Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability”) establishes that it is the policy of this Administration to lead by example and pursue a whole-of-government approach on sustainability and expanding American technologies, industries, and jobs that support sustainability and climate resilience. The Executive Order tasks the Federal government with pursuing new strategies to improve the Nation’s preparedness and resilience to the effects of a changing climate, including financial management strategies. In support of this policy, OMB proposes to add a new paragraph (b) in section 200.323 encouraging Federal award recipients, to the extent permitted by law, to purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.

OMB proposes to add additional language to section 200.324 on contract cost and price to establish that the recipient or subrecipient may consider potential workforce impacts in their

procurement analysis if the procurement transaction will potentially displace public sector employees. OMB also seeks comment on its proposal to delete the existing paragraph (b) in 2 CFR 200.324, requiring the recipient to negotiate profit as a separate element of the price for each contract in which there is no price competition.

In section 200.328, OMB proposes to provide additional clarity on required deadlines for financial reporting to align with progress reporting requirements.

In section 200.329, OMB proposes to revise the reporting of program performance section to remind agencies of the importance of not requiring information in programmatic reports that is not necessary for the effective monitoring of the award. OMB also proposes additional language that emphasizes the importance of measuring customer experience as well as considering evaluation plans when outlining reporting requirements. OMB further proposes to clarify that programmatic reporting may not be required more frequently than quarterly unless specific conditions have been applied to the award in accordance with section 200.208.

In section 200.331 on subrecipient and contractor determinations, OMB proposes additional language to emphasize that Federal agencies do not have a direct legal relationship with subrecipients and contractors of pass-through entities. OMB also proposes to clarify that the characteristics indicative of a subrecipient or contractor determination are not limited to the sample characteristics currently provided in the guidance.

Based on feedback from the Federal financial assistance community, OMB proposes to include in section 200.332 the requirement for pass-through entities to confirm that potential subrecipients are not suspended, debarred, or otherwise excluded from receiving Federal funds.

In section 200.333, OMB proposes removing the current Simplified Acquisition Threshold limit for fixed amount subawards to provide agencies and recipients with increased flexibility in making programmatic and budgetary decisions, while still allowing recipients to establish their own award-specific thresholds with the prior written approval of the Federal agency. Under the proposed revision, a recipient's use of fixed amount subawards remains subject to the prior written approval of the Federal agency.

OMB also proposes to revise and clarify the guidance pertaining to termination and closeout requirements in sections 200.340 through 200.344. On termination, in section 200.340 OMB proposes to remove language that allows a Federal agency or pass-through entity to terminate an award "if an award no longer effectuates the program goals or agency priorities." This revision is proposed only for the purpose of clarifying the guidance; the proposed guidance still allows agencies to terminate a Federal award according to the terms and condition of the award. OMB also proposes to clarify that a termination does not include a Federal agency's decision to not provide continuation funding. In section 200.341, OMB also proposes to clarify requirements that must be included in a notice of termination.

In section 200.344 on closeout, OMB proposes to revise closeout guidance to clarify that recipients must still submit a final financial report even when the recipient does not have a final indirect cost rate; and proposes to clarify that an additional final report must be submitted when the indirect cost rate is finalized. In the same section, OMB also proposes to provide additional flexibilities for agencies and recipients to closeout Federal awards in a timely manner. OMB proposes to allow an agency and recipient to mutually agree upon a final indirect cost rate for an individual award. This proposed revision is not intended to grant agencies additional authorities

to negotiate rates over cognizant agencies for indirect rates; rather, it simply proposes to affirm the Federal agency's right to negotiate with the recipient or subrecipient on a case-by-case basis with the goal of closing out specific awards in a timely manner.

Subpart E — Cost Principles

In section 200.401 on applicability, OMB proposes to clarify that the cost principles in subpart E do not apply to grants and cooperative agreements for food commodities.

In section 200.403, OMB proposes to add language clarifying when allowable administrative closeout costs may be incurred in paragraph (h).

In section 200.407, OMB has removed ten items from the prior written approval requirements to reduce Federal agency and recipient burden. These proposed revisions include no longer requiring prior written approval for such items as, real property, equipment, direct costs, entertainment costs, exchange rates, memberships, participant support costs, selling and marketing costs, and taxes. In this section, OMB also proposes to remove the reference to requiring prior written approval for use of grants agreements, cooperative agreements, and contracts, but other requirements throughout the Uniform Guidance in part 200 would continue to apply to use of these instruments.

In section 200.414, OMB proposes to revise several aspects of the guidance pertaining to indirect costs. OMB proposes to clarify that recipients and subrecipients may notify OMB of any disputes with regards to a Federal agency's application or acceptance of a federally negotiated indirect cost rates. OMB also proposes to revise the guidance to clarify that pass-through entities must accept all federally negotiated indirect cost rates for subrecipients.

In the same section, in response to feedback from the Federal financial assistance community, OMB proposes to raise the *de minimis* rate from 10 percent to 15 percent. This change would allow for a more reasonable and realistic recovery of indirect costs, particularly for new or inexperienced organizations that may not have the capacity to undergo a formal rate negotiation, but still deserve to be fully compensated for their overhead costs. The proposed changes still allow recipients and subrecipients to apply a rate lower than 15 percent at their own discretion. At the same time, the proposed guidance clarifies that Federal agencies may not compel recipients and subrecipients to use an indirect rate lower than the proposed 15 percent rate, unless required by statute. OMB also proposes to clarify that the *de minimis* rate may not be applied to cost reimbursement contracts and recipients and subrecipients are not required to use the *de minimis* rate.

Finally, OMB also proposes to remove the existing requirement in paragraph (h) of section 200.414 for all indirect cost rates to be publicly available on a government-wide website—but this may be revisited when applicable systems are updated to allow for the posting of indirect cost rates. OMB seeks comments that include analysis on the advantages and disadvantages of raising the *de minimis* rate in the way proposed.

Based on feedback from the oversight community, in section 200.415 OMB proposes to require subrecipients to certify to pass-through entities that financial information submitted to the pass-through entity is complete and accurate.

Based on feedback from both Institutions of Higher Education (IHE) and Federal agencies, OMB also proposes to remove the requirement in section 200.419 for an IHE that receives an aggregate total \$50 million or more in Federal awards and instruments subject to

subpart E to submit a disclosure statement form (DS-2) containing information on cost accounting standards. This proposed change, if finalized, would likely reduce Federal agency and recipient burden. OMB received a comment indicating that the DS-2 is outdated, not needed for ensuring compliance with statutory authorities related to Federal financial assistance, and not universally implemented across the IHE community. The commenter also indicated that the DS-2 is not used as regular tool by the audit or oversight community to enhance compliance or oversight. This commenter also stated that information contained in the DS-2 is readily available in numerous policy portals at research universities and creates unnecessary administrative and cost burden to research universities and Federal agencies.

If finalized, this proposed change would not impact the requirement for IHEs receiving Federal awards above the threshold to comply with the Cost Accounting Standards Board's cost accounting standards. It would only no longer require use of the DS-2 form. This proposed change also is not intended to impact any FAR-based requirements related to disclosure of cost accounting practices.

OMB seeks comments on the potential impact of this proposed change to section 200.419, including analysis on the advantages and disadvantages of removing the requirement for use of the DS-2 form. For example, are there any advantages in retaining consistency and uniformity in accounting practices followed by educational institutions for both contracts under the FAR and Federal financial assistance under part 200, which are achieved through use of the DS-2? For additional background, see, for example, 58 FR 39996, at 39997 (Jul. 26, 1993) (explaining OMB's initial plans to expand the Cost Accounting Standards Board's regulations and standards for educational institutions to Federal grants). Does the requirement to use the DS-

2 at section 200.419 help ensure that each IHE's practices used in estimating costs for a proposal are consistent with cost accounting practices used by the institution in accumulating and reporting costs or serve other functions? See 48 CFR § 9905.501-20. How, if at all, could removing the requirement to use the DS-2 from section 200.419 impact compliance by research universities with the requirements of 41 U.S.C. 1502 or the implementing regulations at FAR, Chapter 99 for government contracts? To what extent would removing the requirement to use the DS-2 at section 200.419 reduce burden if the statutory and FAR-based requirements remain in effect?

OMB proposes to require several revisions to the general provisions for items of costs. Specifically, in section 200.420, OMB proposes to add further clarifying text explaining that the listed items of cost are not intended to provide a comprehensive list and that failure to mention an item, even as an example, is not intended to imply that is allowable or unallowable. OMB proposes this clarification to address numerous questions about allowability of costs that arise in the Federal financial assistance community.

In section 200.422, OMB proposes to incorporate the definition of an "advisory council or committee."

At section 200.431, OMB proposes to revise the section on fringe benefits to require recipients and subrecipients to allocate payments for unused leave as general administrative expenses or include them in a fringe benefit rate with cognizant agency approval. Based on feedback from the oversight community, OMB also proposes in section 200.431 to clarify that recipients and subrecipients may not charge unfunded pension and post-retirement health benefits to an award in a manner that is inconsistent with the allocation principles of Subpart E.

Also in section 200.431, OMB proposes additional clarifying guidance on pension plan costs and post-retirement health plans.

OMB proposes to clarify the description of conferences in section 200.432 to remove any limitations provided by the specific types of events listed in the guidance currently. OMB also proposes to allow for dependent-care costs associated with participants' attending or partaking in program-related conferences.

OMB proposes to revise section 200.438 entertainment costs to include prizes, which currently reside in Subpart B, despite the fact that prizes are an item of cost.

In section 200.440, OMB removed the requirement for prior approval of fluctuations of exchange rates. While a recipient or subrecipient needs prior approval for additional Federal funding, no approval is required because an exchange rate has fluctuated and resulted in a necessary charge to available funding.

In section 200.454, OMB proposes to remove prior approval requirements for the cost of membership in any civic or community organization.

In section 200.455 on organization costs, OMB proposes to clarify that any costs associated with either persuading or dissuading employees from collective bargaining and related activities are not allowable under Federal awards. OMB also proposes to add clarifying language that certain costs related to data, evaluation, and other related organization costs are allowable.

In section 200.456, OMB proposes to remove the prior approval requirement of participant support costs. OMB proposes to clarify, however, that the treatment of participant costs is ultimately the responsibility of the recipient or subrecipient to determine, document, and treat consistently across all Federal awards (and when negotiating indirect rates).

In section 200.461, OMB proposes additional clarifying guidance on publication and printing costs by adding reference to “article processing charges” or “similar open access fees.”

In section 200.467, OMB also proposes to remove the prior approval option for selling and marketing costs, clarifying selling and marketing costs are unallowable unless they meet the requirements in section 200.421 and are required to meet the requirements of the award.

Finally, OMB proposes to revise the section on termination costs at section 200.472 to also include closeout costs. Specifically, OMB proposes to include guidance for recipients and subrecipients to charge administrative costs specifically associated with the closeout of a Federal award. OMB received feedback from the Federal financial assistance community that the exclusion of closeout costs in the Uniform Guidance has been problematic as recipients and subrecipients have been unable to charge actual costs associated with closeout actions, such as certain administrative or staff costs not covered through indirect cost recoveries.

Subpart F — Audit Requirements

In this subpart, OMB proposes to raise the audit threshold from \$750,000 to \$1,000,000 in section 200.501. OMB reviewed audit submission data as well as economic data when determining the increase to this threshold. Every two years, the Director of OMB is authorized to adjust the dollar amount of this threshold consistent with the purposes of the Single Audit Act, provided the Director does not make such adjustments below \$300,000. 31 U.S.C. § 7502.

In section 200.502 OMB also proposes to clarify that, in determining Federal awards expended, loan and loan guarantees retain their Federal character through the end of the Federal award period of performance unless otherwise specified in statute or Federal agency regulations. In response to feedback from Federal agencies, OMB proposes to revise the guidance to require

that the schedule of expenditures of Federal awards for comprehensive annual financial reports identify the State, municipal, or local entity recipient or subrecipient of a Federal award. This change is necessary to provide greater transparency and understanding of the information provided in the schedule.

In section 200.510, at paragraph (b), OMB proposes additional guidance explaining that, for audits covering multiple recipients (such as departments, agencies, IHEs, and other organizational units), the schedule of expenditures must identify the recipient of the Federal award.

In section 200.513, OMB proposes to revise the responsibilities of Federal agencies. Specifically, OMB proposes to encourage Federal agencies to engage with external audit stakeholders and the Federal agency's Office of Inspector General National Single Audit Coordinator (NSAC) prior to submitting compliance supplement drafts to OMB. In the same section OMB also proposes to clarify that a Federal agency's key management single audit liaison must also coordinate with the agency's Office of Inspector General NSAC when appropriate.

In section 200.514, on scope of audit, OMB proposes to revise compliance requirements to specify that compliance testing must include a test of transactions and other auditing procedures necessary to provide the auditor with sufficient evidence to support an opinion on compliance.

In section 200.516, based on feedback OMB received from the Federal financial assistance community, OMB proposes to revise in the definitions of known questioned costs and likely questioned costs and provide further clarity on how they are identified in an audit report.

Appendix I to Part 200 — Full Text of Notice of Funding Opportunity

OMB proposes to revise this appendix in its entirety in support of the goal of simplifying and clarifying the grant solicitation and application process, which is a key objective under Executive Order 14058 on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government. The proposed changes to the notice of funding opportunity in Appendix I are intended to improve the quality and accessibility of funding opportunities. Specifically, the proposed revisions to Appendix I intend to: (1) follow plain language principles; (2) group similar items together to streamline content; (3) align sections more closely to the application process; (4) include basic information at the top of a funding opportunity so that applicants can more easily make decisions about whether or not to apply; (5) clearly define what must be included in a section of the funding opportunity versus what is at an agency's discretion; and (6) provide flexibility to agencies while also giving applicants a common way to find information in every funding opportunity.

Appendix III to Part 200 — Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

OMB proposes to update this appendix to adjust the exclusion threshold of subawards from \$25,000 to \$50,000 for modified total direct costs.

Appendix IV to Part 200 — Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

OMB proposes to update this appendix to adjust the exclusion threshold of subawards from \$25,000 to \$50,000 for modified total direct costs. OMB also proposes to clarify that under the direct cost allocation method, joint costs include costs for information technology.

Appendix VII to Part 200 — States and Local Government and Indian Tribe Indirect Cost Proposals

OMB proposes to update this appendix to adjust the exclusion threshold of subawards from \$25,000 to \$50,000 under modified total direct costs (MTDC). OMB also proposes to clarify the meaning of “department or agency” for State and local governments.

OMB also proposes a revision to underscore that Federal agencies must accept indirect cost proposals developed by State or local departments or agencies receiving less than \$35 million in their fiscal year. The proposed revision to this appendix also provides that Federal agencies cannot compel these State or local governmental departments or agencies to accept the *de minimis* rate, or any other rate established by the Federal agency, in place of their indirect cost proposals. OMB emphasizes, however, that any such indirect cost proposals must be developed in accordance with the requirements of part 200 and maintained for audit—along with related supporting documentation.

Appendix X to Part 200 — Data Collection Form (Form SF–SAC)

OMB proposes to revise this appendix to clarify where audit submission instructions are located.

Appendix XII to Part 200 — Award Term and Condition for Recipient Integrity and Performance Matters

OMB proposes to revise this award term to be consistent with the statutory obligation and to reflect the appropriate location (responsibility and qualification records) in SAM.gov for reporting integrity and performance matters. OMB proposes to renumber the award term to align to the requirements of the standard organization of the Code of Federal Regulations.

Other Revisions Under Consideration for Future Updates

OMB may consider additional revisions for potential future updates. Specifically, OMB welcomes additional comments from the public on the following topics for consideration in possible additional revisions in the future:

- Establishing specific audit requirements for for-profit entities, which are not subject to the requirements of Subpart F;
- Incorporating the requirements of National Security Presidential Management (NSPM)-33 on research security requirements;
- Providing additional guidance in 2 CFR concerning the relationship of specific aspects of the guidance to loans and loan guarantees;
- Establishing mechanisms to automatically adjust certain thresholds due to inflation or other triggering events (where permitted by law).
- Removing additional prior approval requirements.
- Challenges related to negotiating indirect costs, working with cognizant agencies, or any other topics related to indirect costs that could be addressed in future updates; and
- Expanding the guidance in Subpart F to include more specific requirements on the scope of an audit (“proper perspective”) so that agencies have additional contextual information to guide them in resolving audit findings.

Request for Comments

OMB requests comments on all aspects of the propose guidance in this document, including on any reliance interests that commenters may have based on the existing text of 2 CFR, subtitle A that OMB’s proposal may affect, and that OMB should consider in deciding

whether or how to finalize this guidance.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14094 (Modernizing Regulatory Review)

Executive Orders (EOs) 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The OMB Guidance for Grants and Agreements published in subtitle A of 2 CFR is guidance to Federal agencies and not regulation. 2 CFR 1.100(b). OMB has thus determined that the revision of 2 CFR is not a significant regulatory action under E.O. 12866, as amended.

Regulatory Flexibility Act

This proposed guidance is exempt from the notice and comment requirements of the Administrative Procedure Act (APA) because it is guidance to Federal agencies and not regulation. See 5 U.S.C. 553(b). Moreover, even if this proposed guidance were otherwise subject to 5 U.S.C. 553, it would be exempt from the notice and comment requirement as a matter related to grants. See 5 U.S.C. 553(a)(2). OMB nonetheless provides the following information for the information of the public. For a rule subject to the notice-and-comment provisions of the APA, the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, requires that an agency provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. Based on the nature of the revisions proposed in this notice, OMB does not expect this guidance to have a significant

economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. There are some proposed revisions that may impose a non-significant burden; however, there are more proposed revisions that reduce burden to small entities. When reviewing all proposed revisions, the burden that will be reduced for recipients is much greater than the burden imposed.

Unfunded Mandates Reform Act of 1995

The proposed guidance would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48). The proposed guidance would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$168 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism Assessment)

This proposed guidance has been analyzed in accordance with the principles and criteria contained in E.O. 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999). OMB has determined that this proposed guidance would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The guidance in 2 CFR is inherently national in scope and significance. Regardless, in accordance with section 4(d) of E.O. 13132, OMB consulted with appropriate State and local officials that may be affected by Federal agencies’ implementation of OMB’s revised guidance by means of posting the RFI prior to proposing revisions. OMB weighed carefully the interests of those who submitted comments in response to the RFI in proposing revisions to the guidance, which balance the State interests with the need to provide Federal agencies with consistent, uniform, efficient, and transparent guidance, which is consistent with authorizing law.

Paperwork Reduction Act

This guidance does not contain a new requirement for information collection. Rather, it streamlines requirements in specific sections. Thus, the Paperwork Reduction Act does not apply.

Executive Order 13175 (Tribal Consultation)

OMB has analyzed this revised guidance in accordance with the principles and criteria contained in E.O. 13175, “Consultation and Coordination with Indian Tribal Governments” 65 FR 67249 (Nov. 9, 2000). On March 7, 2023, OMB held a two-hour Tribal consultation to solicit feedback from Tribal representatives. OMB also proposes providing greater flexibility to Tribal governments in the proposed guidance centered on procurement standards and disposition of equipment. OMB also proposes to clarify the definition of Indian Tribes.

List of Subjects

Administration of Federal financial assistance, Administrative practice and procedure, Federal financial assistance programs

2 CFR Part 25

Administrative practice and procedure; Grant programs; Grants administration; Loan programs

2 CFR Part 170

Colleges and universities; Grant programs; Hospitals; International organizations; Loan programs; Reporting and recordkeeping requirements

2 CFR Part 175

Administrative practice and procedures; Grant programs; Indians-tribal government; Nonprofit organizations; State and local governments

2 CFR Part 180

Administrative practice and procedure; Grant programs; Loan programs; Reporting and recordkeeping requirements

2 CFR Part 182

Administrative practice and procedure; Drug abuse; Grant programs; Reporting and recordkeeping requirements

2 CFR Part 183

Foreign aid; Grants administration; Grant programs; International organizations; Reporting and recordkeeping requirements

2 CFR Part 200

Administration of Federal financial assistance, Administrative practice and procedure, Federal financial assistance programs

For the reasons stated in the preamble, the Office of Management and Budget proposes to amend the headings of Title 2 CFR and Subtitle A of 2 CFR; amend 2 CFR Subtitle A, Part 1; amend 2 CFR Subtitle A, Chapter I, Parts 25, 170, 175, 180, 182, and 183; and amend 2 CFR Subtitle A, Chapter II, Part 200 as follows:

1. Revise the heading of Title 2 of the CFR to read as follows:

Title 2—Federal Financial Assistance

2. Revise the heading of subtitle A of 2 CFR to read as follows:

Subtitle A—Office of Management and Budget Guidance for Federal Financial Assistance

3. Revise part 1, consisting of §§ 1.100 through 1.305, to read as follows:

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

Subpart A—Introduction to Title 2 of the CFR

Sec.

- 1.100 Content of this title.
- 1.105 Organization and subtitle content.
- 1.110 Issuing authorities.

Subpart B—Introduction to Subtitle A

Sec.

- 1.200 Purpose of chapters I and II.
- 1.205 Applicability to Federal financial assistance.
- 1.210 Applicability to Federal agencies and others.
- 1.215 Relationship to previous issuances.
- 1.220 Federal agency implementation of this subtitle.
- 1.230 Maintenance of this subtitle.
- 1.231 Severability.

Subpart C—Responsibilities of OMB and Federal Agencies

Sec.

- 1.300 OMB responsibilities.
- 1.305 Federal agency responsibilities.

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 31 U.S.C. 6307; 41 U.S.C. 1121; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737.

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 governmentwide policies for the award and administration of 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.

(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, not regulation.

(c) Each Federal agency that 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.

Chapters I and II of subtitle A provide OMB guidance to Federal agencies that helps ensure consistent and uniform governmentwide policies and procedures for the management of the agencies' Federal financial assistance.

§ 1.205 Applicability to 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. All portions of the guidance apply to grants and cooperative agreements, and some portions also apply to other types of Federal financial assistance. For example, the:

(a) Guidance on debarment and suspension in part 180 of this subtitle applies broadly to all Federal financial assistance, and not just to grants and cooperative agreements.

(b) Cost principles in subpart E of part 200 of this subtitle apply to procurement contracts issued under a Federal award, as well as to Federal financial assistance. 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 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 other entities through each Federal agency's implementation of the guidance, portions of which may apply to:

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

(2) Recipients and subrecipients that receive or apply for the agency's Federal financial assistance or receive subawards under 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.

§ 1.220 Federal agency implementation of this subtitle.

A Federal agency that awards Federal financial assistance subject to the OMB guidance in this subtitle implements the guidance in agency regulations in subtitle B of this title and in guidance documents, policy documents, and procedural issuances, such as internal instructions to the agency's awarding and administering officials. An applicant, 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 governmentwide compliance with the guidance in this subtitle; and

(e) Performing other OMB functions specified in this subtitle.

§ 1.305 Federal agency responsibilities.

The head of each Federal agency that awards and administers Federal financial assistance subject to the guidance in this subtitle is responsible for:

(a) Implementing the guidance in this subtitle;

(b) Ensuring that the Federal agency complies with 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.

4. Revise part 25, consisting of §25.100 through appendix A to part 25, to read as follows:

PART 25—UNIQUE ENTITY IDENTIFIER AND SYSTEM FOR AWARD MANAGEMENT

Subpart A—General

Sec.

25.100 Purpose of this part.

25.105 Applicability.

25.110 Exceptions to this part.

Subpart B—Policy

Sec.

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

25.205 Effect of noncompliance with a requirement to obtain a UEI or register in SAM.gov.

25.210 Authority to modify agency application forms or formats.

25.215 Requirements for agency information systems.

25.220 Use of award term.

Subpart C—Recipient Requirements of Subrecipients

Sec.

25.300 Requirement for recipients to ensure subrecipients have a unique entity identifier.

Subpart D—Definitions.

Sec.

25.400 Definitions

Appendix A to Part 25

Award Term

Authority: 31 U.S.C. 503; 31 U.S.C. 6102; 31 U.S.C. 6307; Pub. L. 109-282; Pub. L. 110-252, Pub. L. 113-101, Pub. L. 117-40.

Subpart A—General

§ 25.100 Purpose of this part.

This part provides guidance to Federal agencies that:

(a) The unique entity identifier (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.gov) is the repository for standard information about applicants and recipients.

§ 25.105 Applicability.

(a) This part applies to a Federal agency's Federal financial assistance as defined in § 25.400. This part applies to all applicants for and recipients of Federal financial assistance unless exempted by Federal statute or §25.110.

(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 (unrelated to any business or nonprofit organization an individual owns or 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.

(a) *General exceptions.*

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

(i) If a Federal agency grants an exception under paragraph (a)(2) of this section, it must use a generic 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 agencies should use generic entity identifiers rarely as it prevents recipients from fulfilling reporting requirements such as subaward or executive compensation reporting required by the Transparency Act.

(2) A Federal agency may exempt either an applicant or recipient when:

(i) The Federal agency determines that it must protect information about the entity from disclosure in the national security or foreign policy interests of the United States or to avoid jeopardizing the personal safety of the entity's staff, partners, beneficiaries, and participants;

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

(1) the entity is a foreign organization or foreign public entity;

(2) the Federal award or subaward will be performed outside the United States;

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

and

(5) the Federal agency deems it to be impractical for the entity to comply with the requirements of this part.

(B) The Federal agency must determine this exemption on a case-by-case basis while utilizing a risk-based approach; or

(iii) For applicants, the Federal agency determines that there are exigent circumstances that prohibit the applicant from receiving a UEI and registering in SAM.gov before receiving a Federal award. In these instances, Federal agencies must require the recipient to obtain a UEI and complete registration in SAM.gov within 30 days of the Federal award date.

(b) *Class exceptions.* OMB may approve additional exceptions for classes of Federal awards, applicants, 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) A Federal agency that issues Federal financial assistance (see § 25.400) must include the requirements of paragraph (b) in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants that is issued on or after 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 does not have an exemption under § 25.110 to:

- (1) Be registered in SAM.gov before submitting an application;
- (2) Maintain a current and active registration 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 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 received a Federal award or contract within the last three years; and

(3) Include its UEI in each application it submits to the Federal agency.

(c) For the purposes of this policy:

(1) The applicant meets the Federal agency's eligibility criteria and has the legal authority to apply and 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 UEI. If a consortium is eligible to receive funding under a Federal agency program, but the agency's policy is to make the Federal award to a lead entity for the consortium, the UEI of the lead applicant must be used.

§ 25.205 Effect of noncompliance with a requirement to obtain a UEI or register in SAM.gov.

(a) Unless an entity is exempt under § 25.110, a Federal agency may not issue a Federal award or amend an existing Federal award if the entity is not in compliance with the requirements of this part. This does not apply to amendments to terminate or close out a Federal award.

(b) At the time a Federal agency is ready to make a Federal award, if the intended recipient has not complied with the requirements to obtain a UEI and maintain an active registration in SAM.gov with current information, the Federal 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 agency may add a UEI field to information collections previously approved by OMB, with no further approval required.

§ 25.215 Requirements for agency information systems.

Each Federal agency that awards Federal financial assistance (see § 25.400) must ensure that its information systems are able to both accept and transmit the UEI as the universal identifier for Federal financial assistance applicants and recipients.

§ 25.220 Use of award term.

(a) A Federal agency must include the award term in Appendix A in all Federal financial assistance agreements (see § 25.400) to accomplish the purpose of § 25.100.

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

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 that has not obtained a UEI and provided it to the recipient. Subrecipients are not required to complete full registration in SAM.gov to obtain a UEI.

(b) A recipient must notify any potential subrecipients that the recipient cannot make a subaward unless the subrecipient obtains and provides a UEI to the recipient.

Subpart–D—Definitions

§ 25.400 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:

Applicant means any entity that applies for a Federal award directly to a Federal agency.

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 employee.

Federal Award means an award of Federal financial assistance that an entity receives from a Federal agency.

Federal financial assistance:

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

(i) Grant;

(ii) Cooperative 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);

(iii) Loan;

(iv) Loan guarantee;

(v) Subsidy;

(vi) Insurance;

(vii) Food commodity;

(viii) Direct appropriation;

(ix) Assessed or voluntary contribution; or

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

(2) For the purposes of this part, the term "Federal financial assistance" does not include:

(i) Technical assistance that provides services in lieu of money; and

(ii) A transfer of title to federally-owned property provided in lieu of money, even if the award is called a grant.

Recipient means an entity that receives or administers a Federal Award directly from a Federal agency.

System for Award Management (SAM.gov) means the Federal repository into which an entity must provide the information required for the conduct of business as a recipient.

Unique entity identifier means the universal identifier assigned by SAM.gov to uniquely identify an entity.

Appendix A to Part –25—Award Term

I. System for Award Management (SAM.gov) and Universal Identifier Requirements

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

(1) Unless exempt from this requirement under 2 CFR 25.110, you must maintain a current and active registration in SAM.gov. Your registration must always be current and active until you submit all final reports required under this Federal award or receive the final payment, whichever is later. You must review and update your information in SAM.gov at least annually 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 providing information about your predecessors that have received a Federal award or contract within the last three years.

(b) *Requirement for Unique Entity Identifier (UEI).*

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

(i) Must notify potential subrecipients that no entity may receive a subaward from you until the entity has provided its UEI to you.

(ii) May not make a subaward to an entity unless the entity has provided its UEI to you.

Subrecipients are not required to complete full registration in SAM.gov to obtain a UEI.

(c) *Definitions.*

For the purposes of this award term:

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 in SAM.gov (currently at <https://www.sam.gov>).

Unique entity identifier means the universal identifier assigned by SAM.gov to uniquely identify an entity.

Entity is defined at 25 CFR 400 and includes all of the following types as defined in 2 CFR 200.1:

- (1) Non-Federal entity;
- (2) Foreign organization;
- (3) Foreign public entity;
- (4) Domestic for-profit organization; and
- (5) Federal agency.

Subaward has the meaning given in 2 CFR 200.1.

Subrecipient has the meaning given in 2 CFR 200.1.

5. Revise part 170, consisting of §170.100 through appendix A to part 170, to read as follows:

PAR– 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

Subpart A—General

Sec.

170.100 Purpose of this part.

170.105 Applicability.

Subpart B—Policy

Sec.

170.200 Federal agency reporting requirements.

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

170.220 Use of award term.

Subpart C—Definitions

Sec.

170.300 Definitions.

Appendix A to Part 170

Award term

Authority: 31 U.S.C. 503; 31 U.S.C. 6102; 31 U.S.C. 6307; Pub. L. 109-282; Pub. L. 110-252, Pub. L. 113-101, Pub. L. 117-40.

Subpart A—General

§ 170.100 Purpose of this part.

This part provides guidance to Federal agencies on establishing requirements for 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 (Public Law 109-282), as amended by the Digital Accountability and Transparency Act of 2014 (Public Law 113-101), hereafter referred to as the “Transparency Act.”

§ 170.105 Applicability.

(a) This part applies to a Federal agency’s Federal financial assistance as defined in § 170.300. This part applies to all recipients and subrecipients of Federal awards who meet the reporting requirements 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 Federal financial assistance as a natural person (that is, unrelated to any business or nonprofit organization an individual owns or operates).

(c) Reporting Requirements.

(1) The names and total compensation of an entity’s five most highly compensated executives must be reported if:

(i) In the entity’s preceding fiscal year, it received:

(A) 80 percent or more of its annual gross revenue in Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act, as defined at § 170.300; and

(B) \$25,000,000 or more in annual gross revenue from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act, as defined at § 170.300; and

(ii) The public does not have access to information about the compensation of senior executives 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.

(d) *Class exceptions.* OMB may approve additional exceptions for classes of Federal awards or recipients when not prohibited by Federal statute.

Subpart B—Policy

§ 170.200 Federal agency reporting requirements.

(a) Federal agencies must publicly report Federal awards that equal or exceed the micro-purchase threshold (see 2 CFR 200.1). Federal agencies must publish the required Federal award information on *USAspending.gov* in accordance with the guidance provided by OMB and the U.S. Department of the Treasury’s DATA Act Information Model Schema (DAIMS).

(b) Federal agencies should ensure that their agency-specific requirements do not require recipients to submit data that is the same as or similar to data required by the Transparency Act during a given reporting period.

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

(a) A Federal agency that makes Federal awards subject to the Transparency Act must include the requirements of paragraph (b) 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. 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, to which this part applies, to have the necessary processes and systems in place to comply with this part if they receive a Federal award.

§ 170.220 Use of award term.

(a) A Federal agency must include the award term in Appendix A to this part in each Federal award to a recipient under which the total funding is anticipated to equal or exceed \$30,000 in Federal funding.

(b) Consistent with paragraph (a), a Federal agency is not required to include the award term in Appendix A if the total amount of Federal funding under the Federal award will not equal or exceed \$30,000. However, the Federal agency must subsequently add the award term if increases to the Federal funding result in the award equaling or exceeding \$30,000.

(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 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:

Applicant means any entity that applies for a Federal award directly from a Federal agency.

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 (2) or (3); and

(ix) Any State or locality;

(2) Does not include:

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

(ii) A Federal employee.

Federal Award means an award of Federal financial assistance that an entity receives from a Federal agency.

Executive means an officer, managing partner, or any other employee holding a management position.

Federal financial assistance:

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

(i) Grant;

(ii) Cooperative 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);

(iii) Loan;

(iv) Loan guarantee;

(v) Subsidy;

(vi) Insurance;

(vii) Food commodity;

(viii) Direct appropriation;

(ix) Assessed or voluntary contribution; or

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

(2) For the purposes of this part, the term "Federal financial assistance" does not include:

(i) Technical assistance that provides services in lieu of money;

(ii) A transfer of title to federally-owned property provided in lieu of money, even if the award is called a grant;

(iii) Any classified Federal award; or

(iv) 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 (Public Law 111-5).

Recipient means an entity that receives or administers a Federal Award directly from a Federal agency.

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 an entity or Federal agency. You must subsequently report an action if increases to the Federal funding results in the subaward equaling or exceeding \$30,000.

(2) Reporting Requirements.

(i) The entity or Federal agency must report each 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.fsr.gov>.

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

(b) Reporting total compensation of recipient executives for entities.

(1) *Applicability.* You must report the total compensation for each of your five most highly compensated executives for the preceding completed fiscal year if:

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

(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 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 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.*

(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 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.* Subrecipients must report to you, the recipient, their executive total compensation described in paragraph (c)(1) of this award term. 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 the subaward was made. (For example, if the subaward was made on November 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 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:

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 (2); and

(ix) Any State or locality;

(2) Does not include:

- (i) An individual recipient of Federal financial assistance; or
- (ii) A Federal employee.

Executive means an officer, managing partner, or any other employee holding a management position.

Subaward has the meaning given in 2 CFR 200.1.

Subrecipient has the meaning given in 2 CFR 200.1.

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 229.402(c)(2).

6. Revise part 175, consisting of §§ 175.100 through appendix A to part 175, to read as follows:

PART 175—AWARD TERM FOR TRAFFICKING IN PERSONS

Subpart A—General

Sec.

175.100 Purpose of this part.

175.105 Statutory requirement.

Subpart B—Guidance

Sec.

175.200 Use of award term.

175.205 Referral.

Subpart C—Definitions

Sec.

175.300 Definitions.

Appendix A to Part 175

Award term

Authority: 22 U.S.C. 7104(g); 22 U.S.C. 7104a; 22 U.S.C. 7104b; 22 U.S.C. 7104c; 31 U.S.C. 503; 31 U.S.C. 6307; 31 U.S.C. 1111; 41 U.S.C. 1121; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737.

Subpart A—General

§ 175.100 Purpose of this part.

This part establishes a Federal award term for grants and cooperative agreements to implement the requirements in 22 U.S.C. 7104(g).

§ 175.105 Statutory requirement.

(a) Federal agencies are required to include in each Federal grant or cooperative agreement a condition that authorizes the Federal agency to terminate the award, without penalty, if a private entity receiving funds under the award as a recipient or subrecipient engages in:

(1) Severe forms of trafficking in persons;

(2) The procurement of a commercial sex act during the period of time that the grant or cooperative agreement is in effect;

(3) The use of forced labor in the performance of the 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

§ 175.200 Use of award term.

(a) To implement the requirements of 22 U.S.C. 7104(g) a Federal agency must include the award term in Appendix A of this part for the following Federal awards:

(1) A grant or cooperative agreement to a private entity, as defined in § 175.300; and

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

(b) 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 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.

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;
 - (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 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;
- (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.*

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

(i) Severe forms of trafficking in persons;

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

(iii) The use of forced labor in the performance of this award or any subaward; or

(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;

(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 awarding Federal agency may unilaterally terminate this award, without penalty, if 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 that is determined 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 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 (for example, “2 CFR part XX”)*].

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

(1) We as the awarding Federal agency may unilaterally terminate this award, without penalty, if a subrecipient that is a 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 that is determined 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 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 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 (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 unilaterally terminate this award as described in paragraphs (a)(2) or (b)(1) of this section:

(i) Implements the requirements of 22 U.S.C. 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.*

For purposes of this award term:

Employee means either:

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

(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 requirements.

Private Entity means any entity, including for-profit organizations, nonprofit organizations, institutions 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.

The terms “severe forms of trafficking in persons,” “commercial sex act,” “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).

7. Revise part 180, consisting of § 180.5 through appendix A to part 180, to read as follows:

PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

180.5 What does this part do?

180.10 How is this part organized?

180.15 To whom does the guidance apply?

180.20 What must a Federal agency do to implement these guidelines?

180.25 What must a Federal agency address in its implementation of the guidance?

180.30 Where does a Federal agency implement these guidelines?

180.40 How are these guidelines maintained?

180.45 Do these guidelines cover persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Subpart A—General

Sec.

180.100 How are subparts A through I organized?

180.105 How is this part written?

180.110 Do terms in this part have special meanings?

180.115 What do Subparts A through I of this part do?

180.120 Do subparts A through I of this part apply to me?

180.125 What is the purpose of the nonprocurement debarment and suspension system?

180.130 How does an exclusion restrict a person's involvement in covered transactions?

180.135 May a Federal agency grant an exception to let an excluded person participate in a covered transaction?

180.140 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

180.145 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

180.150 Against whom may a Federal agency take an exclusion action?

180.155 How do I know if a person is excluded?

Subpart B—Covered Transactions

Sec.

180.200 What is a covered transaction?

180.205 Why is it important if a particular transaction is a covered transaction?

180.210 Which nonprocurement transactions are covered transactions?

180.215 Which nonprocurement transactions are not covered transactions?

180.220 Are any procurement contracts included as covered transactions?

180.225 How do I know if a transaction in which I may participate is a covered transaction?

Subpart C— Responsibilities of Participants Regarding Transactions Doing Business With Other Persons

Sec.

180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

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

180.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

180.315 May I use the services of an excluded person as a principal under a covered transaction?

180.320 Must I verify that principals of my covered transactions are eligible to participate?

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

180.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Disclosing Information—Primary Tier Participants

180.335 What information must I provide before entering into a covered transaction with a Federal agency?

180.340 If I disclose unfavorable information required under § 180.335, will I be prevented from participating in the transaction?

180.345 What happens if I fail to disclose information required under § 180.335?

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?

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?

180.360 What happens if I fail to disclose information required under § 180.355?

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?

Subpart D— Responsibilities of Federal Agency Officials Regarding Transactions

Sec.

180.400 May I enter into a transaction with an excluded or disqualified person?

180.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

- 180.410 May I approve a participant's use of the services of an excluded person?
- 180.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
- 180.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
- 180.425 When do I check to see if a person is excluded or disqualified?
- 180.430 How do I check to see if a person is excluded or disqualified?
- 180.435 What must I require of a primary tier participant?
- 180.440 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
- 180.445 What action may I take if a primary tier participant fails to disclose the information required under § 180.335?
- 180.45 What action may I take if a lower tier participant fails to disclose the information required under § 180.355 to the next higher tier?

Subpart E— System for Award Management (SAM.gov) Exclusions

Sec.

- 180.500 What is the purpose of the System for Award Management (SAM.gov) Exclusions?
- 180.505 Who uses SAM.gov Exclusions?
- 180.510 Who maintains SAM.gov Exclusions?
- 180.515 What specific information is in SAM.gov Exclusions?
- 180.520 Who places the information into SAM.gov Exclusions?
- 180.52 Whom do I ask if I have questions about a person in SAM.gov Exclusions?
- 180.530 Where can I find SAM.gov Exclusions?

Subpart F— General Principles Relating to Suspension and Debarment Actions

Sec.

- 180.600 How do suspension and debarment actions start?
- 180.605 How does suspension differ from debarment?
- 180.610 What procedures does a Federal agency use in suspension and debarment actions?
- 180.615 How does a Federal agency notify a person of a suspension or debarment action?
- 180.620 Do Federal agencies coordinate suspension and debarment actions?
- 180.625 What is the scope of a suspension or debarment?
- 180.630 May a Federal agency impute the conduct of one person to another?
- 180.635 May a Federal agency resolve an administrative action in lieu of debarment or suspension??
- 180.640 May a settlement include a voluntary exclusion?
- 180.645 Do other Federal agencies know if an agency agrees to a voluntary exclusion?
- 180.650 May an administrative agreement be the result of a settlement?
- 180.655 How will other Federal awarding agencies know about an administrative agreement that is the result of a settlement?
- 180.660 Will administrative agreement information about me in SAM.gov be corrected or updated?

Subpart G—Suspension

Sec.

- 180.700 When may the suspending official issue a suspension?
- 180.705 What does the suspending official consider in issuing a suspension?

- 180.710 When does a suspension take effect?
- 180.715 What notice does the suspending official give me if I am suspended?
- 180.720 How may I contest a suspension?
- 180.725 How much time do I have to contest a suspension?
- 180.730 What information must I provide to the suspending official if I contest the suspension?
- 180.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
- 180.740 Are suspension proceedings formal?
- 180.745 How is fact-finding conducted?
- 180.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
- 180.755 When will I know whether the suspension is continued or terminated?
- 180.760 How long may my suspension last?

Subpart H—Debarment

Sec.

- 180.800 What are the causes for debarment?
- 180.805 What notice does the debarring official give me if I am proposed for debarment?
- 180.810 When does a debarment take effect?
- 180.815 How may I contest a proposed debarment?
- 180.820 How much time do I have to contest a proposed debarment?
- 180.825 What information must I provide to the debarring official if I contest the proposed debarment?
- 180.830 Under what conditions do I get an additional opportunity to challenge the facts on which the proposed debarment is based?
- 180.835 Are debarment proceedings formal?
- 180.840 How is fact-finding conducted?
- 180.845 What does the debarring official consider in deciding whether to debar me?
- 180.850 What is the standard of proof in a debarment action?
- 180.855 Who has the burden of proof in a debarment action?
- 180.860 What factors may influence the debarring official's decision?
- 180.865 How long may my debarment last?
- 180.870 When do I know if the debarring official debars me?
- 180.875 May I ask the debarring official to reconsider a decision to debar me?
- 180.880 What factors may influence the debarring official during reconsideration?
- 180.885 May the debarring official extend a debarment?

Subpart I—Definitions

Sec.

- 180.900 Adequate evidence.
- 180.905 Affiliate.
- 180.910 Agent or representative.
- 180.915 Civil judgment.
- 180.920 Conviction.
- 180.925 Debarment.
- 180.930 Debarring official.

180.935 Disqualified.
180.940 Excluded or exclusion.
180.945 System for Award Management Exclusions (SAM.gov) Exclusions.
180.950 Federal agency.
180.955 Indictment.
180.960 Ineligible or ineligibility.
180.965 Legal proceedings.
180.970 Nonprocurement transaction.
180.975 Notice.
180.980 Participant.
180.985 Person.
180.990 Preponderance of the evidence.
180.995 Principal.
180.1000 Respondent.
180.1005 State.
180.1010 Suspending official.
180.1015 Suspension.
180.1020 Voluntary exclusion or voluntarily excluded.

Appendix A to Part 180

Covered Transactions

Authority: 31 U.S.C. 503; 31 U.S.C. 6102; 31 U.S.C. 6307; Pub. L. 103-355; Pub. L. 109-282; Pub. L. 110-252; Pub. L. 111-84; Pub. L. 113-101; Pub. L. 115-232; Pub. L. 117-40; E.O. 12549; E.O. 12689.

§ 180.5 What does this part do?

This part provides guidance for Federal agencies on how to implement the government-wide debarment and suspension system for nonprocurement programs and activities.

§ 180.10 How is this part organized?

This part is organized 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.

(b) Subparts A through I contain uniform 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 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?

This part provides guidance 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 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 Section 3 of 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's implementing regulation:

(a) Must establish policies and procedures for that Federal agency's nonprocurement debarment and suspension programs and activities consistent with this guidance. When adopted by a Federal agency, the provisions of the guidance have a regulatory effect 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) a 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 must require Federal agency officials to communicate that requirement when entering into covered transactions with primary tier participants.

(c) May also, at the Federal agency's option:

(1) Identify any specific types of transactions 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 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 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.

§ 180.40 How are these guidelines maintained?

The Interagency Committee on Debarment and Suspension, established by section 4 of 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:

(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.

In subpart . . .	You will find provisions related to . . .
B	the types of transactions that are covered by the government-wide 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.gov 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.

If you are . . .	See Subpart(s) . . .
(4) a suspending official	A, B, E, F, G and I.
(5) a debaring official	A, B, D, F, H and I.
(6) a 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. The section headings and text must be read together, as they are often in the form of questions and answers.

(b) Pronouns used within this part, such as “I” and “you,” change from subpart to subpart depending on the audience being addressed.

(c) The “Covered Transactions” diagram in the Appendix to this part shows the levels or “tiers” at which a Federal agency may enforce an exclusion.

§ 180.110 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meanings. Those terms are defined in subpart I. For example, three important terms are:

(a) *Exclusion or excluded*, which refers only to discretionary actions taken by a suspending or debaring official under Executive Order 12549 and Executive Order 12689 or under the Federal Acquisition 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 provide for the reciprocal exclusion of persons who have been excluded under the Federal Acquisition 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 (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 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 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 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?

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 Federal Acquisition Regulations. Therefore, an exclusion under this part has a reciprocal effect on Federal procurement transactions.

§ 180.145 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

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 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 System for Award Management (SAM.gov) Exclusions to determine whether a person is excluded. The General Services Administration (GSA) maintains SAM.gov Exclusions and makes it available, as detailed in subpart E. When a Federal agency takes 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.

Subpart B—Covered Transactions

§ 180.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction subject to this part's prohibitions. It may be a transaction at:

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

or

(b) A lower tier between a participant in a covered transaction and another person.

§ 180.205 Why is it important if a particular transaction is a covered transaction?

The importance of whether a transaction is a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in subpart C. 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.

(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, 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.

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

(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless a Federal agency specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if:

(1) The application of an exclusion to the transaction is prohibited by law; or

(2) A Federal agency's regulation exempts it from coverage under this part.

(h) Notwithstanding paragraph (a) of this section, covered transactions must include non-procurement and procurement transactions involving entities engaged in activity that contributed to or is a significant factor in a country's non-compliance with its obligations under arms control, nonproliferation or disarmament agreements, or commitments with the United States. Federal 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 SAM.gov Exclusions on the basis of involvement in activities that violate arms control, nonproliferation or disarmament agreements, or commitments with the United States (see section 1290 of the National Defense Authorization Act for Fiscal Year 2017). The head of a Federal agency may grant an exception 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?

(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 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 covered under § 180.210, and 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 is always a covered transaction 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 to this part.

(3) The contract is for Federally-required audit services.

(c) A subcontract also is a covered transaction if:

(1) It is awarded by a participant in a procurement transaction under a nonprocurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to additional tiers of contracts (see the diagram in the Appendix to this part showing that optional lower tier coverage); and

(2) The value of the subcontract is expected to equal or exceed \$25,000.

§ 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 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) 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, 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) 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 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) 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 services 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 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. As a participant, you are responsible for determining whether your principals of your covered transactions 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 are not required to check SAM.gov Exclusions.

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

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 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 the participant enters into a covered transaction at the next lower tier.

Disclosing Information—Primary Tier Participants

§ 180.335 What information must I provide before entering into a covered transaction with a Federal agency?

Before you enter into a covered transaction at the primary tier, you, as the participant, must notify the Federal agency office that is entering into the transaction with you if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § 180.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with 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, 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 determining whether to enter into the covered transaction. The Federal agency will also consider any additional information or explanation 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?

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) 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 disqualified from that transaction unless you obtain a waiver or exception under the statute, Executive Order, or regulation that is the basis for the person's disqualification.

§ 180.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As a Federal agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded unless you obtain an exception under § 180.135.

§ 180.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you, as a Federal agency official, may not approve a participant's use of an excluded person as a principal under that transaction unless you obtain an exception under § 180.135.

§ 180.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) As a Federal agency official, you may continue covered transactions with an excluded person or under which an excluded person is a principal if the transactions were in existence when the person was excluded. However, you are not required to continue the transactions, and you may consider termination. You should 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 or under which an excluded person is a principal unless you obtain an exception under § 180.135.

§ 180.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you, as a Federal agency official, may not approve:

(a) A covered transaction with a person who is currently excluded unless you obtain an exception under § 180.135; or

(b) A transaction with a person who is disqualified from that transaction unless you obtain a waiver or exception under the statute, Executive Order, or regulation that is the basis for the person's disqualification.

§ 180.425 When do I check to see if a person is excluded or disqualified?

As a Federal agency official, you must check to see if a person is excluded or disqualified before you:

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if your 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) 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?

As a Federal agency official, you must require each participant in a primary tier covered transaction to:

(a) Comply with subpart C as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with subpart C 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?

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?

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?

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) The SAM.gov Exclusions are available to the general public.

§ 180.510 Who maintains SAM.gov Exclusions?

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 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 of the excluded or disqualified person, if available.

(b)

(1) The SAM.gov Exclusions includes a field for the Taxpayer Identification Number (TIN), or the social security number (SSN) for an individual, of an excluded or disqualified person.

(2) Agencies disclose an individual's SSN to verify an individual's identity 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 ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal or debarment proceeding	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must:	

A suspending official . . .	A debarring official . . .
(1) have <i>adequate evidence</i> that there may be a cause for debarment of a person; and	
(2) conclude that <i>immediate action</i> is necessary to protect the Federal interest	Must conclude, based on a <i>preponderance of the evidence</i> , that the person has engaged in conduct that warrants debarment.
(c) Usually imposes the suspension <i>first</i> , and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted	Imposes debarment <i>after</i> 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.

(b) For debarment actions, a Federal agency uses the procedures in this subpart and subpart H.

§ 180.615 How does a Federal agency notify a person of a suspension or debarment action?

(a) The suspending or debaring 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 debaring official:

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

§ 180.630 May a Federal agency impute the conduct of one person to another?

For purposes of actions taken under this part, a Federal agency may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

(b) *Conduct imputed from an organization to an individual or between individuals.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* A Federal agency may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association, 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 resolve an administrative action in lieu of debarment or suspension?

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

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

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

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

(a) Yes. The Federal agency agreeing to the voluntary exclusion enters information about it into SAM.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 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 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 SAM.gov be corrected or updated?

Yes. The suspending or debarring official who entered information into SAM.gov about an administrative agreement with you:

(a) Must correct the information within three business days if the official subsequently learn that any information is erroneous.

(b) Must correct in 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 any other modification to the administrative agreement in SAM.gov within three business days.

(d) Is strongly encouraged to amend the information in SAM.gov in a timely way to incorporate any update that the official obtains and that could be helpful to Federal 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, the suspending official may impose suspension only when that official determines that:

(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under § 180.800(a), or

(b) There exists adequate evidence to suspect any other cause for debarment listed under § 180.800(b) through (d); and

(c) Immediate action is necessary to protect the public interest.

§ 180.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

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

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

(2) an indictment, criminal information, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual 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:

- (a) That you have been suspended;
- (b) That your suspension is based on:
 - (1) An indictment;
 - (2) A criminal information;
 - (3) A conviction;
 - (4) A civil judgment;
 - (5) Other adequate evidence that you have committed irregularities that seriously reflect on the propriety of further Federal Government dealings with you; or
 - (6) 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 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, and any other Federal agency procedures governing suspension decision-making; and

(g) Of the government-wide effect of your suspension from procurement and nonprocurement programs and activities.

§ 180.720 How may I contest a suspension?

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. 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 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;

(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 or provide false information, the Federal agency taking the action may seek further criminal, civil, or administrative action against you, as appropriate.

§ 180.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) 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 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;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are 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) 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, 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;

(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, 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 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;

(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 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 that is so serious or compelling 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) 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) The cause(s) under § 180.800 upon which the debarring official relied for proposing your debarment;
- (d) The applicable provisions of this subpart, subpart F of this part, and any other Federal agency procedures governing debarment; and
- (e) 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?

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. 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?

(a) 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, as a respondent, to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision 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

debarment 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 debarment 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 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 debarment 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 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 in the form of procedures, policies, and programs to 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 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 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 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 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, 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 organized following the exclusion of a person 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 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 to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulations (48 CFR chapter 1). A person so excluded is debarred.

§ 180.930 Debarring official.

Debarring official means 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. 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 (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.

System for Award Management (SAM.gov) Exclusions means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about ineligible persons.

§ 180.950 Federal agency.

Federal agency means any United States executive department, military department, defense agency, or any other executive branch agency. For the purposes of this part, other agencies of the Federal Government are not considered “agencies” unless they issue regulations adopting the 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 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 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, the following:

- (1) Grants;
- (2) Cooperative agreements;

- (3) Scholarships;
- (4) Fellowships;
- (5) Contracts of assistance;
- (6) Loans;
- (7) Loan guarantees;
- (8) Subsidies;
- (9) Insurances;
- (10) Payments for specified uses; 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 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, 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 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 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.

(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 a Federal agency official 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 Regulations (48 CFR chapter 1) for a temporary period, pending completion of a 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.

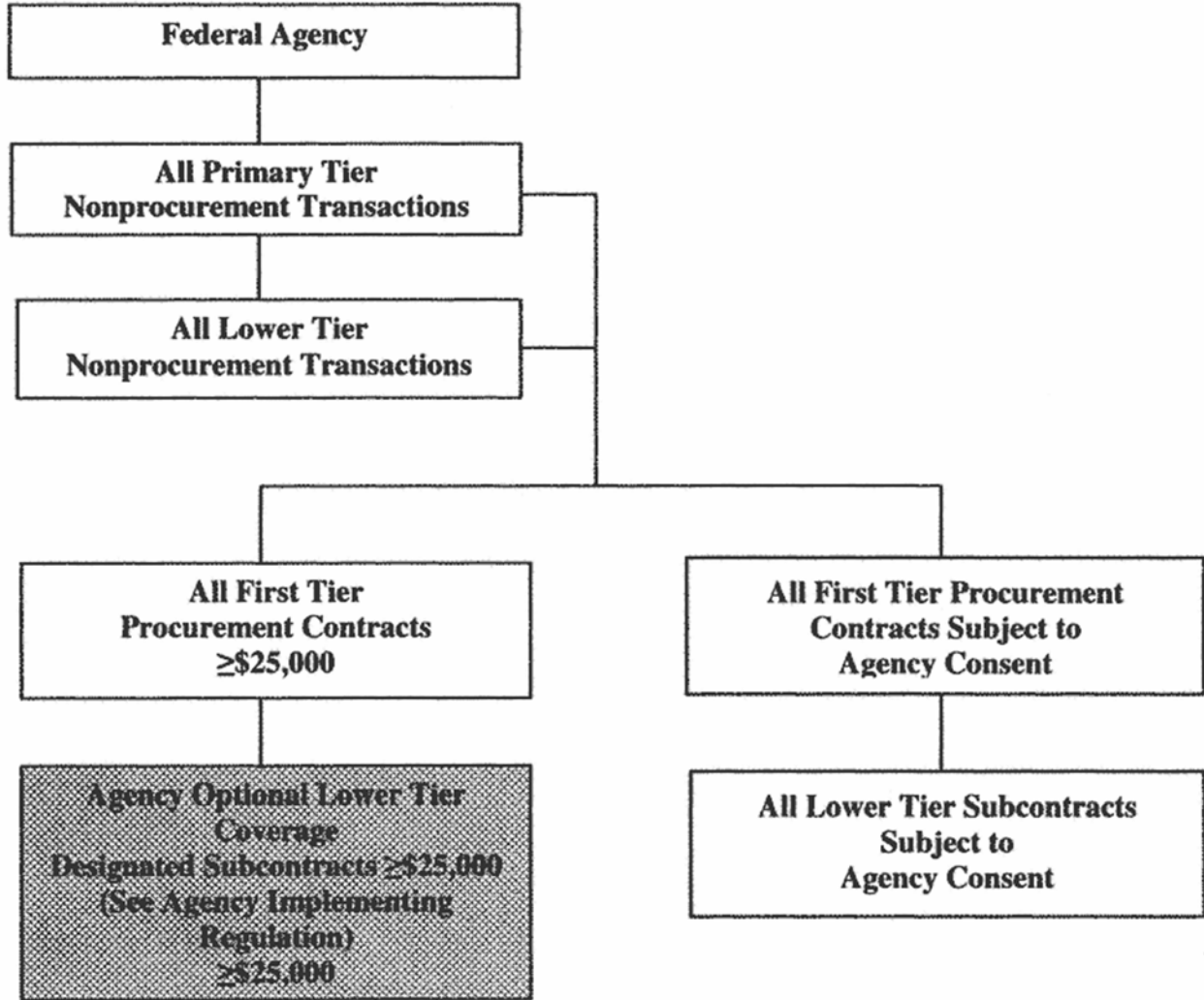
(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have a government-wide effect.

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

Appendix A to Part 180—Covered Transactions

Appendix to Part 180___ - Covered Transactions

COVERED TRANSACTIONS



8. Revise part 182, consisting of §§ 182.5 through 182.670, to read as follows:

PART 182—GOVERNMENT-WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

182.5 What does this part do?

182.10 How is this part organized?

182.15 To whom does the guidance apply?

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

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

182.30 Where does a Federal agency implement the guidance?

182.40 How is the guidance maintained?

Subpart A—Purpose and Coverage

Sec.

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- 182.635 Drug-free workplace.
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- 182.655 Individual.
- 182.660 Recipient.
- 182.665 State.
- 182.670 Suspension.

Authority: 41 U.S.C. 8101-8106; 31 U.S.C. 503; 31 U.S.C. 6307.

§ 182.5 What does this part do?

This part provides guidance for Federal agencies on the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 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.

(b) Subparts A through F contain uniform 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 a 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 guidance 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 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. 8106 for 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 consistent with this guidance. When adopted by a Federal agency, the provisions of the guidance have a regulatory effect 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 Federal award.

(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.

§ 182.40 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.

(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.

§ 182.110 What do subparts A through F of this part do?

Subparts A through F 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 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 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 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, the employee:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if 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 Federal 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 Federal agency 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 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 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 a 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 (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 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 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 a 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, if the recipient is not an individual; or

(b) Subpart C, 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 their designee determines, in writing, that:

(a) The recipient has violated the requirements of subpart B; 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 recipient who is an individual is in violation of the requirements of this part if the Federal agency head or their designee determines, in writing, that:

(a) The recipient has violated the requirements of subpart C; 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?

For a particular award, the Federal agency head may waive, 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 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 (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 (for example, volunteers, even if used to meet a cost 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, 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

Sec.

183.5 Purpose of this part.

183.10 Applicability.

183.15 Responsibilities of Federal agencies.

183.20 Reporting responsibilities of Federal agencies.

183.25 Responsibilities of recipients.

183.30 Access to records.

183.35 Definitions.

Appendix A to Part 183

Award Terms for Never Contract With the Enemy

Authority: Pub. L. 113-291, as amended by Pub. L. 115-232, Pub. L. 116-92, Pub. L. 116-283, Pub. L. 117-263; 31 U.S.C. 503; 31 U.S.C. 6307.

§ 183.5 Purpose of this part.

This part provides guidance to Federal 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. 820 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 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 agencies.

(a) Prior to making an award for a covered grant or cooperative agreement (see also § 183.35), the Federal 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 agency may include the award term provided in Appendix A in all covered grant and cooperative agreement awards in accordance with Never Contract with the Enemy.

(c) A Federal 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 no funds, including goods and services, received under an executive agency's covered grant or cooperative agreement are provided directly or indirectly to covered persons or entities.

(d) When a Federal 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 grant, 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 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 another appropriate official that the grant or cooperative agreement provides funds directly or indirectly to a covered person or entity.

(e) The Federal agency must notify recipients in writing regarding its decision to restrict all future awards, 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 agencies.

(a) If a Federal 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 Never Contract with the Enemy.

(b) When a Federal agency terminates or voids a grant or cooperative agreement due to Never Contract with the Enemy, it must report the action as a termination for material failure to comply in SAM.gov. Federal agencies must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in SAM.gov.

(c) The Federal agency 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 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 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 (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 A to this part.

(b) Recipients must also flow down the provisions in award terms covered in Appendix A to this part to all contracts and subawards under the award.

§ 183.30 Access to records.

In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards, to the extent necessary, to ensure that funds, including supplies and services, received under a covered grant or cooperative agreement (see § 183.35) are not provided directly or indirectly to a covered person or entity in accordance with Never Contract with the Enemy. The Federal agency may only exercise this authority upon a written determination by the Federal 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. 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, 12301(a), 12302, 12304, 12304a, 12305, 12406 of 10 U.S.C. chapter 15, 14 U.S.C. 3713 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 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) You must:

(1) Exercise due diligence to ensure that no 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 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 agency provides written approval to continue the subaward or contract.

(b) 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 agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal agency becomes aware that you have failed to exercise due diligence as required by paragraph (a) of this clause or if the Federal 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 and the 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), 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)

10. Revise part 200, subpart A, to read as follows:

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

Subpart A—Acronyms and Definitions

Acronyms

Sec.

200.0 Acronyms.

200.1 Definitions.

Authority: 31 U.S.C. 503; 31 U.S.C. 6101-6106; 31 U.S.C. 6307; 31 U.S.C. 7501-7507.

Subpart A - Acronyms and Definitions

Acronyms

§ 200.0 Acronyms.

CAS Cost Accounting Standards

CFR Code of Federal Regulations

F&A Facilities and Administration

FAC Federal Audit Clearinghouse

FAIN Federal Award Identification Number

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, statutory note)

FOIA Freedom of Information Act

FR Federal Register

GAAP Generally Accepted Accounting Principles

GAGAS Generally Accepted Government Auditing Standards

GASB Government Accounting Standards Board

GAO Government Accountability Office

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

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

UEI Unique Entity Identifier

U.S.C. United States Code

VAT Value Added Tax

§ 200.1 Definitions.

The following is a list of definitions of key terms frequently used in 2 CFR part 200. Definitions found in Federal statutes or regulations that apply to particular programs 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. For example, acquisition cost for equipment 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 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 recipient's or subrecipient's regular accounting practices.

Advance payment means a payment that a Federal agency or pass-through entity makes by any appropriate payment mechanism and payment method before the 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 refer to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration (GSA) at SAM.gov.

Assistance Listing number means a unique number assigned to identify an Assistance Listing.

Assistance Listing program title means the title that corresponds to the Assistance Listing number.

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

Auditee means any non-Federal entity that must be audited under this part. (See § 200.501)

Auditor means an auditor who is a public accountant or a Federal, State, local government, or Indian Tribe audit organization 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 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 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 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 or equipment for a period of time under a lease contract. See § 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, local government, or Indian 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 assertion by one of the parties to a Federal award seeking as a matter of right:

- (i) The payment of money;
- (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 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 recipient or group of recipients to which specific provisions or exceptions may apply.

Closeout means the process by which the Federal 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 defined by OMB in the compliance supplement or designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating “other

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 cluster of programs must be considered one program when determining major programs as described in § 200.518, and with the exception of R&D as described in § 200.501(d), 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 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, paragraph C.11.
- (2) For nonprofit organizations: Appendix IV, paragraph C.2.a.
- (3) For State and local governments: Appendix V, paragraph F.1.
- (4) For Indian Tribes: Appendix VII, paragraph D.1.

Compliance supplement means an annually updated authoritative source of information for auditors that 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 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 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.

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

Cooperative agreement means a legal instrument of financial assistance between a Federal agency or 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 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.

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 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. A cost objective may be a major function of the 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. See also the definitions of *final cost objective* and *intermediate cost objective* in this section.

Cost sharing means the portion of project costs not paid by Federal funds or contributions (unless authorized by Federal statute). This term includes *matching*, which refers to required levels of cost share that must be provided. See § 200.306.

Disallowed cost means charges to a Federal award that the Federal agency or pass-through entity determines to be unallowable.

Discretionary award means an award in which the Federal agency, in keeping with specific statutory authority that enables the agency to exercise judgment (“discretion”), selects the recipient 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 that equals or exceeds the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes, or \$10,000. See this section’s definitions of *capital assets*, *computing devices*, *general purpose equipment*, *information technology systems*, *special purpose equipment*, and *supplies*.

Expenditures means charges made by a recipient or subrecipient to a Federal award.

(1) The charges may be reported on a cash or accrual basis as long as the methodology is disclosed and 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 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 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 repository of record designated by OMB where non-Federal entities must transmit the information required by subpart F.

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 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 agency or indirectly from a pass-through entity, as described in § 200.101.

(2) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (2) of the definition of *Federal financial assistance* in this section, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(3) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate government-owned, contractor-operated (GOCO) facilities.

(4) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

Federal award date means the date when the authorized official of the Federal agency signed (physically or digitally) the Federal award or when an alternative binding agreement, consistent with the requirements of 31 U.S.C. 1501, is reached with the recipient.

Federal financial assistance means:

(1) Assistance that 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 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 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.

Final cost objective means a cost objective that has allocated to it both direct and indirect costs and, in the 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 recipient or subrecipient. See also the definitions of *cost objective* and *intermediate cost objective* in this section.

Financial obligations 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 award means a type of grant or cooperative agreement pursuant to which the Federal agency or pass-through entity provides a specific amount of 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 recipient or subrecipient and the Federal 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 the country 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 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 apply to financial audits.

Grant agreement or grant means a legal instrument of financial assistance between a Federal agency or pass-through entity and a 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 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 agency in carrying out the activity contemplated by the Federal award.

(3) Does not include an agreement that provides only:

- (i) Direct United States Government cash assistance to an individual;
- (ii) A subsidy;
- (iii) A loan;
- (vi) A loan guarantee; or
- (v) Insurance.

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

Improper payment means 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.

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. See 25 U.S.C. 5304(e). 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.

Indirect (facilities & administrative (F&A)) 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. It may be necessary to establish multiple pools of indirect costs to facilitate equitable distribution of indirect expenses to the cost objectives served. Indirect 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 recipient to substantiate its request to establish an indirect cost rate as described in appendices III through VII and Appendix IX to this part.

Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also the definitions of *computing devices* and *equipment* in this section.

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, data (including data licenses), websites, IP licenses, trade secrets, patents, patent applications, and property such as loans, notes and other debt instruments, lease agreements, stocks and other instruments of property ownership 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 this section's definitions of *cost objective* and *final cost objective*.

Internal control for recipients and subrecipients means:

(1) Processes designed and implemented by 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.

Key Personnel means any individuals (including employees and contractors) working under a Federal award that are designated in the Federal award as being particularly integral or meaningful to the program.

Loan means a Federal loan or loan guarantee received or administered by a recipient, except as used in this section's definition of *program income*.

(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 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 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.

(4) The term “loan guarantee commitment” means a binding agreement by a Federal agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

Local government means any unit of government within a State, including a:

- (1) County;
- (2) Borough;
- (3) Municipality;
- (4) City;
- (5) Town;
- (6) Township;
- (7) Parish;
- (8) Local public authority, including any public housing agency under the United States Housing Act of 1937;
- (9) Special district;
- (10) School district;
- (11) Intrastate district;
- (12) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and

(13) Any other agency or instrumentality of a multi-, regional, or intra-State or local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 200.518 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § 200.503(e).

Management decision means the Federal 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 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 recipient's or subrecipient's small purchases using informal procurement methods as set forth in § 200.320.

Micro-purchase threshold means the dollar amount at or below which a 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 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 \$50,000 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 \$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 agency to specific recipients in accordance with statutory, eligibility, and compliance requirements, such that in keeping with specific statutory authority, the Federal agency has cannot exercise judgment (“discretion”). A non-discretionary award amount could be specifically determined or by formula.

Non-Federal entity (NFE) means a State, local government, Indian Tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Nonprofit organization means any organization that:

- (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- (2) Is not organized primarily for profit;
- (3) Uses net proceeds to maintain, improve, or expand the organization’s operations; 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 agency. The notice of funding opportunity provides information on the award, such as who is eligible to apply, the evaluation

criteria for 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 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 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 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 agency 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 that support participants and their involvement in a Federal award, such as stipends, subsistence allowances, travel allowances, registration fees, dependent care, and per diem paid directly to or on behalf of participants.

Pass-through entity means a 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 (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 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 and end date of a Federal award, which may include one or more funded portions or budget periods. The period of performance does not commit the Federal agency to fund the award beyond the currently approved budget period.

Personal property means property other than real property. It may be tangible or intangible.

Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some PII is available in public sources such as telephone books, websites, and university listings. This type of information is considered Public PII. 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 attached to any single category of information or technology. 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.

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 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(c). Program income includes but is not limited to income from fees for services performed, the use or rental 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 § 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 cost sharing, including third-party contributions.

Property means real property or personal property. See this section's definitions of *real property* and *personal property*.

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 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 must be disclosed by law. See this section's definition of *Personally Identifiable Information (PII)*.

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

(1) *Questioned cost* means an amount, expended or received from a 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;
- (ii) At the time of the audit, lacked adequate documentation to support compliance; or
- (iii) Appeared unreasonable and did not reflect the actions a prudent person would take in the circumstances.

(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.

Real property means land, including land improvements, structures, 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 that receives a Federal award directly from a Federal 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 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. The start date of a renewal award begins a new and distinct period of performance.

Research and Development (R&D) means all basic and applied research activities and all development activities performed by a recipient or subrecipient. The term research also includes activities involving the training of individuals in research techniques where such activities use

the same facilities as other research and development activities and where such activities are not included in the instruction function. “Research” is 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 to produce useful materials, devices, systems, or methods, including designing and developing prototypes and processes.

Simplified acquisition threshold means the dollar amount below which a recipient or subrecipient may purchase property or services using small purchase methods (see § 200.320). Recipients and subrecipients adopt small purchase procedures to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold 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. The 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. Recipients and subrecipients should also determine if local government purchasing laws apply. This threshold must never exceed the dollar value established in the FAR.

Special purpose equipment means equipment that is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, spectrometers, and associated software. See also the definitions of *equipment* and *general purpose equipment* in this section.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the

Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

Student Financial Aid (SFA) means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070-1099d), which 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 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 to an individual that is a Federal program beneficiary. A subaward may be provided through any legal agreement, including an agreement the pass-through entity considers a contract.

Subrecipient means an entity that receives a subaward from a pass-through entity to carry out part of a Federal award. It does not include an individual that is a Federal program beneficiary or participant. A subrecipient may also be a recipient of other Federal awards directly from a Federal 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.

Supply means all tangible personal property other than those described in the *equipment* definition. A computing device is a supply if the acquisition cost is below the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes

or \$10,000, regardless of the length of its useful life. See this section's definitions of *computing devices* and *equipment*.

Telecommunications cost means the cost of using communication technologies such as mobile phones, landlines, and the internet.

Termination means the action a Federal agency or pass-through entity takes to discontinue a Federal award, in whole or in part at any time before the planned end date of the period of performance. 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.

Third-party in-kind contributions means the value of non-cash contributions (*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 recipient or subrecipient under a Federal award.

Unliquidated financial obligation means financial obligations incurred by the recipient or subrecipient but not paid (liquidated) for financial reports prepared on a cash basis. For reports prepared on an accrual basis, these are financial obligations incurred by the recipient or subrecipient but not recorded.

Unobligated balance means the amount of funds under a Federal award that the recipient or subrecipient has not obligated. The amount is computed by subtracting the cumulative amount of the recipient's or subrecipient's unliquidated financial obligations and expenditures under the

Federal award from the cumulative amount of funds the Federal agency or pass-through entity authorized the recipient or subrecipient to obligate.

Voluntary committed cost sharing means cost sharing specifically pledged voluntarily in the proposal's budget on the part of the recipient or subrecipient, which becomes a binding requirement of the Federal award. See § 200.306.

11. Revise part 200, subpart B, to read as follows:

Subpart B—General Provisions

Sec.

- 200.100 Purpose.
- 200.101 Applicability.
- 200.102 Exceptions.
- 200.103 Authorities.
- 200.104 Supersession.
- 200.105 Effect on other issuances.
- 200.106 Agency implementation.
- 200.107 OMB responsibilities.
- 200.108 Inquiries.
- 200.109 Review date.
- 200.110 Effective date.
- 200.111 English language.
- 200.112 Conflict of interest.
- 200.113 Mandatory disclosures.

Authority: 31 U.S.C. 503; 31 U.S.C. 6101-6106; 31 U.S.C. 6307; 31 U.S.C. 7501-7507.

Subpart B - General Provisions

§ 200.100 Purpose.

(a) *Purpose.*

(1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards. Federal agencies must not impose additional requirements

except as allowed in §§ 200.102, 200.211, or unless specifically required by Federal statute, regulation, or Executive order.

(2) This part provides Federal agencies 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 also sets forth how the General Services Administration (GSA), OMB, and Federal agencies implement the Federal Program Information Act (31 U.S.C. 6101-6106).

(b) *Administrative requirements.* Subparts B through D set forth the uniform administrative requirements for Federal financial assistance. This includes establishing requirements for Federal agencies management of Federal financial assistance programs before a Federal award is made, and requirements that Federal agencies may impose on recipients and subrecipients throughout the lifecycle of a Federal award.

(c) *Cost principles.* Subpart E establishes principles for determining allowable costs incurred by recipients and subrecipients under Federal awards. These principles are for the purpose of cost determination. They do not address the circumstances nor dictate the extent of Federal Government funding of a particular program or project.

(d) *Single Audit Requirements and Audit Follow-up.* Subpart F is issued pursuant to the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507). Subpart F sets forth the standards for achieving consistency and uniformity among Federal agencies for the audit of non-Federal entities administering Federal awards. Subpart F also provides the policies and procedures for Federal agencies or pass-through entities when using the results of these audits.

§ 200.101 Applicability.

(a) *General applicability to Federal agencies.*

(1) Subparts A through F apply to Federal agencies that make Federal awards to non-Federal entities.

(2) Federal agencies may apply subparts A through E to Federal agencies, for-profit organizations, foreign public entities, or foreign organizations as permitted in agency regulations or program statutes, except when a Federal agency determines that the application of these subparts would be inconsistent with the international responsibilities of the United States or the 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.*

(1) Throughout subparts A through F, the word “must” indicates a requirement. The word “should” or “may” indicates a recommended approach and permits discretion.

(2) Paragraphs (3) through (6) of this section describe what portions of this part apply to specific types of Federal financial assistance. The terms and conditions of Federal awards and the requirements of this part flow down to subrecipients unless indicated otherwise in Federal statute, regulation, or the terms and conditions of the Federal award. Pass-through entities must

comply with the requirements described in §§ 200.331 through 200.333, and any other sections directed toward pass-through entities.

(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 are incorporated by reference into the contract. 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 from this part. In addition, costs that are identified as unallowable under 41 U.S.C. 4304(a) and as 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, the terms of the contract and the FAR apply.

(d) *Governing provisions.* With the exception of subpart F, which is required by the Single Audit Act, Federal statutes or regulations govern in any circumstances where they conflict with the provisions of this part. For agreements with Indian Tribes, this includes the provisions

of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended (see 25 U.S.C. 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 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 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 does not apply to the following programs:

(1) Entitlement Federal awards to carry out the following programs of the Social Security Act:

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

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

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

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

(v) Medical Assistance (Medicaid) (Title XIX of the Act, 42 U.S.C. 1396-1396w-5) not including the State Medicaid Fraud Control program authorized by Section 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)); and

(vi) Children's Health Insurance Program (Title XXI of the Act, 42 U.S.C. 1397aa-1397mm).

(2) A Federal award for an experimental, pilot, or demonstration project that is also supported by a Federal award listed in paragraph (f)(1) of this section.

(3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980 (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 4 of the Act, 42 U.S.C. 1753);

(ii) Commodity Assistance (Section 6 of the Act, 42 U.S.C. 1755);

(iii) Special Meal Assistance (Section 11 of the Act, 42 U.S.C. 1759a);

- (iv) Summer Food Service Program for Children (Section 13 of the Act, 42 U.S.C. 1761);
- and
- (v) Child and Adult Care Food Program (Section 17 of the Act, 42 U.S.C. 1766).
- (5) Entitlement awards under the following programs of The Child Nutrition Act of 1966:
- (i) Special Milk Program (Section 3 of the Act, 42 U.S.C. 1772);
- (ii) School Breakfast Program (Section 4 of the Act, 42 U.S.C. 1773); and
- (iii) State Administrative Expenses (Section 7 of the Act, 42 U.S.C. 1776).
- (6) Entitlement awards for State Administrative Expenses under The Food and Nutrition Act of 2008 (Section 16 of the Act, 7 U.S.C. 2025).
- (7) Non-discretionary Federal awards under the following non-entitlement programs:
- (i) Special Supplemental Nutrition Program for Women, Infants and Children (Section 17 of the Child Nutrition Act of 1966) 42 U.S.C. 1786;
- (ii) The Emergency Food Assistance Programs (Emergency Food Assistance Act of 1983) 7 U.S.C. 7501 note; and
- (iii) Commodity Supplemental Food Program (Section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

§ 200.102 Exceptions.

(a) *OMB Exceptions.* Except for subpart F, OMB may allow either exceptions to or deviations from requirements of this part for classes of Federal awards, 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 (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 and OMB approval is not expressly required by this part. Only the cognizant agency for indirect costs may authorize exceptions related to cost allocation plans or indirect cost rate proposals. A Federal agency may also apply less restrictive requirements when issuing fixed amount awards (see § 200.1), except for those requirements imposed by statute or in subpart F.

§ 200.103 Authorities.

This part is issued under the following authorities.

(a) Subparts B through D 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).

(b) Subpart E 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. 1101-1126); 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 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.

This part supersedes previous OMB guidance issued under Title 2, subtitle A, chapter I of the Code of Federal Regulations related to uniform administrative requirements, cost principles, and audit requirements for Federal awards.

§ 200.105 Effect on other issuances.

(a) *Superseding inconsistent requirements.* For Federal awards made subject to this part 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 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 § 200.102.

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

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

(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, 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. OMB will provide interpretations of policy requirements and assistance to ensure effective, efficient, and consistent implementation. Any exceptions will be subject to approval by OMB and only with adequate justification from the Federal agency.

§ 200.108 Inquiries.

Inquiries from Federal agencies concerning this part may be directed to OMB. Inquiries from recipients or subrecipients should be addressed to the Federal agency, the cognizant agency for indirect costs, the cognizant agency for audit, or the pass-through entity as appropriate.

§ 200.109 Review date.

OMB will review this part periodically.

§ 200.110 Effective date.

(a) The standards set forth in this part affecting the administration of Federal awards by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this part becomes final.

(b) Existing negotiated indirect cost rates will remain in place until they expire. The effective date of changes to indirect cost rates must be based upon the date a newly re-negotiated rate goes into effect for the recipient's or subrecipient's fiscal year. Therefore, for indirect cost rates and cost allocation plans, the revisions to this part (as of the publication date for revisions to 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 should be in the English language and must be in terms of U.S. dollars. However, Federal agencies, recipients, and subrecipients may issue or translate a Federal award or other documents into another language. 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.

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

§ 200.112 Conflict of interest.

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

§ 200.113 Mandatory disclosures.

An applicant, recipient, or subrecipient of a Federal award must promptly disclose whenever they have credible evidence of a violation of Federal criminal law potentially affecting the Federal award (for example, fraud, embezzlement, bribery, gratuity violations, identity theft, or sexual assault and 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 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.)

12. Revise part 200, subpart C, to read as follows:

**Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards
Sec.**

- 200.200 Purpose.
- 200.201 Use of grants, cooperative agreements, fixed amount awards, and contracts.
- 200.202 Program planning and design.
- 200.203 Requirement to provide public notice of Federal financial assistance programs.
- 200.204 Notices of funding opportunities.
- 200.205 Federal awarding agency review of merit of proposals.
- 200.206 Federal awarding agency review of risk posed by applicants.
- 200.207 Standard application requirements.
- 200.208 Specific conditions.
- 200.209 Certifications and representations.
- 200.210 Pre-award costs.
- 200.211 Information contained in a Federal award.
- 200.212 Public access to Federal award information.
- 200.213 Reporting a determination that a non-Federal entity is not qualified for a Federal award.
- 200.214 Suspension and debarment.
- 200.215 Never contract with the enemy.
- 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.
- 200.217 Whistleblower Protections

Authority: 31 U.S.C. 503; 31 U.S.C. 6101-6106; 31 U.S.C. 6307; 31 U.S.C. 7501-7507.

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

§ 200.200 Purpose.

Sections 200.201 through 200.216 prescribe instructions and other pre-award matters to be used by Federal agencies in the program planning, announcement, application, and award processes.

§ 200.201 Use of grants, cooperative agreements, fixed amount awards, and contracts.

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

(b) *Fixed amount awards*. The Federal agency or pass-through entity (see § 200.333) may use fixed amount awards (see *Fixed amount awards* in § 200.1) for which the following conditions apply:

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal agency or pass-through entity may use fixed amount awards if the project scope has measurable goals and objectives and if adequate cost, historical, or unit pricing data is available to establish a fixed budget based on a reasonable estimate of actual costs. Accountability must be based on performance and results, which can be communicated in performance reports or through routine monitoring. Except in the case of termination before the completion of the Federal award, there is no review of the actual costs incurred by the recipient or subrecipient under the Federal award. Therefore, no financial reporting is required. This does not absolve the awardee from the record retention requirements contained in sections 200.334 through 200.338. Payments must be based on meeting specific requirements of the Federal award. Some of the ways in which the Federal award may be paid include, but are not limited to:

(i) In several partial payments. The amount of each payment as well as the “milestone” or event triggering the payment, should be agreed to in advance and included in the Federal award;

(ii) On a unit price basis. The defined unit(s) or price(s) should be agreed to in advance and included in the Federal award; or

(iii) In one payment at the completion of the Federal award.

(2) A fixed amount award may not be used in programs that require mandatory cost sharing.

(3) A fixed amount award may generate and use program income in accordance with the terms and conditions of the Federal award; however, the requirements of § 200.307 do not apply.

(4) At the end of a fixed amount award, the recipient or subrecipient must certify in writing to the Federal agency or pass-through entity that the project was completed as agreed to in the Federal award and that all expenditures were incurred in accordance with § 200.403. When the required activities were not carried out, including fixed amount awards paid on a unit price basis under 200.201(b)(1)(ii), the amount of the Federal award must be reduced by the amount that reflects the activities that were not completed in accordance with the Federal award. When the required activities were completed in accordance with the terms and conditions of the Federal award, the recipient or subrecipient is entitled to any unexpended funds.

(5) Periodic reports may be established for fixed amount awards.

(6) Prior approval requirements that apply to fixed amount awards are § 200.308 (paragraphs 1 through 3, 6, and 10) and § 200.333.

§ 200.202 Program planning and design.

(a) The Federal agency must design a program and create an Assistance Listing before announcing the Notice of Funding Opportunity. A program must be designed:

(1) With clear goals and objectives that provide meaningful results consistent with the Federal authorizing legislation of the program;

(2) To measure performance based on the goals and objectives developed during program planning and design. Performance measures may differ depending on the type of program. See § 200.301 for more information on performance measurement;

(3) To align with the strategic goals and objectives within the Federal agency's performance plan and should support the Federal agency's performance measurement, management, customer service initiatives, and reporting as required by Part 6 of OMB Circular A-11 (Preparation, Submission, and Execution of the Budget);

(4) To align with the Program Management Improvement Accountability Act (Public Law 114-264) as well as the Foundations for Evidence-Based Policymaking Act (Public Law 115-435), as applicable; and

(5) To encourage the recipient to engage members of the community that will benefit from or be impacted by a program during the design phase, when practicable.

(b) Federal agencies should develop programs in consultation with communities benefiting from or impacted by the program. In addition, Federal agencies should consider available data and evaluation results from past programs and make every effort to extend eligibility requirements to all potential applicants. Federal agencies are encouraged to coordinate with other agencies during program planning and design, particularly when the goals and objectives of a program or project align with those of other agencies.

§ 200.203 Requirement to provide public notice of Federal financial assistance programs.

(a) The Federal agency must maintain an accurate list of Federal programs in the Assistance Listings maintained by the General Services Administration (GSA) at SAM.gov.

(1) The Assistance Listings is the comprehensive government-wide source of Federal financial assistance program information produced by the executive branch of the Federal Government.

(2) The information that the Federal agency must submit to GSA for approval by OMB is listed in paragraph (b). GSA must prescribe the format for the submission in coordination with OMB.

(3) The Federal agency must assign the appropriate Assistance Listing before making the Federal award unless exigent circumstances require otherwise (for example, timing requirements imposed by a Federal statute).

(b) To the extent practicable, the Federal agency must create, update, and manage Assistance Listing entries based on the authorizing statute for the program and comply with additional guidance provided by GSA (in consultation with OMB) to ensure consistent and accurate information is available to prospective applicants. Assistance Listings should be communicated to the public in plain language. Accordingly, Federal agencies must submit the following information to GSA when creating an Assistance Listing:

(1) *Program Description, Purpose, Goals, and Measurement.* A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate, the program description, purpose, goals, and performance measurement should align with the strategic goals and objectives within the Federal agency's performance plan and should support the Federal agency's performance measurement, management, customer service initiatives, and reporting as required by Part 6 of OMB Circular A-11;

(2) *Identification.* Identification of whether the program will issue Federal awards on a discretionary or non-discretionary basis;

(3) *Projected total amount of funds available for the program.* Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission;

(4) *Anticipated source of available funds.* The statutory authority for funding the program and the agency, sub-agency, or specific program unit that will issue the Federal awards (to the extent possible) and associated funding identifier (for example, Treasury Account Symbol(s));

(5) *General eligibility requirements.* The statutory, regulatory, or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (for example, type of recipient); and

(6) *Applicability of Single Audit Requirements.* Applicability of Single Audit Requirements as required by subpart F.

§ 200.204 Notices of funding opportunities.

The Federal agency must announce specific funding opportunities for Federal financial assistance that will be openly competed. The term openly competed means opportunities that are not directed to one or more specifically identified applicants. To the extent possible, the Federal agency should communicate opportunities to the public in plain language to ensure the announcement is accessible to diverse communities of eligible applicants, including underserved communities. The Federal agency should also make efforts to limit the length and complexity of the announcement and only include the information that is necessary for the effective communication of the program objectives. Federal agencies may offer pre-application technical assistance or provide clarifying information for funding opportunities. However, Federal agencies must ensure these resources are made accessible and widely available to all potential

applicants; for example, by posting answers to questions and requests on Grants.gov. The Federal agency should make every effort to identify in the NOFO all eligible applicants (for example, different types of nonprofit organizations such as labor unions). The following information must be provided in a public notice:

(a) *Summary information in notices of funding opportunities.* The Federal agency must display the following information on *Grants.gov*, in a location preceding the full text of the announcement:

(1) Federal Agency Name;

(2) Funding Opportunity Title;

(3) Announcement Type (whether the funding opportunity is the initial announcement or a modification of a previously announced opportunity);

(4) Funding Opportunity Number (required, if the Federal agency has assigned a number to the funding opportunity announcement);

(5) Assistance Listing Number(s);

(6) Funding Details. To the extent appropriate, the total amount of funding that the Federal agency expects to award, the anticipated number of awards, and the expected dollar values of individual awards, which may be a range or average;

(7) Key Dates. Key dates include due dates for submitting applications or Executive Order 12372 submissions, as well as for any letters of intent or preapplications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the Federal agency. If possible, the Federal agency should provide an

anticipated award date. If the NOFO states that applications will be evaluated on a “rolling” basis (that is, at different points during a specified period of time), the Federal agency should provide an estimate of the time needed to process an application and notify the applicant of the Federal agency's decision;

(8) *Executive Summary.* A brief description that is written in plain language and summarizes the goals and objectives of the program, the target audience, and eligible applicants. The text of the executive summary should not exceed 500 words; and

(9) Agency contact information.

(b) *Availability period.* The Federal agency should make all funding opportunities available for application for at least 60 calendar days. However, the Federal agency may extend the availability period of an opportunity as needed. For example, extending the period may be necessary to provide technical assistance to an applicant pool that was not anticipated when the announcement was made or has less experience with applying for Federal financial assistance. The Federal agency may also determine that an availability period of less than 60 days is sufficient for a particular funding opportunity. However, no funding opportunity should be available for less than 30 calendar days unless the Federal agency determines that exigent circumstances justify this.

(c) *Full text of funding opportunities.*

(1) The Federal agency must include the information in Appendix I for every funding opportunity.

(2) Federal agencies should ensure that funding opportunities are written using plain language. To the extent possible Federal agencies must streamline opportunities to make them

accessible, particularly for funding opportunities that are new, targeted to underserved communities, or intended to reach inexperienced applicants.

(3) To reduce application burden, Federal agencies should consider whether programmatic or administrative requirements specific to the agency, program, or funding opportunity must be met at the time of application or as a requirement of receiving a Federal award.

§ 200.205 Federal agency merit review of proposals.

Unless prohibited by Federal statute, the Federal agency must design and execute a merit review process of applications for discretionary Federal awards. The objective of a merit review process is to select recipients most likely to be successful in delivering results based on the program objectives as outlined in section § 200.202. A merit review is an objective process of evaluating Federal award applications in accordance with the written standards of the Federal agency. If utilizing external peer reviewers, these standards should identify the number of people the agency requires to participate in the merit review process and provide opportunities for a diverse group of participants, including those representing underserved communities. This process must be described or incorporated by reference in the applicable funding opportunity. See Appendix I to this part. See also § 200.204. The Federal agency must also periodically review its merit review process.

§ 200.206 Federal agency review of risk posed by applicants.

(a) *Review of OMB-designated repositories of government-wide data.*

(1) Prior to making a Federal award, the Federal agency is required to review eligibility information for applicants and financial integrity information for applicants available in OMB-

designated databases per the Payment Integrity Information Act of 2019 (Public Law 116-117), the “Do Not Pay Initiative” (31 U.S.C. 3354), and 41 U.S.C. 2313.

(2) The Federal agency is required to review the responsibility and qualification records available in the non-public segment of the System for Award Management (SAM.gov) prior to making a Federal award where the Federal share is expected to exceed the simplified acquisition threshold. See 41 U.S.C. 2313. The Federal agency must consider all of the information available in SAM.gov with regard to the applicant and any immediate highest-level owner, predecessor (meaning, an organization that is replaced by a successor), or subsidiary, identified for that applicant in SAM.gov. See Public Law 112-239, National Defense Authorization Act for Fiscal Year 2013. The information in the system for a prior recipient of a Federal award must demonstrate a satisfactory record of administering programs or activities under Federal financial assistance or procurement awards, and integrity and business ethics. The Federal agency may make a Federal award to a recipient that does not fully meet these standards if it is determined that the information is not relevant to the Federal award under consideration or there are specific conditions that can appropriately mitigate the risk associated with the recipient in accordance with § 200.208.

(b) *Risk Assessment.*

(1) The Federal agency must establish and maintain policies and procedures for conducting a risk assessment to evaluate the risks posed by applicants before issuing Federal awards. This assessment helps identify risks that may affect the advancement toward or the achievement of a project’s goals and objectives. Risk assessments assist Federal managers in determining appropriate resources and time to devote to project oversight and monitor recipient

progress. This assessment may incorporate elements such as the quality of the application, award amount, risk associated with the program, cybersecurity risks, and impacts on local jobs and the community. If the Federal agency determines that the Federal award will be made, specific conditions that address the assessed risk may be implemented in the Federal award. The risk criteria to be evaluated must be described in the announcement of the funding opportunity described in § 200.204.

(2) In evaluating risks posed by applicants, the Federal agency should consider the following items:

(i) *Financial stability.* The applicant's record of effectively managing financial risks, assets, and resources;

(ii) *Management systems and standards.* Quality of management systems and ability to meet the management standards prescribed in this part;

(iii) *History of performance.* The applicant's record of managing previous and current Federal awards, including compliance with reporting requirements and conformance to the terms and conditions of Federal awards, if applicable;

(iv) *Audit reports and findings.* Reports and findings from audits performed under subpart F or the reports and findings of any other available audits, if applicable; and

(v) *Ability to effectively implement requirements.* The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on recipients of Federal awards.

(c) *Adjustments to the Risk Assessment.* The Federal agency may modify the risk assessment at any time during the period of performance, which may justify changes to the terms and conditions of the Federal award. See § 200.208.

(d) *Suspension and debarment compliance.*

(1) The Federal agency must comply with the government-wide suspension and debarment guidance in 2 CFR part 180 and individual Federal agency suspension and debarment requirements in title 2 of the Code of Federal Regulations. Federal agencies must also require recipients to comply with these requirements. These requirements restrict making Federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from receiving Federal awards participating in Federal awards.

§ 200.207 Standard application requirements.

(a) *Paperwork clearances.* The Federal agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320 and in alignment with OMB-approved, government-wide data elements available from the OMB-designated standards lead. OMB will authorize additional information collections only on a limited basis and consistent with these requirements.

(b) *Information collection.* The Federal agency may inform applicants that they do not need to provide certain information already being collected through other means.

§ 200.208 Specific conditions.

(a) Federal agencies are responsible for ensuring that specific Federal award conditions and performance expectations are consistent with the program design (See § 200.202 and § 200.301)

(b) The Federal agency or pass-through entity may adjust specific conditions in the Federal award based on an analysis of the following factors:

(1) Review of OMB-designated repositories of government-wide data (for example, *SAM.gov*) or review of its risk assessment (See § 200.206);

(2) The recipient's or subrecipient's history of compliance with the terms and conditions of Federal awards;

(3) The recipient's or subrecipient's ability to meet expected performance goals as described in § 200.211; or

(4) A determination that a recipient or subrecipient has adequate financial resources to perform the Federal award.

(c) Specific conditions may include the following:

(1) Requiring payments as reimbursements rather than advance payments;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance;

(3) Requiring additional or more detailed financial reports;

(4) Requiring additional project monitoring;

(5) Requiring the recipient or subrecipient to obtain technical or management assistance;

or

(6) Establishing additional prior approvals.

(d) Prior to imposing specific conditions, the Federal agency or pass-through entity must notify the recipient or subrecipient as to:

(1) The nature of the specific condition(s);

(2) The reason why the specific condition(s) is being imposed;

(3) The nature of the action needed to remove the specific condition(s);

(4) The time allowed for completing the actions; and

(5) The method for requesting the Federal agency or pass-through entity to reconsider imposing a specific condition.

(e) Any specific conditions must be promptly removed once the conditions that prompted them have been satisfied.

§ 200.209 Certifications and representations.

Unless prohibited by the U.S. Constitution, Federal statutes, or regulations, each Federal agency or pass-through entity is authorized to require a recipient or subrecipient to submit certifications and representations annually in SAM.gov. Submission may be required more frequently if a recipient or subrecipient fails to meet a requirement of a Federal award. When a recipient or subrecipient is provided an exception to the requirements of 2 CFR 25.110, the recipient or subrecipient must submit the appropriate assurance form (for example, SF-424B).

§ 200.210 Pre-award costs.

For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see § 200.458.

§ 200.211 Information contained in a Federal award.

The Federal award must include the following information:

(a) *Federal award performance goals.* Where applicable, performance goals, indicators, targets, and baseline data must be included in the Federal award. The Federal agency must also specify in the terms and conditions of the Federal award how performance will be assessed, including the timing and scope of expected performance. See §§ 200.202 and 200.301 for more information on Federal award performance goals.

(b) *General Federal award information.* The Federal agency must include the following information in each Federal award:

- (1) Recipient Name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.400);
- (2) Recipient's Unique Entity Identifier;
- (3) Unique Federal Award Identification Number (FAIN);
- (4) Federal Award Date (see Federal award date in § 200.1);
- (5) Period of Performance Start and End Date;
- (6) Budget Period Start and End Date;
- (7) Amount of Federal Funds Obligated by this Action;
- (8) Total Amount of Federal Funds Obligated;
- (9) Total Approved Cost Sharing, where applicable;
- (10) Total Amount of the Federal Award including, approved Cost Sharing;
- (11) Budget Approved by the Federal Agency;
- (12) Federal Award Description (to comply with statutory requirements (for example, FFATA));
- (13) Name of the Federal agency (including contact information for the awarding official),
- (14) Assistance Listings Number and Title;
- (15) Identification of whether the Award is R&D; and
- (15) Indirect Cost Rate for the Federal award (including if the de minimis rate is charged per § 200.414).

(c) *General terms and conditions.*

(1) Federal agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:

(i) *Administrative requirements.* Administrative requirements implemented by the Federal agency as specified in this part.

(ii) *National policy requirements.* These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See § 200.300 Statutory and national policy requirements.

(iii) *Recipient integrity and performance matters.* When the total Federal share of the Federal award may include more than \$500,000 over the period of performance, the Federal agency must include the terms and conditions available in Appendix XII. See also § 200.113.

(iv) *Future budget periods.* When it is anticipated that the period of performance will include multiple budget periods, the Federal agency must indicate that subsequent budget periods are subject to the availability of funds, program authority, satisfactory performance, and compliance with the terms and conditions of the Federal award.

(v) *Termination provisions.* Federal agencies must inform recipients of the termination provisions in § 200.340, including the applicable termination provisions in the Federal agency's regulations or terms and conditions of the Federal award.

(2) The Federal award must incorporate, by reference, all general terms and conditions of the Federal award, which must be maintained on the Federal agency's website.

(3) The Federal agency must provide a copy of the full text of the general terms and conditions if a recipient requests it.

(4) The Federal agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by a recipient, auditors, or others. The archive should be located on the Federal agency's website in the same place where current terms and conditions are available.

(d) *Federal award specific terms and conditions.* The Federal agency must include in each Federal award any specific terms and conditions that are in addition to the general terms and conditions. See also § 200.208. Whenever practicable, these specific terms and conditions should also be available on the Federal agency's website and in notices of funding opportunities (as outlined in § 200.204).

(e) *Federal agency requirements.* Any other information required by the Federal agency.

§ 200.212 Public access to Federal award information.

(a) Except as noted in paragraph (c), the Federal agency must publish the required Federal award information on *USAspending.gov* in accordance with the guidance provided by OMB and the U.S. Department of the Treasury's DATA Act Information Model Schema (DAIMS).

(b) All responsibility and qualification records posted in SAM.gov will be publicly available after a waiting period of 14 calendar days, except for:

(1) Past performance reviews required by Federal Government contractors (See Federal Acquisition Regulation (FAR) 48 CFR part 42, subpart 42.15);

(2) Information that was entered prior to April 15, 2011; or

(3) Information that is withdrawn during the 14-calendar day waiting period by a Federal agency.

(c) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C 552), or controlled unclassified information pursuant to Executive Order 13556.

§ 200.213 Reporting a determination that an applicant is not qualified for a Federal award.

(a) The Federal agency must report in SAM.gov if it does not make a Federal award to an applicant because it determines that the applicant does not meet the minimum qualification standards as described in § 200.206(a)(2). The Federal agency must report that determination only if all of the following apply:

(1) The only basis for the determination is the applicant's prior record of performance on administering Federal awards or its record of integrity and business ethics, as described in § 200.206(a)(2) (meaning, the applicant was determined to be qualified based on all factors other than those two standards); and

(2) The total Federal share of the Federal award was expected to exceed the simplified acquisition threshold over the period of performance.

(b) The Federal agency is not required to report a determination that an applicant is not qualified for a Federal award if they issue the Federal award in accordance with the requirements of § 200.208.

(c) If the Federal agency reports a determination that an applicant is not qualified for a Federal award, the Federal agency also must notify the applicant that:

(1) The determination was made and reported in SAM.gov and provides an explanation of the determination;

(2) The information will be kept in the system for a period of five years from the date of the determination and then archived (See section 872 of Public Law 110-417, as amended, codified at 41 U.S.C. 2313);

(3) Each Federal agency that considers making a Federal award to the applicant during that five-year period will consider that information in determining the applicant's qualification to receive a Federal award when the total Federal share of a Federal award is expected to exceed the simplified acquisition threshold over the period of performance;

(4) The applicant may review the responsibility/qualification records accessible in SAM.gov and comment on any information the system contains about the applicant; and

(5) Federal agencies must consider the applicant's comments in determining whether the applicant is qualified for a future Federal award.

(d) If the Federal agency enters information into SAM.gov about a determination that an applicant is not qualified for a Federal award and subsequently:

(1) Learns that any of that information is erroneous, the Federal agency must correct the information in the system within three business days; and

(2) Obtains an update to that information that could be helpful to other Federal agencies, the Federal agency should amend the information in the system within 30 days.

(e) Federal agencies must not post any information that will be made publicly available in the non-public segment of the responsibility/qualification records that is covered by a disclosure exemption under the Freedom of Information Act. If a recipient asserts within seven calendar days to a Federal agency that some or all of the publicly available information is covered by a disclosure exemption under the Freedom of Information Act, the Federal agency that posted the

information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

§ 200.214 Suspension and debarment.

Recipients and subrecipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, as well as 2 CFR part 180. The regulations in 2 CFR part 180 restrict making Federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from receiving or participating in Federal awards.

§ 200.215 Never contract with the enemy.

Federal agencies, recipients, and subrecipients are subject to the guidance implementing Never Contract with the Enemy in 2 CFR part 183. The guidance in 2 CFR part 183 affects covered contracts, grants, and cooperative agreements that are expected to exceed \$50,000 during the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending Federal funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in section 889 of Public Law 115-232, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under section 889 of Public Law 115-232, heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications

equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) A recipient or subrecipient may use covered telecommunications equipment or services for their own purposes (not program activities) provided they are not procured with Federal funds.

(d) The prohibition on covered telecommunications equipment or services applies to funds generated as program income, indirect cost recoveries, or to satisfy cost share requirements.

(e) The recipient or subrecipient is not required to certify that funds were not expended on covered telecommunications equipment or services beyond the certification provided upon signing the award.

(f) For additional information, see section 889 of Public Law 115-232 and § 200.471.

§ 200.217 Whistleblower Protections

An employee of a recipient or subrecipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.

13. Revise part 200, subpart D, to read as follows:

**Subpart D—Post Federal Award Requirements
Sec.**

- 200.300 Statutory and national policy requirements.
- 200.301 Performance measurement.
- 200.302 Financial management.
- 200.303 Internal controls.
- 200.304 Bonds.
- 200.305 Federal payment.
- 200.306 Cost sharing.
- 200.307 Program income.
- 200.308 Revision of budget and program plans.
- 200.309 Modifications to Period of Performance.

Property Standards

Sec.

- 200.310 Insurance coverage.
- 200.311 Real property.
- 200.312 Federally-owned and exempt property.
- 200.313 Equipment.
- 200.314 Supplies.
- 200.315 Intangible property.
- 200.316 Property trust relationship.

Procurement Standards

Sec.

- 200.317 Procurements by states and Indian Tribes.
- 200.318 General procurement standards.
- 200.319 Competition.
- 200.320 Procurement Methods.
- 200.321 Contracting with small businesses, minority businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms.
- 200.322 Domestic preferences for procurements.
- 200.323 Procurement of recovered materials.
- 200.324 Contract cost and price.
- 200.325 Federal awarding agency or pass-through entity review.
- 200.326 Bonding requirements.
- 200.327 Contract provisions.

Performance and Financial Monitoring and Reporting

Sec.

- 200.328 Financial reporting.
- 200.329 Monitoring and reporting program performance.
- 200.330 Reporting on real property.

Subrecipient Monitoring and Management

Sec.

200.331 Subrecipient and contractor determinations.

200.332 Requirements for pass-through entities.

200.333 Fixed amount subawards.

Record Retention and Access

Sec.

200.334 Record retention requirements.

200.335 Requests for transfer of records.

200.336 Methods for collection, transmission, and storage of information.

200.337 Access to records.

200.338 Restrictions on public access to records.

Remedies for Noncompliance

Sec.

200.339 Remedies for noncompliance.

200.340 Termination.

200.341 Notification of termination requirement.

200.342 Opportunities to object, hearings, and appeals.

200.343 Effects of suspension and termination.

Closeout

Sec.

200.344 Closeout.

Post-Closeout Adjustments and Continuing Responsibilities

Sec.

200.345 Post-closeout adjustments and continuing responsibilities.

Collection of Amounts Due

Sec.

200.346 Collection of amounts due.

Authority: 31 U.S.C. 503; 31 U.S.C. 6101-6106; 31 U.S.C. 6307; 31 U.S.C. 7501-7507.

Subpart D - Post Federal Award Requirements

§ 200.300 Statutory and national policy requirements.

(a) The Federal agency or pass-through entity must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, applicable Federal statutes (including statutes that prohibit discrimination) and regulations, and the requirements of this part. The Federal agency or pass-through entity must communicate to a recipient or subrecipient all

relevant requirements, including those contained in general appropriations provisions, and incorporate them directly or by reference in the terms and conditions of the Federal award.

(b) In administering Federal awards that are subject to Federal statutes prohibiting discrimination based on sex, the Federal agency or pass-through entity must ensure that the award is administered in a way that does not unlawfully discriminate based on sexual orientation or gender identity, consistent with the Supreme Court's reasoning in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

(c) In administering awards in accordance with the U.S. Constitution, the Federal agency must take account of the heightened constitutional scrutiny that may apply under the Constitution's Equal Protection clause for government action that provides differential treatment based on sexual orientation or gender identity.

§ 200.301 Performance measurement.

(a) The Federal agency must measure the recipient's performance to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster the adoption of promising practices. The Federal agency should establish program goals and objectives during program planning and design (see § 200.202). The Federal agency should clearly communicate the specific program goals and objectives in the Federal award, including how the Federal agency will measure the achievement of the goals and objectives, the expected timeline, and information on how the recipient must report the achievement of program goals and objectives. The Federal agency should also clearly communicate in the Federal award any expected outcomes, indicators, targets, baseline data, or data collections that the recipient is responsible for measuring and reporting. The Federal agency must ensure all requirements for

measuring performance align with the Federal agency's strategic goals, strategic objectives, or performance goals relevant to a program (see OMB Circular A-11, Preparation, Submission, and Execution of the Budget Part 6).

(b) When establishing performance reporting frequency and content, the Federal agency should consider what information will be necessary to measure the recipient's progress, to identify promising practices of recipients, and build the evidence upon which the Federal agency makes program and performance decisions. The Federal agency should not require additional information that is not necessary for measuring program performance. See § 200.329 for more information on reporting program performance.

(c) The Federal agency should also specify in the Federal award any requirements of the recipients' participation in federally-funded evaluations.

§ 200.302 Financial management.

(a) Each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's funds. All recipient and subrecipient financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by the terms and conditions; and tracking expenditures to establish that funds have been used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award. See § 200.450

(b) The recipient's or subrecipient's financial management system must provide for the following (see §§ 200.334, 200.335, 200.336, and 200.337):

(1) Identification of all Federal awards by the Assistance Listings title and number, Federal award identification number, Federal award year, and name of the Federal agency or pass-through entity.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements in §§ 200.328 and 200.329. When a Federal agency or pass-through entity requires reporting on an accrual basis from a recipient or subrecipient that maintains its records other than on an accrual basis, the recipient or subrecipient must not be required to establish an accrual accounting system. This recipient or subrecipient may develop accrual data for its reports based on an analysis of the documentation on hand.

(3) Maintaining records that sufficiently identify the source and expenditure of Federal funds for Federal awards. These records must contain information necessary to identify Federal awards, authorizations, financial obligations, unobligated balances, assets, expenditures, income, and interest and be supported by source documentation.

(4) Effective control over and accountability for all funds, property, and assets. The recipient or subrecipient must safeguard all assets and ensure they are used solely for authorized purposes. See § 200.303.

(5) Comparison of expenditures with budget amounts for each Federal award.

(6) Written procedures to implement the requirements of § 200.305.

(7) Written procedures for determining the allowability of costs in accordance with subpart E and the terms and conditions of the Federal award.

§ 200.303 Internal controls.

The recipient or subrecipient must:

(a) Establish, document, and maintain effective internal control over the Federal award that provides reasonable assurance that the recipient or subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should comply with the guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control-Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal award.

(c) Evaluate and monitor the recipient’s or subrecipient’s compliance with statutes, regulations, and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified.

(e) Take cybersecurity and other measures as appropriate to safeguard information including protected personally identifiable information (PII). This also includes information the Federal agency or pass-through entity designates as sensitive or other information the recipient or subrecipient considers sensitive and is consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

§ 200.304 Bonds.

(a) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal agency may require adequate bonding and insurance if the

bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government

(b) The Federal agency may require adequate fidelity bond coverage where the recipient entity lacks coverage to protect the interest of the Federal Government.

(c) Where bonds, insurance, or both are required in the situations described above, the bonds and insurance must be obtained from companies holding certificates of authority issued by the U.S. Department of Treasury (see 31 CFR part 223).

§ 200.305 Federal payment.

(a) *Payments for States.* Payments for states are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A-2000, “Overall Disbursing Rules for All Federal Agencies.”

(b) *Payments for recipients and subrecipients other than States.* The payment methods must minimize the time elapsing between the transfer and disbursement of funds regardless of whether the payment is made by electronic funds transfer or by other means. See § 200.302(b)(6). Except as noted in this part, the Federal agency must require recipients to use only OMB-approved, government-wide information collections to request payment.

(1) The recipient or subrecipient must be paid in advance, provided it maintains or demonstrates the willingness to maintain written procedures. Such procedures must minimize the time elapsing between the transfer and disbursement of funds. The procedures must also establish a financial management system that meets the standards for fund control and accountability as established in this part. Advance payments to a recipient or subrecipient must

be limited to the minimum amounts needed and be timed with actual, immediate cash requirements in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements for direct program or project costs and the proportionate share of any allowable indirect costs. The recipient or subrecipient must make timely payments to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payment requests by the recipient or subrecipient must be consolidated to cover anticipated cash needs for all Federal awards received by the recipient from the Federal agency or pass-through entity.

(i) Advance payment mechanisms must comply with 31 CFR part 208 and include, but are not limited to, Treasury checks and electronic funds transfers.

(ii) Recipients and subrecipients must be authorized to submit payment requests as often as necessary when electronic fund transfers are used or at least monthly when electronic transfers are not used. See Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

(3) Reimbursement is preferred when the requirements in paragraph (b) cannot be met, when the Federal agency or pass-through entity sets a specific condition per § 200.208, when requested by the recipient or subrecipient, when a Federal award is for construction, or when a significant portion of the construction project is accomplished through private market financing or Federal loans and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal agency or pass-through entity must make payment within 30 calendar days after receipt of the payment request unless the Federal agency or pass-through entity reasonably believes the request to be improper.

(4) If the recipient or subrecipient cannot meet the criteria for advance payments and the Federal agency or pass-through entity has determined that reimbursement is not feasible because the recipient or subrecipient lacks sufficient working capital, the Federal agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal agency or pass-through entity must advance cash payments to the recipient or subrecipient to cover its estimated disbursement needs for an initial period generally aligned to the recipient's or subrecipient's disbursing cycle. After that, the Federal agency or pass-through entity must reimburse the recipient or subrecipient for its actual cash disbursements. Use of the working capital advance payment method requires that the pass-through entity provide timely advance payments to any subrecipients to meet the subrecipient's actual cash disbursements. The pass-through entity must not use the working capital advance method of payment if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) If available, the recipient or subrecipient must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on Federal funds before requesting additional cash payments.

(6) Payments for allowable costs must not be withheld at any time during the period of performance unless required by Federal statute, regulations, or in one of the following instances:

(i) The recipient or subrecipient has failed to comply with the terms and conditions of the Federal award; or

(ii) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." Under

such conditions, the Federal agency or pass-through entity may, upon reasonable notice, inform the recipient that payments must not be made for financial obligations incurred after a specified date until the conditions are corrected or the debt is repaid to the Federal Government.

(7) A payment withheld for failure to comply with the terms and conditions of the Federal award must be released to the recipient or subrecipient upon subsequent compliance. When a Federal award is suspended, payment adjustments must be made in accordance with § 200.343.

(8) A payment must not be made to a recipient or subrecipient for amounts that the recipient or subrecipient withholds from contractors to assure satisfactory completion of work. Payment must be made when the recipient or subrecipient disburses the withheld funds to the contractors or to escrow accounts established to ensure satisfactory completion of work.

(9) The Federal agency or pass-through entity must not require separate depository accounts for funds provided to the recipient or subrecipient or establish any eligibility requirements for depositories. However, the recipient or subrecipient must be able to account for all Federal funds received, obligated, and expended.

(10) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(11) The recipient or subrecipient must maintain advance payments of Federal funds in interest-bearing accounts unless one of the following applies:

- (i) The recipient or subrecipient receives less than \$250,000 in Federal funding per year;
- (ii) The best available interest-bearing account would not reasonably be expected to earn interest in excess of \$500 per year on Federal cash balances;

(iii) The depository would require an average or minimum balance so high that it would not be feasible with the expected Federal and non-Federal cash resources;

(iv) A foreign government or banking system prohibits or precludes interest-bearing accounts; or

(v) An interest-bearing account is not readily accessible (for example, due to public or political unrest in a foreign country).

(12) The recipient or subrecipient may retain up to \$500 per year of interest earned on Federal funds to use for administrative expenses of the recipient or subrecipient. Any additional interest earned on Federal funds must be returned annually to the Department of Health and Human Services Payment Management System (PMS) through either the Automated Clearing House (ACH) network or a Fedwire Funds Service payment. All interest in excess of \$500 per year must be returned to PMS regardless of whether the recipient or subrecipient was paid through PMS. Instructions for returning interest can be found at <https://pms.psc.gov/grant-recipients/returning-funds-interest.html>.

(13) All other Federal funds must be returned to the payment system of the Federal agency. Returns should follow the instructions provided by the Federal agency. All returns to PMS should follow the instructions provided at <https://pms.psc.gov/grant-recipients/returning-funds-interest.html>.

§ 200.306 Cost sharing.

(a) Cost sharing may not be used as a factor during the merit review of applications or proposals unless allowed by the Federal agency's regulations, and the information is included in

the notice of funding opportunity. Voluntarily committed cost sharing is not expected under Federal research grants. See §§ 200.414, 200.204, and Appendix I.

(b) The Federal agency or pass-through entity must accept any cost sharing or in-kind contributions as part of the recipient's or subrecipient's contributions to a program when they:

- (1) Are verifiable in the recipient's or subrecipient's records;
- (2) Are not included as contributions for any other Federal award;
- (3) Are necessary and reasonable for achieving the objectives of the Federal award;
- (4) Are allowable under subpart E;

(5) Are not paid by the Federal Government under another Federal award, except where the program's Federal authorizing statute specifically provides that Federal funds made available for the program can be applied to cost sharing requirements of other Federal programs.;

- (6) Are provided for in the approved budget when required by the Federal agency; and
- (7) Conform to other applicable provisions of this part.

(c) Unrecovered indirect costs, including indirect costs on cost sharing, may be included as part of cost sharing with the prior approval of the Federal agency or pass-through entity.

Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the recipient's or subrecipient's approved indirect cost rate.

(d) Values for recipient or subrecipient contributions of services and property must be established in accordance with the cost principles in subpart E. When a Federal agency or pass-through entity authorizes the recipient or subrecipient to donate buildings or land for

construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing must be the lesser of paragraph (d)(1) or (2) below.

(1) The value of the remaining life of the property recorded in the recipient's or subrecipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal agency or pass-through may approve using the current fair market value of the donated property, even if it exceeds the value described in paragraph (d)(1) at the time of donation.

(e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other labor may be counted as cost sharing if the service is necessary for the program. Rates for third-party volunteer services must be consistent with those paid for similar work by the recipient or subrecipient. When the required skills are not found in the recipient's or subrecipient's workforce, rates must be consistent with those paid for similar work in the labor market where the recipient or subrecipient competes for the services involved. In either case, fringe benefits that are allowable, allocable, and reasonable may be included in the valuation.

(f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that are allowable, allocable, and reasonable. These services may also include indirect costs at either the third-party organization's federally-negotiated indirect cost rate or a rate in accordance with § 200.414(d). These services are allowable if they employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

(g) Donated property from third parties may include items such as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. The assessed value of donated property included as cost sharing must not exceed the property's fair market value at the time of the donation.

(h) The method used for determining the value of donated equipment, buildings, and land for which title passes to the recipient or subrecipient may differ according to the following:

(1) If the purpose of the Federal award is to assist the recipient or subrecipient in acquiring equipment, buildings, or land, the aggregate value of the donated property may be claimed as cost sharing.

(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings, or land, only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed if provided in the terms and conditions of the Federal award. See § 200.420.

(i) The value of donated property must be determined in accordance with the accounting policies of the recipient or subrecipient with the following qualifications:

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the recipient or subrecipient as established by an independent appraiser (for example, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient or subrecipient as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 USC 4601-4655) except as provided in the implementing regulations at 49 CFR part 24, "Uniform

Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs.”

(2) The value of donated equipment must not exceed the fair market value at the time of donation.

(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment must not exceed its fair rental value.

(j) The fair market value of third-party in-kind contributions must be documented and, to the extent feasible, supported by the same methods used internally by the recipient or subrecipient.

(k) For institutions of higher education (IHE), voluntary uncommitted cost sharing should be treated differently from mandatory or voluntary committed cost sharing and should not be included in the organized research base for computing the indirect cost rate or reflected in any allocation of indirect costs. Voluntary uncommitted cost sharing effort, is faculty-donated additional time above that agreed to as part of the award. See OMB memorandum M-01-06, dated January 5, 2001, Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

§ 200.307 Program income.

(a) *General.* The recipient or subrecipient is encouraged to earn income to defray program costs when appropriate. Program income must be used for the original purpose of the Federal award. Program income earned during the period of performance may only be used for

costs incurred during the period of performance or allowable closeout costs. Program income must be expended prior to requesting additional Federal funds. Program income exceeding amounts specified in the Federal award may be added to or deducted from the total allowable costs in accordance with the terms and conditions of the Federal award.

(b) *Use of program income.* There are three methods of applying program income: (1) deduction; (2) addition; and (3) cost-sharing. The Federal agency should specify how program income will be used in the terms and conditions of the Federal award. The deduction method will be used if the Federal agency does not specify a method for applying program income. However, the addition method will be used when no method is specified for awards made to institutions of higher education (IHE) and nonprofit research institutions. In specifying alternatives to the deduction and addition methods, the Federal agency may distinguish between income earned by the recipient and income earned by subrecipients as well as between the sources, kinds, or amounts of income.

(1) *Deduction.* Program income is deducted from the total allowable costs, reducing the overall total amount of the Federal award.

(2) *Addition.* Program income is added to the total allowable costs, increasing the overall total amount of the Federal award. If no program income method is specified in the Federal award, prior approval is required to use the addition method.

(3) *Cost sharing.* Program income is used to meet the Federal award's cost sharing requirement. If no program income method is specified in the Federal award, prior approval is required to use the cost sharing method.

(c) *Income after the period of performance.* There are no requirements governing the disposition of program income earned after the end of the period of performance of the Federal award unless stipulated in the Federal agency regulations or the terms and conditions of the Federal award. The Federal agency may negotiate agreements with recipients regarding appropriate uses of income earned after the end of the period of performance as part of the closeout process. See § 200.344.

(d) *Cost of generating program income.* If authorized by Federal regulations or the Federal award, costs incidental to generating program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.

(e) The following are not considered program income unless specified in Federal statutes, regulations, or the terms and conditions of the Federal award:

(1) *Governmental revenues.* Taxes, special assessments, levies, fines, and similar revenues the recipient or subrecipient raised.

(2) *Property.* Proceeds from the sale of real property, equipment, or supplies. The proceeds must be handled in accordance with the requirements of the Property Standards of §§ 200.311, 200.313, 200.314, or as explicitly identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

(3) *License fees and royalties.* License fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under the Federal award subject to 37 CFR part 401.

§ 200.308 Revision of budget and program plans.

(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include the Federal share, non-Federal share, or both depending upon Federal agency requirements.

(b) The recipient or subrecipient must report deviations from the approved budget, project or program scope, or objective(s) in accordance with § 200.329. The recipient or subrecipient must request prior approvals from the Federal agency or pass-through entity for budget and program plan revisions in accordance with this section.

(c) When requesting approval for budget revisions, the recipient or subrecipient must use the same format for budget information that was used in their application. However, the Federal agency or pass-through entity may inform the recipient or subrecipient that a letter of request is sufficient.

(d) The Federal agency or pass-through entity must review the request for budget or program plan revision and notify the recipient or subrecipient whether the revisions have been approved within 30 days of receipt of the request. The Federal agency or pass-through entity must inform the recipient or subrecipient in writing when a decision can be expected if more than 30 days is required for a review.

(e) Unless specified in this guidance, the Federal agency may not impose other prior approval requirements for specific items not approved by OMB. See also §§ 200.102 and 200.407.

(f) *Revisions Requiring Prior Approval.* A recipient or subrecipient must request prior written approval from the Federal agency or pass-through entity for the following reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in key personnel specified in the recipient's or subrecipient's application and included in the Federal award.

(3) The disengagement from a project for more than three months, or a 25 percent reduction in time and effort devoted to the Federal award over the course of the period of performance, by the approved project director or principal investigator.

(4) Incurring costs that require prior approval in accordance with subpart E. The Federal agency may waive prior approval of these costs when the costs requiring prior approval are included in the recipient's or subrecipient's application, and also included in the Federal award.

(5) The transfer of funds budgeted for participant support costs to other budget categories.

(6) Subaward activities not proposed in the application and approved in the Federal award. A change in subrecipient only requires prior approval if the Federal agency or pass-through entity includes the requirement in the terms and conditions of the Federal award. In general, a Federal agency or pass-through entity should not require prior approval of a change to the subrecipient unless the inclusion was a determining factor in the merit review or eligibility process. This requirement does not apply to acquiring equipment, supplies, or general support services.

(7) Changes in the total approved cost-sharing amount.

(8) Requesting additional Federal funds to complete the project. If approved, the Federal agency must ensure that adequate funds are available to avoid a violation of the Antideficiency Act.

(9) Transferring funds between the construction and nonconstruction work under a Federal award.

(10) A no-cost extension (meaning, an extension of time that requires no additional Federal funds) of the period of performance, other than any one-time extension authorized by the Federal agency in accordance with paragraph (g)(2). All requests for no-cost extensions should be submitted at least 10 calendar days before the conclusion of the period of performance. The Federal agency may approve multiple no-cost extensions under a Federal award if not prohibited by Federal statute or regulation.

(g) Except for the requirements listed in paragraphs (f)(1) through (10), the Federal agency is authorized to waive other prior written approvals contained in subparts D and E. Such waivers may include authorizing recipients to do one or more of the following:

(1) *Pre-award costs*. Incur project costs 90 calendar days before the Federal award date. Expenses incurred more than 90 calendar days before the Federal award date requires prior approval of the Federal agency. All costs incurred before the Federal award date are at the recipient's own risk (for example, the Federal agency is not required to reimburse such costs if the recipient does not receive the Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). Pre-award costs must be charged to the initial budget period of the Federal award unless otherwise specified by the Federal agency. See also § 200.458.

(2) *One-time extensions.* Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (g)(2)(i) through (iii) of this section apply. Prior approval is not required if a recipient is authorized in the terms and conditions of the Federal award to initiate a one-time extension. However, the recipient must notify the Federal agency in writing with the supporting justification and a revised period of performance at least 10 calendar days before the conclusion of the period of performance. A one-time extension may not be exercised for the sole purpose of using unobligated balances. This paragraph does not preclude the Federal agency from approving further no-cost extensions to the Federal award. One-time extensions require prior approval from the Federal agency when:

- (i) The terms and conditions of the Federal award prohibit the extension.
- (ii) The extension requires additional Federal funds.
- (iii) The extension involves any change in the approved scope of the project.

(3) *Unobligated Balances.* Carry forward unobligated balances to subsequent budget periods.

(h) *Prior approvals for research awards.* The prior approval requirements described in paragraph (g) are automatically waived for Federal awards that support research unless stipulated in the Federal agency's regulations or terms and conditions of the Federal award. However, one-time extensions require the Federal agency's prior approval when one of the conditions in paragraph (g)(2) of this section applies.

(i) *Awards above the Simplified Acquisition Threshold.* The Federal agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation. The Federal agency may restrict the transfer of funds among

direct cost categories (for example, personnel, travel, and supplies) or programs, functions, and activities when:

(1) The Federal share of the Federal award exceeds the simplified acquisition threshold;
and

(2) The cumulative amount of a transfer exceeds 10 percent of the total budget, including cost share, as last approved by the Federal agency.

§ 200.309 Modifications to Period of Performance.

When the Federal agency or pass-through entity extends the Federal award, the period of performance will be amended to end at the completion of the extension. When the Federal agency decides not to continue a Federal award with multiple budget periods, the period of performance will be amended to end at the completion of the authorized budget period. If termination occurs, the period of performance will be amended to end upon the effective date of termination. A renewal award means an award made 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. The start date of a renewal award begins a new and distinct period of performance.

Property Standards

§ 200.310 Insurance coverage.

The recipient or subrecipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property and equipment owned by the recipient or subrecipient. Insurance is not required for Federally-owned property unless required by the terms and conditions of the Federal award.

§ 200.311 Real property.

(a) *Title.* Subject to the requirements and conditions set forth in this section, title to real property acquired or improved under the Federal award will vest upon acquisition in the recipient or subrecipient.

(b) *Use.* Except as otherwise provided by Federal statutes or the Federal agency, real property must be used for the originally-authorized purpose as long as it is needed for that purpose. While the property is being used for the originally-authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests except as provided by the Federal agency. An encumbrance is a claim or liability that is attached to the property or some other right held by a party that is not the owner. An encumbrance may lessen the value of the property and restrict its free use until the encumbrance is lifted.

(c) *Appraisals.* Appraisals of real property must be as conducted by an independent appraiser (for example, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient or subrecipient as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601-4655) except as provided in the implementing regulations at 49 CFR part 24, “Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs.”

(d) *Disposition.* When real property is no longer needed for the originally-authorized purpose, the recipient or subrecipient must obtain disposition instructions from the Federal agency or pass-through entity. The instructions must specify one of the following disposition methods:

(1) *Retain title after compensating the Federal agency.* When the recipient or subrecipient retains title to the property, it must pay the Federal agency an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase (and costs of any improvements) by the current fair market value of the property. However, in situations where the recipient or subrecipient is disposing of real property acquired or improved with the Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sell the property and compensate the Federal agency.* When a recipient or subrecipient sells the property, it must pay the Federal agency an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase (and cost of any improvements) by the proceeds of the sale after deducting any actual and reasonable expenses paid to sell or fix up the property for sale. When the Federal award has not been closed out, the net proceeds from the sale may be offset against the original cost of the property. When directed to sell the property, the recipient or subrecipient must sell the property utilizing procedures that provide for competition to the extent practicable and that results in the highest possible return.

(3) *Transfer title to the Federal agency or a third party designated/approved by the Federal agency.* When a recipient or subrecipient transfers title to the property to a Federal agency or third party designated or approved by the Federal agency, the recipient or subrecipient is entitled to be paid an amount calculated by multiplying the percentage of the recipient's or

subrecipient's contribution towards the original purchase of the real property (and cost of any improvements) by the current fair market value of the property.

§ 200.312 Federally-owned and exempt property.

(a) Title to Federally-owned property remains vested in the Federal Government. The recipient or subrecipient must submit an inventory listing of Federally-owned property in its custody to the Federal agency or pass-through entity on an annual basis. The recipient or subrecipient must request disposition instructions from the Federal agency or pass-through entity upon completion of the Federal award or when the property is no longer needed.

(b) If the Federal agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority unless the Federal agency has statutory authority to dispose of the property by alternative methods (*for example*, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(i)). The Federal agency or pass-through entity must issue appropriate instructions to the recipient or subrecipient.

(c) Exempt property means property acquired under the Federal award where the Federal agency has chosen to vest title to the property to the recipient or subrecipient without further responsibility to the Federal Government. The Federal agency may only exercise this option when permitted by Federal statute and set forth in the terms and conditions of the Federal award. Absent statutory authority and specific terms and conditions of the Federal award, the title to exempt property acquired under the Federal award remains with the Federal Government.

§ 200.313 Equipment.

See also § 200.439.

(a) *Title.* Title to equipment acquired under the Federal award will vest upon acquisition in the recipient or subrecipient subject to the conditions of this section. This title must be a conditional title unless a Federal statute specifically authorizes the Federal agency to vest title in the recipient or subrecipient without further responsibility to the Federal Government (and the Federal agency elects to do so). A conditional title means a clear title is withheld by the Federal agency until conditions and requirements specified in the terms and conditions of a Federal award have been fulfilled. Title for equipment vested in a recipient or subrecipient is subject to the following conditions:

(1) Use the equipment for the authorized purposes of the project during the period of performance or until the property is no longer needed for the purposes of the project.

(2) While the equipment is being used for the originally-authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests without the approval of the Federal agency or pass-through entity. An encumbrance is a claim or liability that is attached to the property or some other right held by a party that is not the owner. An encumbrance may lessen the value of the property and restrict its free use until the encumbrance is lifted.

(3) Use and dispose of the property in accordance with paragraphs (b), (c), and (e) of this section.

(b) *General.* A State must use, manage and dispose of equipment acquired under a Federal award in accordance with State laws and procedures. Indian Tribes must use, manage, and dispose of equipment acquired under a Federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in

this section. Other recipients and subrecipients must follow paragraphs (c) through (e) of this section.

(c) *Use.*

(1) The recipient or subrecipient must use equipment for the project or program for which it was acquired and for as long as needed, whether or not the project or program continues to be supported by the Federal award. The recipient or subrecipient must not encumber the equipment without prior approval of the Federal agency or pass-through entity. The Federal agency may require the submission of the applicable common forms for reporting on equipment. When no longer needed for the original project or program, the equipment may be used in other activities in the following order of priority:

(i) Activities under other Federal awards from the Federal agency that funded the original project; then

(ii) Activities under Federal awards from other Federal agencies. These activities include consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the recipient or subrecipient must also make the equipment available for use on other programs or projects supported by the Federal Government, provided that such use will not interfere with the purpose for which it was originally acquired. First preference for other use of the equipment must be given to other programs or projects supported by the Federal agency that financed the equipment. Second preference must be given to programs or projects under Federal awards from other Federal agencies. Use for non-federally-funded projects is also permissible,

provided such use will not interfere with the purpose for which it was originally acquired. The recipient or subrecipient should consider charging user fees as appropriate.

(3) Notwithstanding the encouragement in § 200.307 to earn program income, the recipient or subrecipient must not use equipment acquired with the Federal award to provide services for a fee that is less than a private company would charge for similar services. This restriction is effective as long as the Federal Government retains an interest in the equipment or as authorized by Federal statute.

(4) When acquiring replacement equipment, the recipient or subrecipient may either trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment.

(d) *Management requirements.* Regardless of whether equipment is acquired in part or its entirety under the Federal award, the recipient or subrecipient must manage equipment (including replacing equipment) utilizing procedures that meet the following requirements:

(1) Property records must include a description of the property, a serial number or another identification number, the source of funding for the property (including the FAIN), the title holder, the acquisition date, the cost of the property, the percentage of the Federal agency contribution towards the original purchase, the location, use and condition of the property, and any disposition data including the date of disposal and sale price of the property. The recipient is responsible for maintaining and updating property records when there is a change in the status of the property.

(2) A physical inventory of the property must be conducted, and the results must be reconciled with the property records at least once every two years.

(3) A control system must be in place to ensure safeguards for preventing property loss, damage, or theft. Any loss, damage, or theft of equipment must be investigated and reported to the Federal agency or pass-through entity.

(4) Regular maintenance procedures must be in place to ensure the property is in proper working condition.

(5) If the recipient or subrecipient is authorized or required to sell the property, proper sales procedures must be in place to ensure the highest possible return.

(e) *Disposition.* When equipment acquired under a Federal award is no longer needed for the original project, program, or for other activities currently or previously supported by a Federal agency, the recipient or subrecipient must request disposition instructions from the Federal agency or pass-through entity if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal agency or pass-through entity disposition instructions:

(1) Equipment with a current fair market value of \$10,000 or less (per unit) may be retained, sold, or otherwise disposed of with no further responsibility to the Federal agency or pass-through entity.

(2) Except as provided in § 200.312(b), or if the Federal agency or pass-through entity fails to provide requested disposition instructions within 120 days, items of equipment with a current fair market value in excess of \$10,000 (per-unit) may be retained or sold by the recipient or subrecipient. However, the Federal agency is entitled to an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase by the current market value or proceeds from the sale. If the equipment is sold, the Federal agency or pass-

through entity may permit the recipient or subrecipient to retain \$1,000 or 10 percent (whichever is less) from the Federal share of the proceeds to cover expenses associated with the selling and handling of the equipment.

(3) The recipient or subrecipient may transfer title to the property to the Federal Government or to an eligible third party provided that the recipient or subrecipient must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a recipient or subrecipient fails to take appropriate disposition actions, the Federal agency or pass-through entity may direct the recipient or subrecipient to take disposition actions.

(f) *Equipment retention.* When included in the terms and conditions of the Federal award, the Federal agency may permit the recipient to retain equipment with no further obligation to the Federal Government unless prohibited by Federal statute or regulation.

§ 200.314 Supplies.

See also § 200.453.

(a) Title to supplies acquired under the Federal award will vest upon acquisition in the recipient or subrecipient. When there is a residual inventory of unused supplies exceeding \$10,000 in aggregate value at the end of the period of performance, and the supplies are not needed for any other Federal award, the recipient or subrecipient may retain or sell the unused supplies. Unused supplies means supplies that are in new condition, not having been used or opened before. The aggregate value of unused supplies consists of all supply types, not just like-item supplies. The Federal agency or pass-through entity is entitled to compensation in an

amount calculated by multiplying the percentage of the Federal agency's or pass-through-through entity's contribution towards the cost of the original purchase(s) by the current market value or proceeds from the sale. If the supplies are sold, the Federal agency or pass-through entity may permit the recipient or subrecipient to retain \$500 or 10 percent (whichever is less) from the Federal share of the proceeds to cover expenses associated with the selling and handling of the supplies.

(b) Unless expressly authorized by Federal statute, the recipient or subrecipient must not use supplies acquired with the Federal award to provide services for a fee that is less than a private company would charge for similar services. This restriction is effective as long as the Federal Government retains an interest in the supplies or as authorized by Federal statute.

§ 200.315 Intangible property.

(a) Title to intangible property acquired under a Federal award vest upon acquisition in the recipient or subrecipient. The recipient or subrecipient must use that intangible property for the originally-authorized purpose and must not encumber the property without the approval of the Federal agency or pass-through entity. An encumbrance is a claim or liability that is attached to the property or some other right held by a party that is not the owner. An encumbrance may lessen the value of the property and restrict its free use until the encumbrance is lifted. When no longer needed for the originally-authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 200.313(e).

(b) To the extent permitted by law, the recipient or subrecipient is not prohibited from asserting any copyright it may own in any work resulting from or acquired under the Federal award. To the extent permitted by law, the Federal agency reserves a royalty-free, nonexclusive,

and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes and to authorize others to do so. This includes the right to require recipients and subrecipients to make such works available through agency-designated public access repositories.

(c) The recipient or subrecipient is subject to applicable regulations governing patents and inventions, including government-wide regulations in 37 CFR 401.

(d) The Federal Government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award;
and

(2) Authorize others to receive, reproduce, publish, or otherwise use the data for Federal purposes.

(e)

(1) The recipient or subrecipient must provide research data relating to published research findings produced under the Federal award and that were used by the Federal Government in developing an agency action that has the force and effect of law if requested by the Federal agency in response to a Freedom of Information Act (FOIA) request. When the Federal agency obtains the research data solely in response to a FOIA request, the Federal agency may charge the requester a fee for the cost of obtaining the research data. This fee should reflect the costs incurred by the Federal agency and the recipient or subrecipient. This fee is in addition to any fees the Federal agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings mean:

(i) Research findings published in a peer-reviewed scientific or technical journal; or

(ii) Research findings publicly cited by a Federal agency in developing an agency action that has the force and effect of law.

(3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings. Research data does not include any of the following:

(i) Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (for example, laboratory samples).

(ii) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(iii) Personnel, medical, and other personally identifiable information that, if disclosed, would constitute an invasion of personal privacy. Information that could identify a particular person in a research study is not considered research data.

§ 200.316 Property trust relationship.

Real property, equipment, and intangible property acquired or improved with the Federal award must be held in trust by the recipient or subrecipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal agency or pass-through entity may require the recipient or subrecipient to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

Procurement Standards

§ 200.317 Procurements by States and Indian Tribes.

When conducting procurement transactions under a Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements with non-Federal funds. If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in §§ 200.318 through 200.327. In addition to its own policies and procedures, a State or Indian Tribe must also comply with the following procurement standards: §§ 200.321, 200.322, 200.323, and 200.327. All other recipients and subrecipients, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

§ 200.318 General procurement standards.

(a) The recipient or subrecipient must maintain and use documented procedures for procurement transactions under a Federal award or subaward, including for acquisition of property or services. These documented procurement procedures must be consistent with State, local, and tribal laws and regulations and the standards identified in §§ 200.317 through 200.327.

(b) Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c) *Conflicts of interest.*

(1) The recipient or subrecipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No employee, officer, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the Federal award. A conflict of interest includes when the employee, officer, or agent, any member of their immediate family, their partner, or an organization that

employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. An employee, officer, and agent of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors. However, the recipient or subrecipient may set standards for situations where the financial interest is not substantial or a gift is an unsolicited item of nominal value. The recipient's or subrecipient's standards of conduct must also provide for disciplinary actions to be applied for violations by its employees, officers, agents, or board members.

(2) If the recipient or subrecipient has a parent, affiliate, or subsidiary organization that is not a State or Indian Tribe, the recipient or subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient or subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The recipient's or subrecipient's procedures must avoid the acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. When appropriate, an analysis should be made between leasing and purchasing property or equipment to determine the most economical approach.

(e) When appropriate for the procurement or use of common or shared goods and services, recipients and subrecipients are encouraged to enter into State and local intergovernmental agreements or inter-entity agreements for procurement transactions. These or

similar procurement arrangements using strategic sourcing may foster greater economy and efficiency. Documented procurement actions of this type (using strategic sourcing, shared services, and other similar procurement arrangements) will meet the competition requirements of this part.

(f) The recipient or subrecipient is encouraged to use excess and surplus Federal property instead of purchasing new equipment and property when it is feasible and reduces project costs.

(g) When practical, the recipient or subrecipient is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering means analyzing each contract item or task to ensure its essential function is provided at the overall lowest cost.

(h) The recipient or subrecipient must award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract. The recipient or subrecipient must consider contractor integrity, public policy compliance, proper classification of employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), past performance record, and financial and technical resources when conducting a procurement transaction. See also § 200.214.

(i) The recipient or subrecipient must maintain records sufficient to detail the history of each procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.

(j) *Time-and-materials type contracts.*

(1) The recipient or subrecipient may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a recipient or subrecipient is the sum of:

- (i) The actual cost of materials; and
- (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Because this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the recipient or subrecipient awarding such a contract must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The recipient or subrecipient is responsible for the settlement of all contractual and administrative issues arising out of its procurement transactions. These issues include but are not limited to, source evaluation, protests, disputes, and claims. In resolving these issues, the Federal agency may not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a Federal concern. Proper oversight does not relieve the recipient or subrecipient of any of its contractual responsibilities. Violations of law must be referred to the Federal, State, or local authority with proper jurisdiction.

(l) The procurement standards in this subpart do not prohibit recipients or subrecipients from using Project Labor Agreements (PLAs) or similar forms of pre-hire collective bargaining

agreements; requiring construction contractors to use hiring preferences or goals for people residing in high-poverty areas, disadvantaged communities as defined by the Justice40 Initiative OMB Memorandum M-21-28, or high-unemployment census tracts within a region no smaller than the county where a federally funded construction project is located, consistent with the policies and procedures of the recipient or subrecipient, provided that a recipient or subrecipient may not prohibit interstate hiring; requiring a contractor to use hiring preferences or goals for individuals with barriers to employment (as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. § 3102(24))), including women and people from underserved communities as defined by Executive Order 13985; using agreements intended to ensure uninterrupted delivery of services; using agreements intended to ensure community benefits; or offering employees of a predecessor contractor rights of first refusal under a new contract. Federal agencies may allow recipients and subrecipients to use such practices if consistent with the U.S. Constitution, applicable Federal statutes and regulations, the objectives and purposes of the applicable Federal financial assistance program, and other requirements of this part.

§ 200.319 Competition.

(a) All procurement transactions under the Federal award must be conducted in a manner that provides full and open competition and is consistent with the standards of this section and § 200.320.

(b) To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that assist recipients and subrecipients with developing or drafting specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements.

(c) Examples of requirements that may restrict competition include, but are not limited to:

(1) Placing unreasonable requirements on firms for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(d) The recipient or subrecipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Are made in accordance with § 200.319(b);

(2) Incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured. The description may include a statement of the qualitative nature of the property, equipment, or service to be procured. When necessary, the description must provide minimum essential characteristics and standards to which the property, equipment, or service must conform. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to clearly and accurately describe the technical requirements, a “brand name or equivalent” description of features may be used to provide procurement requirements. The specific features of the named brand must be clearly stated; and

(3) Identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals.

(e) The recipient or subrecipient must ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and include enough qualified sources to ensure maximum open competition. When establishing or amending prequalified lists, the recipient or subrecipient must consider objective factors that evaluate price and cost to maximize competition. The recipient or subrecipient must not preclude potential bidders from qualifying during the solicitation period.

(f) To the extent consistent with established practices and legal requirements applicable to the recipient or subrecipient, this subpart does not prohibit recipients or subrecipients from developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work or products providing services on a contract, and other worker protections. This subpart also does not prohibit recipients and subrecipients from making inquiries of bidders about these subjects and assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award.

(g) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

§ 200.320 Procurement Methods.

There are three types of procurement methods described in this section: (a) informal procurement methods (for micro-purchases and simplified acquisitions); (b) formal procurement methods (through sealed bids or proposals); and (c) noncompetitive procurement methods. For any of these methods, the recipient or subrecipient must maintain and use documented

procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319.

(a) *Informal procurement methods for small purchases.* These procurement methods expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods may be used when the value of the procurement transaction under the Federal award does not exceed the simplified acquisition threshold as defined in § 200.1. Recipients and subrecipients may also establish a lower threshold. Informal procurement methods include:

(1) *Micro-purchases.*

(i) *Distribution.* The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold defined in § 200.1. To the extent practicable, the recipient or subrecipient should distribute micro-purchases equitably among qualified suppliers.

(ii) *Micro-purchase awards.* Micro-purchases may be awarded without soliciting competitive price or rate quotations if the recipient or subrecipient considers the price reasonable based on research, experience, purchase history, or other information. Purchase cards may be used as a method of payment for micro-purchases.

(iii) *Micro-purchase thresholds.* The recipient or subrecipient is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the recipient or subrecipient must be authorized or not prohibited under State, local, or tribal laws or regulations. The recipient or subrecipient may establish a threshold higher

than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) *Recipient or subrecipient increase to the micro-purchase threshold up to \$50,000.*

The recipient or subrecipient may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The recipient or subrecipient may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal agency or pass-through entity and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold is consistent with State law.

(v) *Recipient or subrecipient increase to the micro-purchase threshold over \$50,000.*

Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The recipient or subrecipient must submit a request that includes the requirements in paragraph (a)(1)(iv) above. The increased threshold is valid until any factor that was relied on in the establishment and rationale of the threshold changes.

(2) *Simplified acquisitions.*

(i) *Simplified acquisition procedures.* The aggregate dollar amount of the procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified

acquisition threshold. If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the recipient or subrecipient.

(ii) *Simplified acquisition thresholds.* The recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures, which may be lower than, but not exceed, the threshold established in the FAR.

(b) *Formal procurement methods.* Formal procurement methods are required when the value of the procurement transaction under a Federal award exceeds the simplified acquisition threshold of the recipient or subrecipient. Formal procurement methods are competitive and require public notice. The following formal methods of procurement are used for procurement transactions above the simplified acquisition threshold determined by the recipient or subrecipient in accordance with paragraph (a)(2)(ii):

(1) *Sealed bids.* This is a procurement method in which bids are publicly solicited through an invitation and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price. The sealed bids procurement method is preferred for procuring construction services.

- (i) For sealed bidding to be feasible, the following conditions should be present:
 - (A) A complete, adequate, and realistic specification or purchase description is available;
 - (B) Two or more responsible bidders have been identified as willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm-fixed-price contract, and the selection of the successful bidder can be made principally based on price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them with sufficient response time prior to the date set for opening the bids. For local governments, the invitation for bids must be publicly advertised.

(B) The invitation for bids must define the items or services with specific information, including any required specifications, for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids. For local governments, the bids must be opened publicly.

(D) A firm-fixed-price contract is awarded in writing to the lowest responsive bid and responsible bidder. When specified in the invitation for bids, factors such as discounts, transportation cost, and life-cycle costs must be considered in determining which bid is the lowest. Payment discounts must only be used to determine the low bid when the recipient or subrecipient determines they are a valid factor based on prior experience.

(E) The recipient or subrecipient must document and provide a justification for all bids it rejects.

(2) *Proposals*. This is a procurement method used when conditions are not appropriate for using sealed bids. This procurement method may result in either a fixed-price or cost-reimbursement contract. They are awarded in accordance with the following requirements:

(i) Requests for proposals require public notice, and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified

entities. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered.

(ii) The recipient or subrecipient must have written procedures for conducting technical evaluations and making selections.

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors; and

(iv) The recipient or subrecipient may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used to procure architectural/engineering (A/E) professional services. The method may not be used to purchase other services provided by A/E firms that are a potential source to perform the proposed effort.

(c) *Noncompetitive procurement.* There are specific circumstances in which the recipient or subrecipient may use a noncompetitive procurement method. The noncompetitive procurement method may only be used if one of the following circumstances apply:

(1) The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The procurement transaction can only be fulfilled by a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;

(4) The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or

(5) After soliciting several sources, competition is determined inadequate.

§ 200.321 Contracting with small businesses, minority businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms.

(a) When possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor’s list) are considered as set forth below.

(b) Such consideration means:

(1) These business types are included on solicitation lists;

(2) These business types are solicited whenever they are deemed eligible as potential sources;

(3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;

(4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;

(5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring a contractor under a Federal award to apply this section to subcontracts.

§ 200.322 Domestic preferences for procurements.

(a) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or

materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

§ 200.323 Procurement of recovered materials.

(a) A recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an

affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

§ 200.324 Contract cost and price.

(a) The recipient or subrecipient must perform a cost-benefit or price analysis for every procurement transaction, including contract modifications, in excess of the Simplified Acquisition Threshold. The method and degree of analysis conducted depend on the facts surrounding the particular procurement transaction. For example, the recipient or subrecipient should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However, as a starting point, the recipient or subrecipient must develop their own estimates before receiving bids or proposals.

(b) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred or cost estimates included in negotiated prices would be allowable for the recipient or subrecipient under subpart E. The recipient or subrecipient may reference its own cost principles as long as they comply with subpart E.

(c) The recipient or subrecipient may not use the “cost plus a percentage of cost” and “percentage of construction costs” methods of contracting.

§ 200.325 Federal agency or pass-through entity review.

(a) The Federal agency or pass-through entity may review the technical specifications of proposed procurements under the Federal award if the Federal agency or pass-through entity believes the review is needed to ensure that the item or service specified is the one being proposed for acquisition. The recipient or subrecipient must submit the technical specifications of proposed procurements when requested by the Federal agency or pass-through entity. This review should take place prior to the time the specifications are incorporated into a solicitation document. When the recipient or subrecipient desires to accomplish the review after a solicitation has been developed, the Federal agency or pass-through entity may still review the specifications. In those cases, the review should be limited to the technical aspects of the proposed purchase.

(b) When requested, the recipient or subrecipient must provide procurement documents (such as requests for proposals, invitations for bids, or independent cost estimates) to the Federal agency or pass-through entity for pre-procurement review. The Federal agency or pass-through entity may conduct a pre-procurement review when:

(1) The recipient's or subrecipient's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition, or only one bid is expected to be received in response to a solicitation;

(3) The procurement is expected to exceed the Simplified Acquisition Threshold and specifies a "brand name" product;

(4) The procurement is expected to exceed the Simplified Acquisition Threshold, and a sealed bid procurement is to be awarded to an entity other than the apparent low bidder; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The recipient or subrecipient is exempt from the pre-procurement review in paragraph (b) of this section if the Federal agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The recipient or subrecipient may request that the Federal agency or pass-through entity review its procurement system to determine whether it meets these standards for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding and third-party contracts are awarded regularly.

(2) The recipient or subrecipient may self-certify its procurement system. However, self-certification does not limit the Federal agency's or pass-through-through entity's right to review the system. Under a self-certification procedure, the Federal agency or pass-through entity may rely on written assurances from the recipient or subrecipient that it is complying with the standards of this part. The recipient or subrecipient must cite specific policies, procedures, regulations, or standards as complying with these requirements and have its system available for review.

§ 200.326 Bonding requirements.

The Federal agency or pass-through entity may accept the recipient's or subrecipient's bonding policy and requirements for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold. Before doing so, the Federal

agency or pass-through entity must determine that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute any required contractual obligations within the specified timeframe.

(b) A performance bond on the contractor's part for 100 percent of the contract price. A performance bond is a bond executed in connection with a contract to secure the fulfillment of all the contractor's requirements under a contract.

(c) A payment bond on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.

§ 200.327 Contract provisions.

The recipient's or subrecipient's contracts must contain the applicable provisions described in Appendix II of this part.

Performance and Financial Monitoring and Reporting

§ 200.328 Financial reporting.

(a) The Federal agency must only require OMB-approved government-wide data elements on recipient financial reports. At the time of publication, this consists of the Federal Financial Report (SF-425); however, this also applies to any future OMB-approved government-wide data elements available from the OMB-designated standards lead.

(b) The Federal agency or pass-through entity must collect financial reports no less than annually. The Federal agency or pass-through entity may not collect financial reports more frequently than quarterly unless a specific condition has been implemented in accordance with § 200.208. To the extent practicable, the Federal agency or pass-through entity should collect financial reports in coordination with performance reports.

(c) The recipient or subrecipient must submit financial reports as required by the Federal award. Reports submitted annually by the recipient or subrecipient must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period.

(d) The final financial report submitted by the recipient must be due no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must submit a final financial report to a pass-through entity no later than 90 calendar days after the conclusion of the period of performance. See also § 200.344. The Federal agency or pass-through entity may extend the due date for any financial report with justification from the recipient or subrecipient.

§ 200.329 Monitoring and reporting program performance.

(a) *Monitoring by the recipient.* The recipient or subrecipient is responsible for the oversight of the Federal award. The recipient or subrecipient must monitor its activities under Federal awards to ensure they are compliant with all requirements and meeting performance expectations. Monitoring by the recipient or subrecipient must cover each program, function, or activity. See also § 200.332.

(b) *Reporting program performance.* The Federal agency must use OMB-approved common information collections, as applicable, when requesting performance reporting

information. The Federal agency must only require OMB-approved government-wide data elements in collection of performance information including Research Performance Progress Reports if applicable. The Federal agency or pass-through entity may not collect performance reports more frequently than quarterly unless a specific condition has been implemented in accordance with § 200.208. To the extent practicable, the Federal agency or pass-through entity should collect performance reports in coordination with financial reports. When reporting program performance, the recipient or subrecipient must relate financial data and project or program accomplishments to the performance goals and objectives of the Federal award. Also, the recipient or subrecipient must provide cost information to demonstrate cost-effective practices (for example, through unit cost data) when required by the terms and conditions of the Federal award. In some instances (for example, discretionary research awards), this may be limited to the requirement to submit technical performance reports. Reporting requirements must clearly indicate a standard against which the recipient's or subrecipient's performance can be measured. As noted in OMB Circular A-11, Part 6, Section 280, measures of customer experience are of co-equal importance as traditional measures of financial and operational performance. Reporting requirements should not solicit information from the recipient or subrecipient that is not necessary for the effective monitoring of the Federal award. Federal agencies should consult monitoring framework documents such as the agency's Evaluation Plan to make that determination.

(c) Submitting performance reports.

(1) The recipient or subrecipient must submit performance reports as required by the Federal award. Intervals must be no less frequent than annually nor more frequent than quarterly

except if specific conditions are applied (See § 200.208). Reports submitted annually by the recipient or subrecipient must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period. Alternatively, the Federal agency or pass-through entity may require annual reports before the anniversary dates of multiple-year Federal awards. The final performance report submitted by the recipient must be due no later than 120 calendar days after the period of performance. A subrecipient must submit a final performance report to a pass-through entity no later than 90 calendar days after the conclusion of the period of performance. See also § 200.344. The Federal agency or pass-through entity may extend the due date for any performance report with justification from the recipient or subrecipient.

(2) As applicable, performance reports should contain information on the following:

(i) A comparison of accomplishments to the objectives of the Federal award established for the reporting period (for example, comparing costs to units of accomplishment). Where performance trend data and analysis would be informative to the Federal agency program, the Federal agency should include this as a performance reporting requirement.

(ii) Explanations on why established goals or objectives were not met; and

(iii) Additional information, analysis, and explanation of cost overruns or higher-than-expected unit costs.

(d) *Construction performance reports.* Federal agencies or pass-through-through entities rely on on-site technical inspections and certified percentage of completion data to monitor progress under Federal awards for construction. Therefore, the Federal agency or pass-through

entity may require additional performance reports when necessary to ensure the goals and objectives of Federal awards are met.

(e) *Significant developments.* The recipient or subrecipient must inform the Federal agency or pass-through entity of any significant developments between performance reporting due dates that could impact the Federal award. Significant developments include events that enable meeting milestones and objectives sooner or at less cost than anticipated or that produce different beneficial results than originally planned. Significant developments also include problems, delays, or adverse conditions which will impact the recipient's or subrecipient's ability to meet milestones or the objectives of the Federal award. When significant developments occur that negatively impact the Federal Award, the recipient or subrecipient must include information on their plan for corrective action and any assistance needed to resolve the situation.

(f) *Site visits.* The Federal agency or pass-through entity may conduct in-person or virtual site visits as warranted.

(g) *Performance report requirement waiver.* The Federal agency may waive any performance report that is not necessary to ensure the goals and objectives of the Federal award are being achieved.

§ 200.330 Reporting on real property.

The Federal agency or pass-through entity must require the recipient or subrecipient to submit at least annual reports on the status of real property in which the Federal Government retains an interest. In instances where the Federal Government's interest in the real property extends for 15 years or more, the Federal agency or pass-through entity may require the recipient or subrecipient to report at various multi-year frequencies. Reports submitted at multi-year

frequencies may not exceed a five-year reporting period. The Federal agency must only require OMB-approved government-wide data elements on recipient real property reports.

Subrecipient Monitoring and Management

§ 200.331 Subrecipient and contractor determinations.

An entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor. The recipient or subrecipient is responsible for making case-by-case determinations to determine whether the entity receiving Federal funds is a subrecipient or a contractor. The Federal agency may require the recipient or subrecipient to comply with additional guidance to inform these determinations. The Federal agency does not have a direct legal relationship with subrecipients or contractors of any tier. All of the characteristics listed below may not be present in all cases, and some characteristics from both categories may be present at the same time. Therefore, the recipient or subrecipient is responsible for determining the nature of an agreement. The substance of the relationship is more important than the form of the agreement.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of the Federal award and creates a Federal financial assistance relationship with a subrecipient. See the definition of *Subaward* in § 200.1. Characteristics that support the classification of the entity as a subrecipient include, but are not limited to, when the entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether the objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision-making;

(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

(5) Implements a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors*. A contract is for the purpose of obtaining goods and services for the recipient's or subrecipient's use and creates a procurement relationship with a contractor. See the definition of *contract* in § 200.1. Characteristics that support a procurement relationship between the recipient or subrecipient and a contractor include, but are not limited to, when the contractor:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the implementation of a Federal program; and

(5) Is not subject to compliance requirements of a Federal program as a result of the agreement. However, similar requirements may apply for other reasons.

§ 200.332 Requirements for pass-through entities.

A pass-through entity must:

(a) Confirm in SAM.gov that a potential subrecipient is not suspended, debarred, or otherwise excluded from receiving Federal funds.

(b) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the information provided below. A pass-through entity must provide the best available information when some of the information below is unavailable. A pass-through entity must

amend a subaward if additional information becomes available or data elements change.

Required information includes:

- (1) Federal award identification.
 - (i) Subrecipient's name (must match the name associated with its unique entity identifier);
 - (ii) Subrecipient's unique entity identifier;
 - (iii) Federal Award Identification Number (FAIN);
 - (iv) Federal Award Date;
 - (v) Subaward Period of Performance Start and End Date;
 - (vi) Subaward Budget Period Start and End Date;
 - (vii) Amount of Federal Funds Obligated in the subaward;
 - (viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity, including the current financial obligation;
 - (ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
 - (x) Federal award project description, as required by the Federal Funding Accountability and Transparency Act (FFATA);
 - (xi) Name of the Federal agency, pass-through entity, and contact information for awarding official of the pass-through entity;
 - (xii) Assistance Listings title and number; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at the time of disbursement;

(xiii) Identification of whether the Federal award is for research and development; and

(xiv) Indirect cost rate for the Federal award (including if the de minimis rate is used in accordance with § 200.414).

(2) All requirements of the subaward, including requirements imposed by Federal statutes, regulations, and the terms and conditions of the Federal award;

(3) Any additional requirements that the pass-through entity imposes on the subrecipient for the pass-through entity to meet its responsibilities under the Federal award. This includes information and certifications (see § 200.415) required for submitting financial and performance reports that the pass-through entity must provide to the Federal agency;

(4) Indirect Cost Rate;

(i) An approved indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, a pass-through entity must determine the appropriate rate in collaboration with the subrecipient. The indirect cost rate may be either:

(A) An indirect cost rate negotiated between the pass-through entity and the subrecipient. These rates may be based on a prior negotiated rate between a different pass-through entity and the subrecipient. In these instances, the pass-through entity is not required to collect information justifying the rate but may elect to do so; or

(B) The de minimis indirect cost rate.

(ii) The pass-through entity must not require the use of the de minimis indirect cost rate if the subrecipient has an approved indirect cost rate negotiated with the Federal Government. Subrecipients may elect to use the cost allocation method to account for indirect costs in accordance with § 200.405(d).

(5) A requirement that the subrecipient permit the pass-through entity and auditors to access the subrecipient's records and financial statements for the pass-through entity to fulfill its monitoring requirements; and

(6) Appropriate terms and conditions concerning the closeout of the subaward.

(c) Prior to issuing a subaward, evaluate each subrecipient's risk of noncompliance with a subaward to determine the appropriate subrecipient monitoring described in paragraph (e) of this section. When evaluating a subrecipient's risk, a pass-through entity should consider the following:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits. This includes considering whether or not the subrecipient receives a Single Audit in accordance with subpart F and the extent to which the same or similar subawards have been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems, policies, or procedures; and

(4) Any Federal agency monitoring results (for example, if the subrecipient also receives Federal awards directly from the Federal agency).

(d) If appropriate, consider implementing specific conditions in a subaward described in § 200.208 and notify the Federal agency of the specific conditions.

(e) Monitor the activities of a subrecipient to ensure that a subaward complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the

goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Review financial and performance reports.

(2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

(3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) Resolve audit findings specifically related to the subaward. However, the pass-through entity is not responsible for resolving cross-cutting findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report and has not been excluded from receiving Federal funding (meaning, has not been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section § 200.513(a)(4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

(f) Depending upon the pass-through entity's assessment of the risk posed by the subrecipient (as described in paragraph (c) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters;

(2) Performing site visits to review the subrecipient's program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in § 200.425.

(g) Verify that a subrecipient is audited as required by subpart F.

(h) Consider whether the results of a subrecipient's audit, on-site reviews, or other monitoring necessitate adjustments to the pass-through entity's records.

(i) Consider taking enforcement action against noncompliant subrecipients as described in § 200.339 and in program regulations.

§ 200.333 Fixed amount subawards.

With prior written approval from the Federal agency, the recipient may provide subawards based on fixed amounts. Fixed amount subawards must meet the requirements of § 200.201.

Record Retention and Access

§ 200.334 Record retention requirements.

The recipient or subrecipient must retain all Federal award records for three years from the date of submission of the final financial report. For awards that are renewed quarterly or annually, the recipient or subrecipient must retain records for three years from the date of

submission of the quarterly or annual financial report, respectively. Records to be retained include but are not limited to, financial records, supporting documentation, and statistical records. Federal agencies or pass-through-through entities may not impose any other record retention requirements except for the following:

(a) The records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken if any litigation, claim, or audit is started before the expiration of the three-year period.

(b) When the recipient or subrecipient is notified in writing by the Federal agency or pass-through entity, cognizant agency for audit, oversight agency for audit, or cognizant agency for indirect costs to extend the retention period.

(c) The records for property and equipment acquired with the support of Federal funds must be retained for three years after final disposition.

(d) The three-year retention requirement does not apply to the recipient or subrecipient when records are transferred to or maintained by the Federal agency.

(e) The records for program income earned after the period of performance must be retained for three years from the end of the recipient's or subrecipient's fiscal year in which the program income is earned. This only applies if the Federal agency or pass-through entity requires the recipient or subrecipient to report on program income earned after the period of performance in the terms and conditions of the Federal award.

(f) The records for indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable

(such as computer usage chargeback rates or composite fringe benefit rates) must be retained according to the applicable option below:

(1) *If submitted for negotiation.* When a proposal, plan, or other computation must be submitted to the Federal Government to form the basis for negotiation of an indirect cost rate (or other standard rates), then the three-year retention period for its supporting records starts from the date of submission.

(2) *If not submitted for negotiation.* When a proposal, plan, or other computation is not required to be submitted to the Federal Government to form the basis for negotiation of an indirect cost rate (or other standard rates), then the three-year retention period for its supporting records starts from the end of the fiscal year (or another accounting period) covered by the proposal, plan, or other computation.

§ 200.335 Requests for transfer of records.

The Federal agency must request the transfer of records to its custody from the recipient or subrecipient when it determines that the records possess long-term retention value. However, the Federal agency may arrange for the recipient or subrecipient to retain the records that have long-term retention value so long as they are continuously available to the Federal Government.

§ 200.336 Methods for collection, transmission, and storage of information.

When practicable, the Federal agency or pass-through entity and the recipient or subrecipient must collect, transmit, and store Federal award information in an open file, non-licensed, and machine-readable formats. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a computer system. Upon request, the Federal agency or pass-through entity must always provide or accept paper versions

of Federal award information to and from the recipient or subrecipient. The Federal agency or pass-through entity must not require additional copies of Federal award information submitted in paper versions. The recipient or subrecipient does not need to create and retain paper copies when original records are electronic and cannot be altered. In addition, the recipient or subrecipient may substitute electronic versions of original paper records through duplication or other forms of electronic conversion, provided that the procedures are subject to periodic quality control reviews. Quality control reviews must ensure that electronic conversion procedures provide safeguards against the alteration of records and assurance that records remain in a format that is readable by a computer system.

§ 200.337 Access to records.

(a) *Records of recipients and subrecipients.* The Federal agency or pass-through entity, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives must have the right of access to any records of the recipient or subrecipient pertinent to the Federal award to perform audits, execute site visits, or for any other official use. This right also includes timely and reasonable access to the recipient's or subrecipient's personnel for the purpose of interview and discussion related to such documents or the Federal award in general.

(b) *Extraordinary and rare circumstances.* The recipient or subrecipient and Federal agency or pass-through entity must take measures to protect the name of victims of a crime when access to the victim's name is necessary. Only under extraordinary and rare circumstances would such access include a review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this

information. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head or delegate of the Federal agency.

(c) *Expiration of right of access.* The Federal agency's or pass-through-through entity's rights of access are not limited to the required retention period of this part but last as long as the records are retained. Federal agencies or pass-through-through entities must not impose any other access requirements upon recipients and subrecipients.

§ 200.338 Restrictions on public access to records.

Federal agencies or pass-through-through entities may not place restrictions on the recipient or subrecipient that limit public access to the records of the recipient or subrecipient pertinent to a Federal award, except for protected personally identifiable information (PII) or other sensitive information when the Federal agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to records that remain under the recipient's or subrecipient's control except as required by § 200.315. Unless required by Federal, State, local, and tribal law, recipients and subrecipients are not required to permit public access to their records. The recipient's or subrecipient's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

Remedies for Noncompliance

§ 200.339 Remedies for noncompliance.

The Federal agency or pass-through entity may implement specific conditions if the recipient or subrecipient fails to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award. See § 200.208 for additional information on specific conditions. When the Federal agency or pass-through entity determines that noncompliance cannot be remedied by imposing specific conditions, the Federal agency or pass-through entity may take one or more of the following actions:

(a) Temporarily withhold payments until the recipient or subrecipient takes corrective action.

(b) Disallow costs for all or part of the activity associated with the noncompliance of the recipient or subrecipient.

(c) Suspend or terminate the Federal award in part or in its entirety.

(d) Initiate suspension or debarment proceedings as authorized in 2 CFR part 180 and the Federal agency's regulations. Pass-through entities must recommend suspension or debarment proceedings for a subrecipient or subcontractor be initiated by the Federal agency.

(e) Withhold further Federal funds (new awards or continuation funding) for the project or program.

(f) Pursue other legally available remedies.

§ 200.340 Termination.

(a) The Federal award may be terminated in part or its entirety as follows:

(1) By the Federal agency or pass-through entity if the recipient or subrecipient fails to comply with the terms and conditions of the Federal award;

(2) By the Federal agency or pass-through entity with the consent of the recipient or subrecipient, in which case the two parties must agree upon the termination conditions. These conditions include the effective date and, in the case of partial termination, the portion to be terminated;

(3) By the recipient or subrecipient upon sending the Federal agency or pass-through entity a written notification of the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal agency or pass-through entity determines that the remaining portion of the Federal award will not accomplish the purposes for which the Federal award was made, the Federal agency or pass-through entity may terminate the Federal award in its entirety; or

(4) By the Federal agency or pass-through entity pursuant to the terms and conditions of the Federal award.

(b) The Federal agency or pass-through entity must clearly and unambiguously specify all termination provisions in the terms and conditions of the Federal award.

(c) When the Federal agency terminates the Federal award prior to the end of the period of performance due to the recipient's material failure to comply with the terms and conditions of the Federal award, the Federal agency must report the termination in SAM.gov. A Federal agency must use the Contractor Performance Assessment Reporting System (CPARS) to enter information in SAM.gov.

(1) The information required under paragraph (c) of this section is not to be reported in SAM.gov until the recipient has either:

(i) Exhausted its opportunities to object or challenge the decision (see § 200.342); or

(ii) Has not, within 30 calendar days after being notified of the termination, informed the Federal agency that it intends to appeal the decision to terminate.

(2) If a Federal agency, after entering information about a termination in SAM.gov, subsequently:

(i) Learns that any of that information is erroneous, the Federal agency must correct the information in the system within three business days;

(ii) Obtains an update to that information that could be helpful to other Federal agencies. The Federal agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(3) The Federal agency must not post any information that will be made publicly available in the non-public segment of SAM.gov that is covered by a disclosure exemption under the Freedom of Information Act (FOIA). When the recipient asserts within seven calendar days to the Federal agency which posted the information that a disclosure exemption under FOIA covers some of the information made publicly available, the Federal agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Before reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's FOIA procedures.

(d) When the Federal award is terminated in part or its entirety, the Federal agency or pass-through entity and recipient or subrecipient remain responsible for compliance with the requirements in §§ 200.344 and 200.345.

(e) A Federal agency determination to not award continuation funding does not constitute a termination. For example, if an award no longer effectuates the program goals or agency priorities or continued Federal funding is not available.

§ 200.341 Notification of termination requirement.

(a) The Federal agency or pass-through entity must provide written notice of termination to the recipient or subrecipient. The written notice of termination should include the reasons for termination, the effective date, and the portion of the Federal award to be terminated, if applicable.

(b) If the Federal award is terminated for the recipient's material failure to comply with a Federal award, the notification must state the following:

(1) The termination decision will be reported in SAM.gov;

(2) The information will be available in SAM.gov for five years (and then archived) from the date of the termination;

(3) A Federal agency that considers making a Federal award to the recipient during that five-year period that is expected to exceed the simplified acquisition threshold over the period of performance must consider the information regarding the recipient's material failure to comply in judging whether the entity is qualified to receive the Federal award.

(4) The recipient may comment on any information in SAM.gov about the recipient for future consideration by Federal agencies. The recipient may submit comments in SAM.gov.

(5) Federal agencies should consider the recipient's comments when determining whether the recipient is qualified for a Federal award.

(c) Upon termination of the Federal award, the Federal agency must provide the information to *USAspending.gov* as required by the Federal Funding Accountability and Transparency Act (FFATA). In addition, the Federal agency must update or notify any other relevant government-wide systems or entities of any indications of poor performance as required by 41 U.S.C. 2313 and 31 U.S.C. 3321.

§ 200.342 Opportunities to object, hearings, and appeals.

The Federal agency or pass-through entity must maintain written procedures for processing objections, hearings, and appeals. Upon initiating a remedy for noncompliance (for example, disallowed costs, a corrective action plan, or termination), the Federal agency or pass-through entity must provide the recipient or subrecipient with an opportunity to object and provide information challenging the action. The Federal agency or pass-through entity must comply with any requirements for hearings, appeals, or other administrative proceedings to which the recipient or subrecipient is entitled under any statute or regulation applicable to the action involved.

§ 200.343 Effects of suspension and termination.

Costs to the recipient or subrecipient resulting from financial obligations incurred by the recipient or subrecipient during a suspension or after the termination of a Federal award are not allowable unless the Federal agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

(a) The costs result from financial obligations which were properly incurred by the recipient or subrecipient before the effective date of suspension or termination, are not in anticipation of it; and

(b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

Closeout

§ 200.344 Closeout.

(a) The Federal agency or pass-through entity must close out the Federal award when it determines that all administrative actions and required work of the Federal award have been completed. When the recipient or subrecipient fails to complete the necessary administrative actions or the required work for an award, the Federal agency or pass-through entity must proceed with closeout based on the information available. This section specifies the administrative actions required at the end of the period of performance.

(b) A recipient must submit all reports (financial, performance, and other reports required by the Federal award) no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must submit all reports (financial, performance, and other reports required by a subaward) to the pass-through entity no later than 90 calendar days after the conclusion of the period of performance of the subaward (or an earlier date as agreed upon by the pass-through entity and subrecipient). When justified, the Federal agency or pass-through entity may approve extensions for the recipient or subrecipient. When the recipient does not have a final indirect cost rate covering the period of performance, a final financial report must still be

submitted to fulfill the requirements of this section. The recipient must submit a revised final financial report when all applicable indirect cost rates have been finalized.

(c) The recipient must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must liquidate all financial obligations incurred under a subaward no later than 90 calendar days after the conclusion of the period of performance of the subaward (or an earlier date as agreed upon by the pass-through entity and subrecipient). When justified, the Federal agency or pass-through entity may approve extensions for the recipient or subrecipient.

(d) The Federal agency or pass-through entity must not delay payments to the recipient or subrecipient for costs meeting the requirements of subpart E.

(e) The recipient or subrecipient must immediately refund any unobligated funds that the Federal agency or pass-through entity paid and that are not authorized to be retained. See OMB Circular A-129 and § 200.346.

(f) The Federal agency or pass-through entity must make all necessary adjustments to the Federal share of costs after closeout reports are received. For example, the disallowance of any costs or the deobligation of an unliquidated balance.

(g) The recipient or subrecipient must account for any property acquired with Federal funds or received from the Federal Government in accordance with §§ 200.310 through 200.316 and 200.330.

(h) The Federal agency must make every effort to complete all closeout actions no later than one year after the end of the period of performance. If the indirect cost rate has not been finalized and would delay closeout, the Federal agency is authorized to mutually agree with the

recipient to close an award using the current or most recently negotiated rate. However, the recipient is not required to agree to a final rate for a Federal award for the purpose of prompt closeout.

(i) If the recipient does not comply with the requirements of this section, including submitting all final reports, the Federal agency must report the recipient's material failure to comply with the terms and conditions of the Federal award in SAM.gov. A Federal agency must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in SAM.gov. Federal agencies may also pursue other enforcement actions as appropriate. See § 200.339.

Post-Closeout Adjustments and Continuing Responsibilities

§ 200.345 Post-closeout adjustments and continuing responsibilities.

(a) The closeout of the Federal award does not affect any of the following:

(1) The right of the Federal agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or review. However, the Federal agency or pass-through entity must make determinations to disallow costs and notify the recipient or subrecipient within the record retention period.

(2) The recipient's or subrecipient's requirement to return funds or right to receive any remaining and available funds as a result of refunds, corrections, final indirect cost rate adjustments (unless the Federal award is closed in accordance with § 200.344(h)), or other transactions.

(3) The ability of the Federal agency or pass-through entity to make financial adjustments to a previously closed Federal award, such as resolving indirect cost payments and making final payments.

(4) Audit requirements in subpart F.

(5) Property management and disposition requirements in §§ 200.310 through 200.316.

(6) Records retention as required in §§ 200.334 through 200.337.

(b) After the closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part. This may only be done with the consent of the awarding Federal agency or pass-through entity and the recipient or subrecipient, provided the responsibilities of the recipient or subrecipient referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient or subrecipient, as appropriate.

Collection of Amounts Due

§ 200.346 Collection of amounts due.

Any Federal funds paid to the recipient or subrecipient in excess of the amount that the recipient or subrecipient is determined to be entitled to under the Federal award constitutes a debt to the Federal Government. The Federal agency must collect all debts arising out of its Federal awards in accordance with the Standards for the Administrative Collection of Claims (31 CFR 901).

14. Revise part 200, subpart E, to read as follows:

Subpart E—Cost Principles General Provisions

Sec.

200.400 Policy guide.

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200.476 Trustees.

Authority: 31 U.S.C. 503; 31 U.S.C. 6101-6106; 31 U.S.C. 6307; 31 U.S.C. 7501-7507.

Subpart E - Cost Principles

General Provisions

§ 200.400 Policy guide.

The application of these cost principles is based on the fundamental premises that:

- (a) The recipient or subrecipient is responsible for the efficient and effective administration of the Federal award through sound management practices.
- (b) The recipient or subrecipient is responsible for administering Federal funds in a manner consistent with Federal statutes, regulations, and the terms and conditions of the Federal award.
- (c) The recipient or subrecipient, in recognition of its unique combination of staff, facilities, and experience, is responsible for employing organization and management techniques necessary to ensure the proper and efficient administration of the Federal award.
- (d) The accounting practices of the recipient or subrecipient must be consistent with these cost principles and support the accumulation of costs as required by these cost principles, including maintaining adequate documentation to support costs charged to the Federal award.
- (e) The cognizant agency for indirect costs should ensure that the recipient or subrecipient consistently applies these cost principles when reviewing, negotiating, and approving cost allocation plans or indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the recipient or subrecipient, the reasonableness and equity of such treatments should be fully considered. See the definition of *indirect costs* in § 200.1.

(f) For recipients and subrecipients that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.

(g) The recipient or subrecipient may not earn or keep any profit resulting from Federal financial assistance unless explicitly authorized by the terms and conditions of the Federal award. See also § 200.307.

§ 200.401 Application.

(a) *General.* The recipient or subrecipient must apply these principles in determining allowable costs under Federal awards. The recipient or subrecipient must also use these principles as a guide in pricing fixed-price contracts and subcontracts when costs are used in determining the appropriate price. These cost principles do not apply to:

(1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on items such as education allowance or published tuition rates and fees.

(2) Capitation awards to Institutions of Higher Education (IHEs) based on case counts or the number of beneficiaries.

(3) Fixed amount awards. See 200.201.

(4) Federal awards to hospitals (see Appendix IX).

(5) Grants and cooperative agreements for food commodities.

(6) Other awards under which the recipient or subrecipient is not required to account for actual costs incurred.

(b) *Federal contract.* A Federal contract awarded to a recipient is subject to the Cost Accounting Standards (CAS). It must incorporate the applicable CAS requirements per 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). With respect to the allocation of costs, the Cost Accounting Standards at 48 CFR parts 9904 or 9905 take precedence over the cost principles in subpart E. When a contract with a recipient is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (for example, CAS 414 - 48 CFR 9904.414 - Cost of Money as an Element of the Cost of Facilities Capital, and CAS 417 - 48 CFR 9904.417 - Cost of Money as an Element of the Cost of Capital Assets Under Construction, apply instead of the allowability provisions of § 200.449). For example, the allowability of costs in CAS-covered costs is determined first by the allocation provisions of the Cost Accounting Standards rather than the allowability provisions in 200.449 (unless the CAS does not address the specific costs). In complying with those requirements, the recipient's application of cost accounting practices for estimating, accumulating, and reporting costs for Federal awards and CAS-covered contracts must be consistent with the cost accounting practices for the CAS-covered contracts. The recipient must maintain only one set of accounting records supporting the allocation of costs if the recipient administers both Federal awards and CAS-covered contracts.

(c) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit organizations in terms of the applicability of cost principles. These nonprofit organizations must operate under Federal cost principles that apply to for-profit organizations located at 48 CFR 31.2. Appendix VIII contains a

list of these nonprofit organizations. Other organizations may be added to this list if approved by the cognizant agency for indirect costs.

Basic Considerations

§ 200.402 Composition of costs.

The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs minus any applicable credits

§ 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following criteria to be allowable under Federal awards:

(a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.

(b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the recipient or subrecipient.

(d) Be accorded consistent treatment. For example, a cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for State and local governments and Indian Tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing requirements of any other federally-financed program in either the current or a prior period. See § 200.306(b).

(g) Be adequately documented. See §§ 200.300 through 200.309.

(h) Administrative closeout costs may be incurred until the due date of the final report(s). If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency. All other costs must be incurred during the approved budget period. At its discretion, the Federal agency is authorized to waive prior written approvals to carry forward unobligated balances to subsequent budget periods. See § 200.308(g)(3).

§ 200.404 Reasonable costs.

A cost is reasonable if it does not exceed an amount that a prudent person would incur under the circumstances prevailing when the decision was made to incur the cost. In determining the reasonableness of a given cost, consideration must be given to the following:

(a) Whether the cost is generally recognized as ordinary and necessary for the recipient's or subrecipient's operation or the proper and efficient performance of the Federal award;

(b) The restraints or requirements imposed by such factors as sound business practices; arm's-length bargaining; Federal, State, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.

(c) Market prices for comparable costs for the geographic area; and

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the recipient or subrecipient, its employees, its students or membership (if applicable), the public at large, and the Federal Government.

(e) The degree to which the cost represents a deviation from the recipient's or subrecipient's established written policies and procedures for incurring costs.

§ 200.405 Allocable costs.

(a) A cost is allocable to a Federal award if the cost is assignable to that Federal award in accordance with the relative benefits received. This standard is met if the cost satisfies any of the following criteria:

(1) Is incurred specifically for the Federal award;

(2) Benefits both the Federal award and other work of the recipient or subrecipient and can be distributed in proportions that may be approximated using reasonable methods; or

(3) Is necessary to the overall operation of the recipient or subrecipient and is assignable in part to the Federal award in accordance with these cost principles.

(b) All activities which benefit from the recipient's or subrecipient's indirect cost, including unallowable activities and donated services by the recipient or subrecipient or third parties, will receive an appropriate allocation of indirect costs.

(c) A cost allocable to a particular Federal award may not be charged to other Federal awards (for example, to overcome fund deficiencies or to avoid restrictions imposed by Federal statutes, regulations, or the terms and conditions of the Federal awards). However, this prohibition would not preclude the recipient or subrecipient from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) *Direct cost allocation principles.* If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to

the projects based on the proportional benefit. However, when those proportions cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c), the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved, when no longer needed for the purpose for which it was originally required. See also §§ 200.310 through 200.316 and 200.439.

(e) Costs of contracts subject to CAS must be allocated according to the Cost Accounting Standards, which take precedence over the allocation provisions in this part.

§ 200.406 Applicable credits.

(a) Applicable credits refer to transactions that offset or reduce direct or indirect costs allocable to a Federal award. Examples of such transactions are purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, adjustments of overpayments, or erroneous charges. To the extent that such credits accruing to or received by the recipient or subrecipient relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the recipient or subrecipient should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. See §§ 200.436 and 200.468 for potential application areas.

§ 200.407 Prior written approval (prior approval).

The reasonableness and allocability of certain costs under Federal awards may be difficult to determine. To avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the recipient may seek the prior written approval of the Federal agency (or, for indirect costs, the cognizant agency for indirect costs) before incurring the cost. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that cost unless prior approval is specifically required for allowability as described under certain circumstances in the following sections:

- (a) § 200.306 Cost sharing;
- (b) § 200.307 Program income;
- (c) § 200.308 Revision of budget and program plans;
- (d) § 200.333 Fixed amount subawards;
- (e) § 200.430 Compensation - personal services, paragraph (h);
- (f) § 200.431 Compensation - fringe benefits;
- (g) § 200.439 Equipment and other capital expenditures;
- (h) § 200.441 Fines, penalties, damages and other settlements;
- (i) § 200.442 Fund raising and investment management costs;
- (j) § 200.445 Goods or services for personal use;
- (k) § 200.447 Insurance and indemnification;
- (l) § 200.455 Organization costs;
- (m) § 200.458 Pre-award costs;
- (n) § 200.462 Rearrangement and reconversion costs;

(o) § 200.475 Travel costs.

§ 200.408 Limitation on allowance of costs.

Statutory requirements may limit the allowability of costs. Any costs that exceed the maximum amount allowed by statute may not be charged to the Federal award. Only the amount allowable by statute may be charged to the Federal award.

§ 200.409 Special considerations.

Other sections in this part describe special considerations and requirements applicable to states, local governments, Indian Tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart are only applicable to certain types of recipients and subrecipients, as specified in the following sections:

(a) Direct and Indirect Costs (§§ 200.412-200.415);

(b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 and 200.417); and

(c) Special Considerations for Institutions of Higher Education (§§ 200.418 and 200.419).

§ 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the awarding Federal agency, cognizant agency for indirect costs, or pass-through entity must be refunded with interest to the Federal Government. Unless directed by Federal statute or regulation, repayments must be made in accordance with the instructions provided by the Federal agency or pass-through entity that made the allowability determination. See §§ 200.300 through 200.309, and §200.346.

§ 200.411 Adjustment of previously negotiated indirect cost rates containing unallowable costs.

(a) Federal negotiated indirect cost rates based on a proposal later found to have included costs that:

(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or

(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made in accordance with the requirements of this section. These adjustments or refunds are intended to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds must be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the recipient or subrecipient, the unallowable costs must be removed from the indirect cost pools and the rates must be adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs must be computed for each year involved, and a cash refund (including interest) must be made to the Federal Government in accordance with the directions provided by the cognizant agency for indirect costs. When cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments must be made when the rates are finalized to avoid duplicate recovery of the unallowable costs.

(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.

(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

Direct and Indirect Costs

§ 200.412 Classification of costs.

There is no universal rule for classifying certain costs as direct or indirect costs. A cost may be direct for some specific service or function but indirect for the Federal award or other final cost objective. Therefore, each cost incurred for the same purpose in like circumstances must be treated consistently either as a direct or an indirect cost to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect costs charged to Federal awards are provided in this subpart.

§ 200.413 Direct costs.

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as direct or indirect costs. See § 200.405.

(b) *Application to Federal awards.* The association of costs with a Federal award (rather than the nature of the procurement transaction) determines whether costs are direct or indirect. Costs charged directly to a Federal award are typically incurred specifically for that Federal award (including, for example, supplies needed to achieve the award's objectives and the proportion of staff salary expended in relation to that specific award). However, costs that

otherwise would be treated as indirect costs may also be considered direct costs if they are directly related to a specific award (including, for example, extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities, cybersecurity, integrated data systems, asset management systems, performance management costs, program evaluation costs, or other institutional service operations).

(c) Administrative and clerical staff salaries should normally be treated as indirect costs.

Direct charging of these costs may be appropriate only if they meet all of the following conditions:

- (1) The administrative or clerical services are integral to a Federal award;
- (2) Individuals involved can be specifically identified with a Federal award; and
- (3) The costs are not also recovered as indirect costs.

(d) *Minor items.* A minor direct cost may be treated as an indirect cost when it is practical to do so and provided that it is treated consistently for all Federal and non-Federal purposes.

(e) Unallowable costs for Federal awards must be treated as direct costs when determining indirect cost rates. Additionally, unallowable costs must be allocated their equitable share of the recipient's or subrecipient's indirect costs if they represent activities which:

- (1) Include the salaries of personnel;
- (2) Occupy space; and
- (3) Benefit from the recipient's or subrecipient's indirect costs.

(f) For nonprofit organizations, the costs of activities performed by the nonprofit organization primarily as a service to members, clients, or the general public when significant and necessary to the organization's mission must be treated as direct costs whether or not

allowable, and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions.

See § 200.454.

(2) Providing services and information to members, the government, or the public. See §§ 200.454 and 200.450.

(3) Promotion, lobbying, and other forms of public relations. See §§ 200.421 and 200.450.

(4) Conferences (except in support of the general administration of the recipient or subrecipient). See also § 200.432.

(5) Maintenance, protection, and investment of special funds not used in the recipient's or subrecipient's operation. See also § 200.442.

(6) Group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 200.431.

§ 200.414 Indirect costs.

(a) *Facilities and administration classification.* For major Institutions of Higher Education (IHE) and major nonprofit organizations, indirect costs must be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation on buildings, equipment and capital improvements, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel, and all other types of expenditures not listed specifically under one

of the subcategories of “Facilities” (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the “Administration” category; for IHEs, they are included in the “Facilities” category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III. Major nonprofit organizations are those which receive more than \$10 million in direct Federal funding.

(b) *Diversity of nonprofit organizations.* It is not always possible to specify the types of costs that may be classified as indirect costs for nonprofit organizations due to the diversity of their accounting practices. Identification with a Federal award rather than the nature of the procurement transaction involved is the determining factor in distinguishing direct from indirect costs of Federal awards. However, typical examples of indirect cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See § 200.306.)

(1) Negotiated indirect cost rates must be accepted by all Federal agencies. A Federal agency may only use a rate different from the negotiated rate for either a class of Federal awards or a single Federal award when required by Federal statute, regulation, or when approved by the awarding Federal agency based on documented justification described in paragraph (c)(3).

(2) The Federal agency must notify OMB of any approved deviations. The recipient or subrecipient may notify OMB of any disputes with Federal agencies regarding the application of a federally negotiated indirect cost rate.

(3) The Federal agency must implement, and make publicly available, the policies, procedures and general decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) The Federal agency must include the policies relating to indirect cost rate reimbursement or cost share as approved under paragraph (e) in the notice of funding opportunity. As appropriate, the Federal agency should incorporate discussion of these policies into its outreach activities with applicants before posting a notice of funding opportunity. See § 200.204.

(d) Pass-through entities are subject to the requirements in § 200.332(b)(4) and must accept all federally negotiated indirect costs rates for subrecipients.

(e) Requirements for development and submission of indirect cost rate proposals and cost allocation plans are contained in the following Appendices:

(1) Appendix III to Part 200 - Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

(2) Appendix IV to Part 200 - Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

(3) Appendix V to Part 200 - State/Local Government-wide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200 - Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 200 - States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 200 - Hospital Cost Principles.

(f) Recipients and subrecipients that do not have a current Federal negotiated indirect cost rate (including provisional rate) may elect to charge a de minimis rate of up to 15 percent of modified total direct costs (MTDC). The recipient or subrecipient is authorized to determine the appropriate rate up to this limit. Federal agencies may not require recipients and subrecipients to use a de minimis rate lower than this standard unless required by Federal statute. The de minimis rate must not be applied to cost reimbursement contracts issued directly by the Federal Government in accordance with the FAR. Recipients and subrecipients are not required to use the de minimis rate and may submit an indirect cost proposal in accordance with the appropriate Appendix referenced in paragraph (e). When applying the de minimis rate, costs must be consistently charged as either direct or indirect costs and may not be double charged or inconsistently charged as both. The de minimis rate does not require documentation to justify its use and may be used indefinitely. Once elected, the recipient or subrecipient must use the de minimis rate for all Federal awards until the recipient or subrecipient chooses to receive a negotiated rate. A governmental department or agency that receives more than \$35 million in direct Federal funding during its fiscal year may not elect to use the de minimis rate (see Appendix VII, paragraph D.1.b.).

(g) A recipient or subrecipient with a current Federal negotiated indirect cost rate may apply for a one-time extension of that agreement for up to four years. This extension will be subject to review and approval by the cognizant agency for indirect costs. If granted, the recipient or subrecipient may only request a rate review when the extension period ends. The recipient or subrecipient must re-apply to negotiate a new rate when the extension ends. When a

new rate is negotiated, the recipient or subrecipient may again apply for a one-time extension of the new rate in accordance with this paragraph.

§ 200.415 Required financial certifications.

(a) Financial reports and payment requests under Federal awards must include a certification, signed by an official who is authorized to legally bind the recipient or subrecipient, which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

(b) Subrecipients under the Federal award must certify to the pass-through entity whenever applying for funds, requesting payment, and submitting reports: “I certify to the best of my knowledge and belief that the information provided herein is true, complete, and accurate. I am aware that the provision of false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative consequences including, but not limited to violations of U.S. Code Title 18, Sections 2, 1001, 1343 and Title 31, Sections 3729-3730 and 3801-3812.” Each such certification must be maintained pursuant to the requirements of § 200.334. This paragraph applies to all tiers of subrecipients.

(c) Certification of cost allocation plan or indirect cost rate proposal. Each cost allocation plan or indirect cost rate proposal must comply with the following:

(1) A proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the recipient, must be certified by the recipient using the *Certificate of Cost Allocation Plan* or *Certificate of Indirect Costs* as set forth in appendices III through VII, and IX of this part. The certificate must be signed on behalf of the recipient by an individual at a level no lower than the vice president or chief financial officer of the recipient that submits the proposal.

(2) The Federal Government may either disallow all indirect costs or unilaterally establish an indirect cost rate when the recipient fails to submit a certified proposal for establishing a rate. This rate should be based upon audited historical data or other data furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. The rate established must ensure that potentially unallowable costs are not reimbursed. Alternatively, the recipient may use the de minimis indirect cost rate. See § 200.414(f).

(d) Nonprofit organizations must certify that they did not meet the definition of a major nonprofit organization as defined in § 200.414(a), if applicable.

(e) The recipient must certify that the requirements and standards for lobbying (see § 200.450) have been met when submitting its annual indirect cost rate proposal.

Special Considerations for States, Local Governments and Indian Tribes

§ 200.416 Cost allocation plans and indirect cost proposals.

(a) Awards to states, local governments, and Indian Tribes are often implemented at the level of department within the State, local government, or Indian Tribe. A central service cost allocation plan is established to allow such department to claim a portion of centralized service

costs that are incurred in proportion to the award's activities. Examples of centralized service costs may include motor pools, computer centers, purchasing, and accounting. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan establishes this process.

(b) Individual departments typically charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate proposal for each operating department is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

(1) The indirect costs originating in each operating department of the State, local government, or Indian Tribe carrying out Federal awards; and

(2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for developing and submitting cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in Appendices V, VI, and VII.

§ 200.417 Interagency service.

An operating department may provide services to another operating department of the same State, local government, or Indian Tribe. In these instances, the cost of services provided may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost rate equal to 10 percent of the direct salaries and wages for providing the service (excluding overtime, shift premiums, and fringe benefits) may be used instead of

determining the actual indirect costs of the service. These services do not include centralized services that are included in central service cost allocation plans described in Appendix V.

Special Considerations for Institutions of Higher Education

§ 200.418 Costs incurred by states and local governments.

Costs incurred or paid by a State or local government on behalf of and in direct benefit to its IHEs are allowable. These costs include but are not limited to fringe benefit programs such as pension costs and Federal Insurance Contributions Act (FICA) costs. These costs are allowable regardless of whether or not they are recorded in the accounting records of the institutions, subject to the following conditions:

(a) The costs meet the requirements of § 200.402 - 200.411;

(b) The costs are properly supported by approved cost allocation plans in accordance with the applicable cost accounting principles of this part; and

(c) The costs are not otherwise borne directly or indirectly by the Federal Government.

§ 200.419 Cost accounting standards.

An IHE that receive an aggregate total \$50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts and subcontracts awarded to the IHEs are subject to the broader range of CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30).

General Provisions for Selected Items of Cost

§ 200.420 Considerations for selected items of cost.

(a) This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of subtitle II of this subpart. These principles apply whether or not a particular cost item is properly treated as a direct or indirect cost.

(b) The following sections are not intended to be a comprehensive list of potential items of cost encountered under Federal awards. Failure to mention a particular item of cost, including as an example in certain sections, is not intended to imply that it is either allowable or unallowable. When determining the allowability for an item of cost, each case should be based on the treatment provided for similar or related items of cost and based on the principles described in §§ 200.402 through 200.411. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in § 200.403 must be applied in determining allowability.

§ 200.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media includes, but is not limited to, magazines, newspapers, radio and television, direct mail, exhibits, and electronic or computer transmittals.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the recipient or subrecipient for the performance of a Federal award (See also § 200.463);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when the recipient or subrecipient is reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach and other specific purposes necessary to meet the Federal award requirements.

(c) The term “public relations” includes community relations and means those activities dedicated to maintaining the recipient’s or subrecipient’s image or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press about specific activities or accomplishments which result from the performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities or financial matters.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

(2) Costs of meetings, conventions, conferences, or other events related to other activities of the entity (see also § 200.432), including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia;

(4) Costs of advertising and public relations designed solely to promote the recipient or subrecipient.

§ 200.422 Advisory councils.

An advisory council or committee is a body that provides advice to the management of such entities as corporations, organizations, or foundations. Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the Federal agency, or as an indirect cost where allocable to Federal awards. See § 200.444, which applies to States, local governments, and Indian Tribes.

§ 200.423 Alcoholic beverages.

The cost of alcoholic beverages is unallowable.

§ 200.424 Alumni activities.

Costs incurred by IHEs for, or in support of, alumni activities are unallowable.

§ 200.425 Audits conducted in accordance with the Single Audit Act.

(a) A reasonably proportionate share of the costs of audits required by and performed in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), and the requirements of this part are allowable. However, the following audit costs are unallowable:

(1) Any costs for audits that are not required by and performed in accordance with the Single Audit Act, and the requirements of this part; and

(2) Any costs of auditing a recipient or subrecipient exempt from having an audit conducted under the Single Audit Act and the requirements of this part.

(b) The costs of a financial statement audit of a recipient or subrecipient that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge Federal awards for the cost of *agreed-upon procedures engagements* to monitor subrecipients (in accordance with §§ 200.331-333) exempt from having an audit conducted under the Single Audit Act and the requirements of this part. This cost is allowable only if the agreed-upon procedures engagements are:

(1) Conducted in accordance with GAGAS or applicable international attestation standards, as appropriate;

(2) Paid for and arranged by the pass-through entity; and

(3) Limited in scope to one or more of the following compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

§ 200.426 Bad debts.

Bad debts (debts determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related

collection costs, and related legal costs, arising from such debts are also unallowable. See § 200.428.

§ 200.427 Bonding costs.

(a) Bonding costs arise when the Federal agency requires assurance against financial loss to itself or others because of an act or default of the recipient. They also arise when the recipient requires similar assurance, including bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) Bonding costs required under the Federal award's terms and conditions are allowable.

(c) Bonding costs required by the recipient in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 200.428 Collections of improper payments.

The costs incurred by a recipient or subrecipient to recover improper payments, including improper overpayments, are allowable as either direct or indirect costs, as appropriate. The recipient or subrecipient may use the amounts collected in accordance with cash management standards described in § 200.305.

§ 200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as activity costs provided for in Appendix III, (B)(9) Student Administration and Services.

§ 200.430 Compensation - personal services.

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the

Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits addressed in § 200.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the recipient or subrecipient consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with the recipient's or subrecipient's laws, rules, or written policies and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (g) of this section, when applicable.

(b) *Reasonableness.* Compensation for employees engaged in work on Federal awards will be reasonable to the extent that it is consistent with that paid for similar work in other activities of the recipient or subrecipient. In cases where the kinds of employees required for Federal awards are not found in the different activities of the recipient or subrecipient, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the recipient or subrecipient competes for the kind of employees involved.

(c) *Professional activities outside the recipient or subrecipient.* Unless the Federal agency expressly authorizes an arrangement, a recipient or subrecipient must follow its written policies and procedures concerning the permissible extent of professional services that can be provided outside the recipient or subrecipient for non-organizational compensation. Where the

recipient or subrecipient does not have written policies or procedures, or they do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require the recipient or subrecipient to allocate the effort of professional staff working on Federal awards between:

(1) Recipient or subrecipient activities, and

(2) Non-organizational professional activities. Appropriate arrangements governing compensation must be negotiated on a case-by-case basis if the Federal agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award.

(d) *Unallowable costs.*

(1) Costs unallowable under other sections of these principles must not be allowable under this section solely because they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with Federal statute. See 10 U.S.C. 2324(e)(1)(P), 41 U.S.C. 1127, and 41 U.S.C. 4304(a)(16) for the ceiling amount, covered compensation subject to the ceiling, covered employees, and other relevant provisions for cost-reimbursement contracts. For different types of Federal awards, other statutory ceilings may apply.

(e) *Special considerations.* Special considerations in determining the allowability of compensation will be given to any change in a recipient's or subrecipient's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any

change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

(f) *Incentive compensation.* Incentive compensation to employees based on cost reduction, efficient performance, suggestion awards, or safety awards is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued according to an agreement entered into in good faith between the recipient or subrecipient and the employees before the services were rendered, or according to an established plan followed by the recipient or subrecipient so consistently as to imply, in effect, an agreement to make such payment.

(g) *Standards for Documentation of Personnel Expenses*

(1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control that provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the recipient or subrecipient;

(iii) Reasonably reflect the total activity for which the employee is compensated by the recipient or subrecipient, not exceeding 100 percent of compensated activities (for IHEs, this is the IBS);

(iv) Encompass federally-assisted and all other activities compensated by the recipient or subrecipient on an integrated basis but may include the use of subsidiary records as defined in the recipient's or subrecipient's written policy;

(v) Comply with the established accounting policies and procedures of the recipient or subrecipient (See paragraph (i)(1)(ii) for treatment of incidental work for IHEs.); and

(vi) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(vii) Budget estimates (meaning, estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity performed;

(B) Significant changes in the related work activity (as defined by the recipient's or subrecipient's written policies) are promptly identified and entered into the records. Short-term (such as one or two months) fluctuation between workload categories do not need to be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The recipient's or subrecipient's system of internal controls includes processes to perform periodic after-the-fact reviews of interim charges made to a Federal award based on budget estimates. All necessary adjustments must be made so that the final amount charged to the Federal award is accurate, allowable, and properly allocated based on actual work performed.

(viii) Because practices vary as to the activity constituting a full workload (for example, IBS for IHEs), records may reflect categories of activities expressed as a percentage distribution of total activities.

(ix) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. Therefore, a precise assessment of factors contributing to costs is not required when IHEs record salaries and wages are charged to Federal awards.

(2) For records that meet the standards required in paragraph (g)(1), the recipient or subrecipient is not required to provide additional support or documentation for the work performed other than that referenced in paragraph (g)(3).

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) States, local governments, and Indian Tribes may use substitute processes or systems for allocating salaries and wages to Federal awards either in place of or in addition to the records described in paragraph (g)(1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, “rolling” time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems that use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards, including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (g)(5)(iii);

(B) The sample must cover the entire period involved; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors and clerical and support staff, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in paragraph (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts allocated to Federal awards will be minimal or if it concludes that the system proposed by the recipient or subrecipient will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance when these are clearly documented. These plans are acceptable as an alternative to paragraph (g)(1) requirements when approved by the cognizant agency for indirect costs.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a recipient or subrecipient may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented

metrics, provided the plans are approved in advance by all involved Federal agencies. In these instances, the recipient or subrecipient must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a recipient or subrecipient whose records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation supporting the records as required in this section.

(h) *Nonprofit organizations.* This paragraph provides guidance specific to only nonprofit organizations. For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, a determination must be made that the compensation is reasonable for the actual personal services rendered rather than a distribution of earnings above actual costs. Compensation may include director's and executive committee member's fees, incentive awards, off-site or incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(i) *Institutions of Higher Education (IHEs).* This paragraph provides guidance specific to only IHEs.

(1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special

lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etcetera), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under the written institutional policy (at a rate not to exceed institutional base salary) do not need to be included in the records described in paragraph (g) to charge payments of incidental activities directly, such activities must either be expressly authorized in the Federal award budget or receive prior written approval by the Federal agency.

(2) *Salary basis*. Charges for work performed on Federal awards by faculty members during the academic year are allowable at the institutional base salary (IBS) rate. Except as noted in paragraph (i)(1)(ii), in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of the faculty at an institution. IBS is the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal agency, charges of a faculty member's salary to a Federal award may not exceed the proportionate share of the IBS for the period during which the faculty member worked on the Federal award.

(3) *Intra-Institution of Higher Education (IHE) consulting*. Intra-IHE consulting by faculty should be undertaken as an IHE responsibility requiring no compensation in addition to

IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty members is in addition to their regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are expressly authorized in the Federal award or approved in writing by the Federal agency.

(4) Extra Service Pay typically represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay results from Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The IHE establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The IHE establishes a consistent written definition of work covered by IBS, which is specific enough to determine conclusively when work beyond that level has occurred. This definition may be described in appointment letters or other documentation.

(iii) The supplementation amount paid is commensurate with the IBS pay rate and additional work performed. See paragraph (i)(2).

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the IHE.

(v) The total salaries charged to Federal awards, including extra service payments, are subject to the standards of documentation as described in paragraph (g).

(5) *Periods outside the academic year.*

(i) Except as specified for teaching activity in paragraph (i)(5)(ii), charges for work performed by faculty members on Federal awards during periods not included in the base salary period must be at a rate not more than the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period must be based on the written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) *Part-time faculty*. Charges for work performed on Federal awards by faculty members having only part-time appointments must be determined at a rate not more than that regularly paid for part-time assignments.

(7) *Sabbatical leave costs*. Rules for sabbatical leave are as follows:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable, provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. These costs must be allocated equitably among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits as a direct charge, the aggregate amount of assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's experience under its sabbatical leave policy.

(8) *Salary rates for non-faculty members*. Non-faculty full-time professional personnel may also earn “extra service pay” in accordance with the recipient’s written policy and paragraph (i)(1)(i).

§ 200.431 Compensation - fringe benefits.

(a) *General.* Fringe benefits are allowances and services employers provide to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family, sick, or military), employee insurance, pensions, and unemployment benefits. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, an organization-employee agreement, or an established policy of the recipient or subrecipient.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

- (1) They are provided under established written leave policies;
- (2) The costs are equitably allocated to all related activities, including Federal awards;

and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the recipient or subrecipient or a specified grouping of employees.

(i) When a recipient or subrecipient uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment and must be allocated as a general administrative expense to all activities. These costs may be included in fringe benefit rates with the approval of the cognizant agency for indirect costs.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a recipient or subrecipient uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) *Fringe benefits.* The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447); pension plan costs; and other similar benefits are allowable, provided such benefits are permitted under established written policies. The recipient or subrecipient must allocate fringe benefits to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs following the recipient's or subrecipient's accounting practices.

(d) *Cost objectives.* The recipient or subrecipient may assign fringe benefits to cost objectives by identifying specific benefits to specific individual employees or by allocating them based on entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees unless the recipient or subrecipient demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also § 200.447(d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation and the types of coverage, the extent of

coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Insurance costs on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The cost of such insurance is unallowable when the recipient or subrecipient is named as beneficiary.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (*for example*, post-retirement health benefits) are allowable in the year of payment provided that the recipient or subrecipient follows a consistent costing policy.

(f) *Automobiles*. That portion of automobile costs furnished by the recipient or subrecipient that relates to personal use by employees (including transportation to and from work) is unallowable as a fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees.

(g) *Pension plan costs*. Pension plan costs incurred in accordance with the established written policies of the recipient or subrecipient are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) The cost assigned to each fiscal year should be determined in accordance with GAAP, except for State and local governments.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. The recipient or subrecipient may follow the “Cost Accounting Standard for Composition and Measurement of Pension Costs” (48 CFR 9904.412).

(5) Premiums for pension plan termination insurance that are paid according to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301-1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or an actuarial cost method recognized by GAAP and following the recipient’s or subrecipient’s established written policies.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after six months (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the recipient’s or subrecipient’s contribution to the pension fund. Adjustments may be made by cash refund or

other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the recipient or subrecipient in excess of the costs calculated using an actuarial cost-based method recognized by GAAP for a fiscal year may be used as the recipient's or subrecipient's contribution in future periods.

(iv) When a recipient or subrecipient establishes or converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) Payments for unfunded pension costs must be charged in accordance with the allocation principles of this subpart. Specifically, the recipient or subrecipient may not charge unfunded pension costs directly to a Federal award if those unfunded pension costs are related to compensation not allocable to that award. In all cases, the payments for unfunded pension costs may not exceed the contribution rate of the employee's current pension costs. Payments for unfunded pension costs may only be charged to a Federal award with the prior approval of the awarding Federal agency or cognizant agency for indirect costs if included as part of an approved negotiated indirect cost rate agreement. The recipient or subrecipient must notify the awarding Federal agency or cognizant agency for indirect costs, as applicable, if unfunded pension costs are re-amortized.

(vi) The recipient or subrecipient must provide the Federal Government an equitable share of any previously allowed pension costs (including subsequent earnings) that the recipient or subrecipient receives through a refund, withdrawal, or other credit.

(h) *Post-retirement health.* A post-retirement health plan (PRHP) refers to the costs of health insurance or health services not included in a pension plan covered by paragraph (g) for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an actuarial cost method recognized by GAAP and following the recipient's or subrecipient's established written policies.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after six months (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the recipient's or subrecipient's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in the current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded by the recipient or subrecipient in excess of the costs calculated using an actuarial cost-based method recognized by GAAP for a fiscal year may be used as the recipient's or subrecipient's contribution in future periods.

(4) If a recipient or subrecipient establishes or converts to an actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to

prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) Payments for unfunded PRHP costs must be charged in accordance with the allocation principles of this subpart. Specifically, the recipient or subrecipient may not charge unfunded PRHP costs directly to a Federal award if those unfunded PRHP costs are related to compensation not allocable to that award. In all cases, the payments for unfunded PHRP costs may not exceed the contribution rate of the employee's current health benefit costs. Payments for unfunded PRHP costs may only be charged to a Federal award with the prior approval of the awarding Federal agency or cognizant agency for indirect costs if included as part of an approved negotiated indirect cost rate agreement. The recipient or subrecipient must notify the awarding Federal agency or cognizant agency for indirect costs, as applicable, if unfunded PHRP costs are re-amortized.

(6) To be allowable in the current year, the PRHP costs must be paid either to:

- (i) An insurer or other benefit provider as current year costs or premiums; or
- (ii) An insurer or trustee that will maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(7) The recipient or subrecipient must provide the Federal Government an equitable share of any previously allowed post-retirement benefit costs (including subsequent earnings) that the recipient or subrecipient receives through a refund, withdrawal, or other credit.

(i) *Severance pay.*

(1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by recipients and subrecipients to workers whose

employment is being terminated. Severance pay is allowable only to the extent that, in each case, it is required by:

(i) Law;

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the recipient's or subrecipient's part; or

(iv) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual severance payments for normal turnover must be allocated to all activities; or, where the recipient or subrecipient provides for a reserve for normal severances, such method is acceptable if the charge to current operations is reasonable in light of payments made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the recipient or subrecipient.

(ii) Measuring the costs of abnormal or mass severance pay by means of an accrual method will not achieve equity for both parties. Therefore, accruals are not allowable. However, the Federal Government recognizes its responsibility to contribute its fair share toward a specific payment. Prior approval by the Federal agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in severance pay packages that are in excess of the standard severance pay provided by the recipient or subrecipient to an employee upon termination of employment and that are paid to the employee contingent upon a change in management control over, or ownership of, the recipient's or subrecipient's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the recipient or subrecipient outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the recipient or subrecipient in the United States, are unallowable unless they are required by applicable foreign law or necessary for the performance of Federal programs and approved by the Federal agency.

(5) Severance payments to foreign nationals employed by the recipient or subrecipient outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the recipient or subrecipient in that country, are unallowable unless they are required by applicable foreign law or necessary for the performance of Federal programs and approved by the Federal agency.

(j) *For IHEs only.*

(1) Fringe benefits in the form of undergraduate and graduate tuition or tuition remission for individual employees are allowable, provided such benefits are granted in accordance with established written policies of the IHE and are distributed to all IHE activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of undergraduate and graduate tuition or tuition remission for individual employees not employed by the IHE are limited to the tax-free amount allowed by the Internal Revenue Code as amended (26 U.S.C. 127).

(3) IHEs may offer employees tuition waivers or reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See § 200.466, for treatment of tuition remission provided to students.

(k) *Fringe benefit programs and other benefit costs.* For IHEs whose costs are paid by a State or local government, fringe benefit programs (such as pension costs and FICA) and any other benefits costs incurred specifically on behalf of, and in direct benefit to, the IHE, are allowable. These costs do not need to be recorded in the accounting records of the IHE but are subject to the following:

(1) The costs meet the requirements of Basic Considerations in §§ 200.402 through 200.411;

(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(3) The costs are not otherwise borne directly or indirectly by the Federal Government.

§ 200.432 Conferences.

A conference means an event whose primary purpose is to disseminate technical information beyond the recipient or subrecipient and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the recipient or subrecipient as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other incidental items to such conferences unless further restricted by the terms and conditions of the Federal award. The costs of identifying and providing locally available dependent-care resources for participants are allowable as needed. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary, and managed to minimize costs to the Federal award. The Federal agency may authorize exceptions for programs including Indian Tribes, children, and the elderly. See also §§ 200.438, 200.456, and 200.475.

§ 200.433 Contingency provisions.

(a) Contingency provisions are part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items approved by the Federal agency) which are associated with possible events or conditions arising from causes for which the precise outcome is indeterminable at the time of estimate and that are likely to result, in the aggregate, in additional costs for the approved activity or project. Contingency costs for major project scope changes, unforeseen risks, or extraordinary events are not allowable.

(b) It is permissible for contingency costs other than those excluded in paragraph (a) to be explicitly included in budget estimates to the extent necessary to improve their precision. Contingency costs must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements of this part (see §§ 200.300 and 200.403), be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the recipient's or subrecipient's records.

(c) Payments to a recipient's or subrecipient's "contingency reserve" or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 200.431 and 200.447.

§ 200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the recipient or subrecipient to other entities are unallowable.

(b) The value of services and property donated (including in-kind) to the recipient or subrecipient may not be charged to the Federal award either as a direct or indirect cost. The value of donated services and property may be used to meet cost sharing requirements (see § 200.306). Depreciation on donated assets is permitted so long as the donated property is not counted towards meeting cost sharing requirements (see § 200.436).

(c) Services donated or volunteered to the recipient or subrecipient may be provided by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing requirements in accordance with the provisions of § 200.306.

(d) To the extent feasible, services donated to the recipient or subrecipient will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to a nonprofit organization and used in the performance of a direct cost activity must be considered in the determination of the recipient's or subrecipient's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the recipient or subrecipient;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient or subrecipient and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the project's total costs. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing requirements.

(f) Fair market value of donated services must be computed as described in § 200.306.

(g) Personal Property and Use of Space.

(1) Donated personal property and use of space may be furnished to a recipient or subrecipient. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing requirements described in § 200.300. The recipient or subrecipient must value the donations in accordance with § 200.300. Where the recipient or subrecipient treats donations as indirect costs, indirect cost rates must separate the value of the donations so that reimbursement is not made.

§ 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(a) *Definitions for this section.*

(1) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) *Costs* include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the recipient or subrecipient before, during, and after the commencement of a judicial or administrative proceeding that bears a direct relationship to the proceeding.

(3) *Fraud* means:

(i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,

(ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(iii) Acts that violate the False Claims Act (31 U.S.C. 3729-3732) or the Anti-kickback Act (42 U.S.C. 1320a-7b(b)).

(4) *Penalty* does not include restitution, reimbursement, or compensatory damages.

(5) *Proceeding* includes an investigation.

(b) *Costs*.

(1) Except as otherwise described herein, costs incurred in connection with any criminal, civil, or administrative proceeding (including the filing of a false certification) commenced by the Federal Government, a State, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the recipient or subrecipient, (or commenced by third parties or a current or former employee of the recipient or subrecipient who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 4701 or 41 U.S.C. 4712), are not allowable if the proceeding:

(i) Relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute, regulation, or the terms and conditions of the Federal award by the recipient or subrecipient (including its agents and employees); and

(ii) Results in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of recipient or subrecipient liability.

(C) In the case of any civil or administrative proceeding, the disallowance of costs, the imposition of a monetary penalty, or an order issued by the Federal agency head or delegate to the recipient or subrecipient to take corrective action under 10 U.S.C. 4701 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the recipient or subrecipient, to rescind or void a Federal award, or to terminate a Federal award because of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.

(E) A disposition by consent or compromise if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) If a proceeding referred to in paragraph (b) is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the recipient or

subrecipient and the Federal Government, then the costs incurred may be allowed to the extent expressly authorized in the agreement.

(d) If a proceeding referred to in paragraph (b) is commenced by a State, local or foreign government, then the costs incurred may be allowed if the authorized Federal official determines that the costs were incurred as a result of:

(1) A specific term or condition of the Federal award, or

(2) Specific written direction of an authorized official of the Federal agency.

(e) Costs incurred in connection with proceedings described in paragraph (b), and are not unallowable, may be allowable to the extent that:

(1) The costs are reasonable and necessary for the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;

(3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) An authorized Federal official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and other factors that may be appropriate. This percentage must not exceed 80 percent unless the agreement under paragraph (c) has explicitly considered this limitation and permitted a higher percentage. In that case, the total amount of costs incurred may be allowable.

(f) Costs incurred by the recipient or subrecipient in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make the employee whole, where the recipient or subrecipient was found liable or settled, are unallowable.

(g) Costs for prosecuting claims against the Federal Government, including appeals of final Federal agency decisions, are unallowable.

(h) Costs of legal, accounting, consultant services, and related costs incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.

(i) Costs that may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f), the Federal Government must generally withhold payment of such costs. However, if in its best interests, the Federal Government may provide for conditional payment upon a provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

§ 200.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The recipient or subrecipient may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP provided that they are needed and used in the recipient's or subrecipient's activities and correctly

allocated to Federal awards. The compensation must be made by computing the proper depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices III through IX.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the recipient or subrecipient by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as cost sharing but not both. When computing depreciation charges, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where the title was originally vested or is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the recipient or subrecipient that is already claimed as cost sharing or where law or agreement prohibits recovery; and

(4) Any asset acquired solely for the performance of a non-Federal award.

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as the type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency for indirect costs. The depreciation methods used to calculate the depreciation amounts for indirect cost rate purposes must be the same methods used by the recipient or subrecipient for its financial statements.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component may be depreciated over its estimated useful life in this case. The building components must be grouped into three general components: building shell (including construction and design costs), building services systems (for example, elevators, HVAC, and plumbing system), and fixed equipment (for example, sterilizers, casework, fume hoods, cold rooms, and glassware/washers). A cognizant agency for indirect costs may authorize a recipient or subrecipient to use more than these three groupings in exceptional cases. When a recipient or subrecipient elects to depreciate its buildings by their components, the same depreciation method must be used for indirect and financial statements purposes, as described in paragraphs (d)(1) and (2).

(4) No depreciation may be allowed on assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life meaning,

from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods before the conversion from the use allowance method and depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Adequate property records must support depreciation charges, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. The recipient or subrecipient may use statistical sampling techniques when taking these inventories. In addition, the recipient or subrecipient must maintain adequate depreciation records showing the amount of depreciation.

§ 200.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the recipient's or subrecipient's established written policies for improving working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) These costs must be equitably apportioned to all activities of the recipient or subrecipient. Income generated from these activities must be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the recipient's or subrecipient's objective is to operate food services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only when:

- (1) The recipient or subrecipient can demonstrate unusual circumstances; and
- (2) Approved by the cognizant agency for indirect costs.

§ 200.438 Entertainment and Prizes.

(a) Entertainment Costs. Costs of entertainment, including amusement, diversion, and social activities and any associated costs (such as gifts), are unallowable unless they have a specific and direct programmatic purpose and are included in a Federal award.

(b) Prizes. Costs of prizes or challenges are allowable if they have a specific and direct programmatic purpose and are included in the Federal award. Federal agencies should refer to OMB guidance in M-10-11 “Guidance on the Use of Challenges and Prizes to Promote Open Government,” issued March 8, 2010, or its successor.

§ 200.439 Equipment and other capital expenditures.

(a) See § 200.1 for the definitions of *capital expenditures*, *equipment*, *special purpose equipment*, *general purpose equipment*, *acquisition cost*, and *capital assets*.

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general-purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$10,000 or more have the prior written approval of the Federal agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment that materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal agency or pass-through entity. See § 200.436 on the allowability

of depreciation on buildings, capital improvements, and equipment. See § 200.465 on the allowability of real property and equipment rental costs.

(4) When approved as a direct charge in accordance with paragraphs (b)(1) through (3), capital expenditures must be charged in the period in which the expenditure is incurred or as otherwise determined appropriate and negotiated with the Federal agency.

(5) The recipient or subrecipient may claim the unamortized portion of any equipment written off as a result of a change in capitalization levels by continuing to claim the otherwise allowable depreciation on the equipment or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the Federal agency instructs the recipient or subrecipient to otherwise dispose of or transfer the equipment, the costs of disposal or transfer are allowable.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436.

§ 200.440 Exchange rates.

Cost increases for fluctuations in the exchange rate are allowable costs subject to funding availability. The recipient or subrecipient must conduct reviews of fluctuations in the exchange rate to determine if there is the need for additional Federal funding before the end date of the Federal award. Subsequent adjustments for currency increases may be allowed only when the recipient or subrecipient provides the Federal agency or pass-through entity with adequate source documentation from a commonly used source in effect when the cost was incurred and to the extent that sufficient Federal funds are available.

§ 200.441 Fines, penalties, damages and other settlements.

Costs resulting from recipient or subrecipient violations of, alleged violations of, or failure to comply with, Federal, State, local, tribal, or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with the prior written approval of the Federal agency. See § 200.435.

§ 200.442 Fund raising and investment management costs.

(a) Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions, are unallowable. Fundraising costs for meeting the Federal program objectives are allowable with the prior written approval of the Federal agency.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds, which include Federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fundraising and investment activities must be allocated as an appropriate share of indirect costs in accordance with § 200.413.

§ 200.443 Gains and losses on the disposition of depreciable assets.

(a) The recipient or subrecipient must include gains and losses on the sale, retirement, or other disposition of depreciable property in the year they occur as credits or charges to the asset cost grouping(s) of the property. The amount of the gain or loss is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 200.436 and 200.439.

(2) The property is given in exchange as part of the purchase price of a similar item, and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(3) A loss results from failing to maintain proper insurance, except as provided in § 200.447.

(4) Compensation for the use of the property was provided through use allowances instead of depreciation.

(5) Gains and losses arising from extraordinary or bulk sales, retirements, or other dispositions must be considered on an individual basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) must be excluded in computing Federal award costs.

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 200.310 through 200.316.

§ 200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable except as provided in § 200.475. Unallowable costs include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a local government or the chief executive of an Indian Tribe;

(2) Salaries and other expenses of a State legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, or school board, whether incurred for purposes of legislation or executive direction;

(3) Costs of the judicial branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation. However, this does not preclude the allowability of other legal activities of the Attorney General as described in § 200.435; and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided as a direct cost under a program statute or regulation.

(b) Indian Tribes and Councils of Governments (COGs) (see definition for *Local government* in § 200.1) may include up to 50 percent of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and their staff in the indirect cost calculation without documentation.

§ 200.445 Goods or services for personal use.

(a) Costs of goods or services for the personal use of the recipient's or subrecipient's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) Housing costs (for example, depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, these costs must be approved in advance by a Federal agency to be allowable.

§ 200.446 Idle facilities and idle capacity.

(a) Definitions for the purpose of this section:

(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the recipient or subrecipient.

(2) Idle facilities mean completely unused facilities that exceed the recipient's or subrecipient's current needs.

(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

(i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

(ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means maintenance, repair, housing, rent, and other related costs (for example, insurance, interest, and depreciation). These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load (for example, consolidated data centers).

(b) The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet workload requirements which may fluctuate, and are allocated appropriately to all benefiting programs; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under this exception, costs of idle facilities are allowable for a reasonable period, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. These costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

§ 200.447 Insurance and indemnification.

(a) Costs of insurance required or approved and maintained by the terms and conditions of the Federal award are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) The types, extent, and cost of coverage are in accordance with the recipient's or subrecipient's established written policy and sound business practices.

(2) Costs of insurance or contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the Federal agency has approved the costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) Insurance costs on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only when the insurance represents additional compensation (see § 200.431). This insurance is unallowable when the recipient or subrecipient is identified as the beneficiary.

(5) Insurance costs to correct defects in the recipient's or subrecipient's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of a Federal research program only when the program involves human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and assigned to individual projects based on how the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable unless expressly authorized in the Federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not

covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for a self-insurance program, including workers' compensation, unemployment compensation, and severance pay, are allowable subject to the following requirements:

(1) The type, extent, and cost of coverage and the rates and premiums would have been allowed had the insurance (including reinsurance) been purchased to cover the risks. However, a provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by considering factors such as the recipient's or subrecipient's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3)

(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, and other relevant factors or information. Reserve levels related to employee-related coverages must normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve levels exceeding the above-mentioned value must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to the types of insured risk and losses generated by the various insured activities or agencies of the recipient or subrecipient. If individual departments or agencies of the recipient or subrecipient experience significantly different levels of claims for a particular risk, those differences must be recognized by using separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (for example, general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with the claims collection regulations of the cognizant agency for indirect cost.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

(f) Indemnification includes securing the recipient or subrecipient against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the recipient or subrecipient only to the extent expressly provided for in the Federal award, except as provided in paragraph (c).

§ 200.448 Intellectual property.

(a) *Patent and copyright costs.*

(1) The following costs related to securing patents and copyrights are allowable:

Pre-publication Version

(i) Costs of preparing disclosures, reports, and other documents required by the Federal award and of searching the art to the extent necessary to make such disclosures;

(ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where the Federal Government requires that a title or a royalty-free license be conveyed to the Federal Government; and

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See § 200.459).

(2) The following costs related to securing patents and copyrights are unallowable:

(i) Costs of preparing disclosures, reports, and other documents and of searching the art to make disclosures not required by the Federal award;

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

(b) *Royalties and other costs for the use of patents and copyrights.*

(1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:

(i) The Federal Government already has a license or the right to free use of the patent or copyright.

(ii) The patent or copyright has been adjudicated to be invalid or administratively determined to be invalid.

(iii) The patent or copyright is considered to be unenforceable.

(iv) The patent or copyright is expired.

(2) Special care should be exercised in determining reasonableness when the royalties may have been obtained as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the recipient or subrecipient.

(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(iii) Royalties paid under an agreement entered into after a Federal award is made to a recipient or subrecipient.

(3) In any case involving a patent or copyright formerly owned by the recipient or subrecipient, the amount of royalty allowed must not exceed the cost which would have been allowed had the recipient or subrecipient retained the title.

§ 200.449 Interest.

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the recipient's or subrecipient's own funds are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the requirements of this section.

(b) *Capital assets.*

(1) Capital assets is defined in § 200.1. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For recipient or subrecipient fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) Conditions for all recipients and subrecipients.

(1) The recipient or subrecipient uses the capital assets in support of Federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the recipient or subrecipient from an unrelated (arm's length) third party.

(3) The recipient or subrecipient obtains the financing via an arm's-length transaction (meaning, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The recipient or subrecipient limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a lease contract that transfers ownership by the end of the contract may be determined less costly than purchasing through other types of debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The recipient or subrecipient expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost

is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over \$1 million to purchase or construct facilities unless the recipient or subrecipient makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, “initial equity contribution” means the amount or value of contributions made by the recipient or subrecipient for the acquisition of facilities prior to occupancy.

(i) The recipient or subrecipient must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(ii) The recipient or subrecipient must impute interest on excess cash flow as follows:

(A) Annually, the recipient or subrecipient must prepare a cumulative (from the project’s inception) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the recipient or subrecipient must divide the above-mentioned annual amounts by the months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to

allowable interest cost. The interest rate to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) *Additional conditions for states, local governments and Indian Tribes.* For interest costs to be allowable for states, local governments, and Indian Tribes, the recipient or subrecipient must have incurred the interest costs for buildings after October 1, 1980, or after September 1, 1995, for land and equipment.

(1) The requirement to offset the interest earned on borrowed funds against allowable interest cost (paragraph (c)(5)) also applies to earnings on debt service reserve funds.

(2) The recipient or subrecipient must negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of \$1 million or more, as described in paragraph (c)(7). For this purpose, a recipient or subrecipient must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) *Additional conditions for IHEs.* For interest costs to be allowable, the IHE must have incurred the interest costs after July 1, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) *Additional condition for nonprofit organizations.* For interest costs to be allowable, the nonprofit organization must have incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to “full coverage” under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201-2(a). The nonprofit organization’s Federal awards are instead subject to

CAS 414 (48 CFR 9904.414), “Cost of Money as an Element of the Cost of Facilities Capital,” and CAS 417 (48 CFR 9904.417), “Cost of Money as an Element of the Cost of Capital Assets Under Construction.”

§ 200.450 Lobbying.

(a) The costs of certain influencing activities associated with obtaining grants, cooperative agreements, contracts, or loans are unallowable. Lobbying with respect to certain grants, cooperative agreements, contracts, and loans is governed by relevant statutes, including the provisions of 31 U.S.C. 1352, as well as the common rule, “New Restrictions on Lobbying,” published on February 26, 1990, including definitions, and the Office of Management and Budget “Government-wide Guidance for New Restrictions on Lobbying” and notices published on December 20, 1989, June 15, 1990, January 15, 1992, and January 19, 1996.

(b) *Executive lobbying costs.* Costs incurred in attempting to improperly influence, either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merit.

(c) In addition, the following restrictions apply to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established to influence the outcomes of elections in the United States;

(iii) Any attempt to influence:

(A) The introduction of Federal or State legislation;

(B) The enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or State legislation by preparing, distributing, or using publicity or propaganda or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the

Congress or a State legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient's or subrecipient's member of congress, legislative body, subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence State legislation to directly reduce the cost, or to avoid material impairment of the recipient's or subrecipient's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.

(iv) Any activity excepted from the definitions of "lobbying" or "influencing legislation" by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and "grass roots" lobbying activities to retain their charitable deduction status and avoid punitive excise taxes, 26 U.S.C. (I.R.C.) §§ 501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. § 4911(d)(2) and 26 CFR 56.4911-2(c)(1)-(c)(3).

(v) When a recipient or subrecipient seeks reimbursement for indirect costs, total lobbying costs must be identified separately in the indirect cost rate proposal and thereafter be treated as other unallowable activity costs in accordance with § 200.413.

(vi) The recipient or subrecipient must submit a certification that the requirements and standards of this section have been complied with as part of its annual indirect cost rate proposal. (See § 200.415.)

(vii)

(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record-keeping requirements in § 200.302 with respect to lobbying costs during a particular calendar month when:

(1) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) for 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(2) Within the preceding five-year period, the recipient or subrecipient has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(1) and (2) are met, recipients and subrecipients are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(1) and (2) of this section are met, the absence of time logs, calendars, or similar

records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(viii) In consultation with OMB, the Federal agency must establish procedures for resolving, in advance, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or recipient or subrecipient from contesting the lawfulness of such a determination.

§ 200.451 Losses on other awards or contracts.

Any excess costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the recipient's or subrecipient's contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another is unallowable. All losses are not allowable indirect costs and must be included in the appropriate indirect cost rate base for allocating indirect costs.

§ 200.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements that add to the permanent value of the buildings and equipment or appreciably

prolong their intended life must be treated as capital expenditures (see § 200.439). These costs are only allowable to the extent not paid through rental or other agreements.

§ 200.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary for the performance of a Federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are an allowable part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. Charging computing devices as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.

(d) Where Federally-donated or furnished materials are used in performing the Federal award, the materials will be used without charge.

§ 200.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the recipient's or subrecipient's membership in business, technical, and professional organizations are allowable.

(b) Costs of the recipient's or subrecipient's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See § 200.450.

§ 200.455 Organization costs.

(a) Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the recipient or subrecipient in connection with the establishment or reorganization of an organization, are unallowable except with prior approval of the Federal agency.

(b) The costs of any activities undertaken to persuade employees of the recipient or subrecipient, or any other entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing, are unallowable.

(c) The costs related to data and evaluation are allowable and include (but are not limited to) the expenditures needed to gather, store, track, manage, analyze, disaggregate, secure, share, publish, or otherwise use data to administer or improve the program, such as data systems, personnel, data dashboards, cyber security, and related items. Data costs may also include direct or indirect costs associated with building integrated data systems—data systems that link individual-level data from multiple State and local government agencies for purposes of management, research, and evaluation.

§ 200.456 Participant support costs.

Participant support costs are allowable (see § 200.1). The classification of items as participant support costs must be documented in the recipient's or subrecipient's written policies and procedures and treated consistently across all Federal awards.

§ 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for the protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to § 200.439.

§ 200.458 Pre-award costs.

Pre-award costs are those incurred before the start date of the Federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. These costs are allowable only to the extent that they would have been allowed if incurred after the start date of the Federal award and only with the prior written approval of the Federal agency. If approved, these costs must be charged to the initial budget period of the Federal award unless otherwise specified by the Federal agency or pass-through entity.

§ 200.459 Professional service costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the recipient or subrecipient are allowable, subject to paragraphs (b) and (c) when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under § 200.435.

(b) In determining the allowability of costs in a particular case, no single factor or any combination of factors is necessarily determinative. However, the following factors are relevant:

- (1) The nature and scope of the service rendered in relation to the service required.
 - (2) The necessity of contracting for the service, considering the recipient's or subrecipient's capability in the particular area.
 - (3) The past pattern of such costs, particularly in the years prior to receiving a Federal award(s).
 - (4) The impact of Federal awards on the recipient's or subrecipient's business (meaning, what new problems have arisen).
 - (5) Whether the proportion of Federal work to the recipient's or subrecipient's total business influences the recipient or subrecipient in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.
 - (6) Whether the service can be performed more economically by direct employment rather than contracting.
 - (7) The qualifications of the individual or entity providing the service and the customary fees charged, especially on non-federally funded activities.
 - (8) Adequacy of the contractual agreement for the service (for example, description of the service, estimate of the time required, rate of compensation, and termination provisions).
- (c) To be allowable, retainer fees must be supported by evidence of bona fide services available or rendered in addition to the factors in paragraph (b).

§ 200.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including developing data necessary to support the

recipient's or subrecipient's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated to all current activities of the recipient or subrecipient. No proposal costs of past accounting periods may be allocated to the current period.

§ 200.461 Publication and printing costs.

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling, are allowable. These costs should be allocated as indirect costs to all benefiting activities of the recipient or subrecipient if they are not identifiable with a particular cost objective.

(b) Page charges, article processing charges, or similar open access fees for professional journal publications and other peer-reviewed publications developed under a Federal award are allowable where:

- (1) The publications report work supported by the Federal Government; and
- (2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.
- (3) The recipient or subrecipient may charge the Federal award during closeout for the costs of publication or sharing of research results if the costs were not incurred during the period of performance of the Federal award. If incurred, these costs must be charged to the final budget period of the award unless otherwise specified by the Federal agency.

§ 200.462 Rearrangement and reconversion costs.

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations are allowable as a direct cost if

the costs are incurred specifically for a Federal award and with the prior approval of the Federal agency or pass-through entity.

(b) Costs incurred in restoring or rehabilitating the recipient's or subrecipient's facilities to approximately the same condition existing immediately before the commencement of a Federal award(s), less costs related to normal wear and tear, are allowable.

§ 200.463 Recruiting costs.

(a) Subject to paragraphs (b) and (c), and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the recipient's or subrecipient's standard recruitment program. When the recipient or subrecipient uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the recipient or subrecipient, are unallowable.

(c) If relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part by a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the recipient or subrecipient must refund or credit the Federal Government for its share of the cost. See § 200.464.

(d) Short-term visa costs (as opposed to longer-term immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose and can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:

- (1) Be critical and necessary for the conduct of the project;
- (2) Be allowable under the applicable cost principles;
- (3) Be consistent with the recipient's or subrecipient's cost accounting practices and established written policy; and
- (4) Meet the definition of "direct cost" as described in the applicable cost principles.

§ 200.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d), provided that:

- (1) The move is for the benefit of the employer.
- (2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.
- (3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of their immediate family and their household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to a maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to eight percent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2). If relocation costs incurred incident to the recruitment of a new employee have been funded in whole or in part by a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the recipient or subrecipient must refund or credit the Federal Government for its share of the cost. If a new employee is relocating to an overseas location and dependents are not permitted for any

reason, and the costs do not include transporting household goods, the costs must be considered travel costs in accordance with § 200.474, not relocation costs under § 200.464).

(d) The following costs related to relocation are unallowable:

- (1) Fees and other costs associated with acquiring a new home.
- (2) A loss on the sale of a former home.
- (3) Continuing mortgage principal and interest payments on a home being sold.
- (4) Income taxes paid by an employee related to reimbursed relocation costs.

§ 200.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) through (d), rental costs are allowable to the extent that the rates are reasonable in light of such factors as costs of comparable rental properties; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and if other options are available.

(b) Rental costs under “sale and lease back” arrangements are allowable only up to the amount allowed if the recipient or subrecipient had continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under “less-than-arm's-length” leases are allowable only up to the amount described in paragraph (b). For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement can control or substantially influence the actions of the other. Such leases include, but are not limited to, those between:

- (1) Divisions of the recipient or subrecipient;

(2) The recipient or subrecipient under common control through common officers, directors, or members; and

(3) The recipient or subrecipient and a director, trustee, officer, or key employee of the recipient or subrecipient or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the recipient or subrecipient may establish a separate corporation to own property and lease it back to the recipient or subrecipient.

(4) Family members include one party with any of the following relationships to another party:

(i) Spouse and parents thereof;

(ii) Children and spouses thereof;

(iii) Parents and spouses thereof;

(iv) Siblings and spouses thereof;

(v) Grandparents and grandchildren and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(d) Rental costs under leases which are required to be accounted for as a financed purchase under GASB standards or a finance lease under GAAP are allowable only up to the amount (described in paragraph (b)) allowed if the recipient or subrecipient had purchased the property on the date the lease agreement was executed. Interest costs related to these leases are

allowable if they meet the criteria in § 200.449. Unallowable costs include costs that would not have been incurred if the recipient or subrecipient had purchased the property, such as amounts paid for profit, management fees, and taxes.

(e) Rental or lease payments are allowable under lease contracts where the recipient or subrecipient is required to recognize an intangible right-to-use lease asset under GASB standards or right-of-use operating lease workspace asset under GAAP for purposes of financial reporting in accordance with GAAP.

(f) The rental of any property owned by any individuals or entities affiliated with the recipient or subrecipient, including commercial or residential real estate, for purposes such as the home office is unallowable.

§ 200.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and student aid programs at IHEs are allowable only when the purpose of the Federal award is to provide training to participants, and the Federal agency approves the cost. However, tuition remission and other forms of compensation paid as, or instead of, wages to students performing necessary work are allowable provided that:

(1) The individual is conducting activities necessary to the Federal award;

(2) Tuition remission and other support are provided in accordance with the established written policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and

(3) The student is enrolled in an advanced degree program at the IHE or an affiliated institution during the academic period and the student's activities under the Federal award are related to their degree program;

(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) The IHE compensates students under Federal awards as well as other activities in similar manners.

(b) Charges for tuition remission and other forms of compensation paid to students as, or instead of, salaries and wages are subject to the reporting requirements in § 200.430. The charges must be treated as a direct or indirect cost in accordance with the actual work performed. Tuition remission may be charged on an average rate basis. See § 200.431.

§ 200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the recipient or subrecipient are unallowable unless they are allowed under § 200.421 and are necessary to meet the requirements of the Federal award.

§ 200.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities operated by the recipient or subrecipient are allowable provided the charges for the services meet the conditions of either paragraph (b) or (c) and take into account any items of income or Federal financing that qualify as applicable credits under § 200.406. These costs include charges for facilities such as computing facilities, wind tunnels, and reactors.

(b) The costs of such services, when material, must be charged directly to the applicable Federal awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate between activities under Federal awards and other activities of the recipient or subrecipient, including usage by the recipient or subrecipient for internal purposes; and

(2) Is designed to recover only the aggregate costs of the services. Each service's costs must normally consist of its direct costs and an allocable share of all indirect costs. Rates must be adjusted at least biennially and must consider any over or under-applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect costs.

(d) Under extraordinary circumstances, the cognizant agency for indirect costs and the recipient or subrecipient may negotiate and establish an alternative costing arrangement if it is in the Federal Government's best interest.

§ 200.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities are unallowable unless expressly authorized in the Federal award.

§ 200.470 Taxes (including Value Added Tax).

(a) For states, local governments, and Indian Tribes:

(1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are, in effect, user fees for benefits provided to the Federal Government are allowable.

(3) This provision does not restrict the authority of the Federal agency to identify taxes where Federal participation is inappropriate. The cognizant agency for indirect costs may accept a reasonable approximation in circumstances where determining the amount of unallowable taxes would require an excessive amount of effort.

(b) For nonprofit organizations and IHEs:

(1) Taxes that the recipient or subrecipient is required to pay and which are paid or accrued in accordance with GAAP are generally allowable. These costs include payments made to local governments instead of taxes and that are commensurate with the local government services received. The following taxes are unallowable:

(i) Taxes for which exemptions are available to the recipient or subrecipient directly or which are available to the recipient or subrecipient based on an exemption afforded the Federal Government and, in the latter case, when the Federal agency makes available the necessary exemption certificates;

(ii) Special assessments on land which represent capital improvements; and

(iii) Federal income taxes.

(2) Any refund of taxes and interest thereon, which were allowed as Federal award costs, must be credited to the Federal Government as a cost reduction or cash refund, as appropriate. However, any interest paid or credited to a recipient or subrecipient incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the Federal Government has reimbursed the recipient or subrecipient for the taxes, interest, and penalties.

(c) *Value Added Tax (VAT)*. Foreign taxes charged for procurement transactions that a recipient or subrecipient is legally required to pay in a country is allowable. Foreign tax refunds or applicable credits under Federal awards refer to receipts or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the recipient or subrecipient relate to allowable cost, these costs must be credited to the Federal agency as a cost reduction or cash refunds, as appropriate. In cases where the costs are credited back to the Federal award, the recipient or subrecipient may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, the Federal agency may allow the recipient or subrecipient to use the foreign government tax refund for approved activities under the Federal award.

§ 200.471 Telecommunication and video surveillance costs.

(a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

(b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 to:

- (1) Procure or obtain, extend or renew a contract to procure or obtain;
- (2) Enter into a contract (or extend or renew a contract) to procure; or
- (3) Obtain the equipment, services, or systems.

§ 200.472 Termination and standard closeout costs.

(a) *Termination Costs.* Termination of a Federal award generally gives rise to the incurrence of costs or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They must be used in conjunction with the other termination requirements of this part.

(1) The cost of items reasonably usable on the recipient's or subrecipient's other work is unallowable unless the recipient or subrecipient submits evidence that it would not retain such items without sustaining a loss. In deciding whether such items are reasonably usable on other work of the recipient or subrecipient, the Federal agency or pass-through entity should consider the recipient's or subrecipient's plans and orders for current and scheduled activity.

Contemporaneous purchases of common items by the recipient or subrecipient must be considered evidence that the items are reasonably usable on the recipient's or subrecipient's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order do not exceed the reasonable quantitative requirements of other work.

(2) If the recipient or subrecipient cannot discontinue certain costs immediately after the effective termination date, despite making all reasonable efforts, then the costs are generally allowable within the limitations of this part. Any costs continuing after termination due to the negligent or willful failure of the recipient or subrecipient to immediately discontinue the costs are unallowable.

(3) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(i) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the recipient or subrecipient;

(ii) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the Federal agency (see § 200.313 (d)); and

(iii) The loss of useful value for one terminated Federal award is limited to the portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

(4) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(i) The amount of claimed rental costs does not exceed the reasonable use value of the property leased for the period of the Federal award and a further period as may be reasonable; and

(ii) The recipient or subrecipient makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of the lease. The cost of alterations of the leased property provided they were necessary for the performance of the Federal award, and the cost of reasonable restoration required by the lease may be included.

(5) The following settlement expenses are generally allowable.

(i) Accounting, legal, clerical, and similar costs that are reasonably necessary for:

(A) The preparation and presentation to the Federal agency or pass-through entity of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see §§ 200.339-200.343); and

(B) The termination and settlement of subawards.

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.

(6) Claims under subawards, including the allocable portion of claims common to the Federal award and other work of the recipient or subrecipient, are generally allowable. An appropriate share of the recipient's or subrecipient's indirect costs may be allocated to the amount of settlements with contractors and subrecipients, provided that the amount allocated is consistent with the requirements of § 200.414. These allocated indirect costs must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

(b) *Closeout Costs.* Administrative costs associated with the closeout activities of a Federal award are allowable. The recipient or subrecipient may charge the Federal award during the closeout for the necessary administrative costs of that Federal award (for example, salaries of personnel preparing final reports, publication and printing costs, and the costs associated with the disposition of equipment and property). These costs may be incurred until the due date of the final report(s). If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency.

§ 200.473 Training and education costs.

The cost of training and education provided for employee development is allowable.

§ 200.474 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating to goods purchased, in process, or delivered, are allowable. When the costs can be readily identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. When identification with the materials received cannot be readily identified, the inbound transportation cost may be charged to the appropriate indirect cost accounts if the recipient or subrecipient follows a consistent, equitable procedure in this respect. If reimbursable under the terms and conditions of the Federal award, outbound freight should be treated as a direct cost.

§ 200.475 Travel costs.

(a) *General.* Travel costs include the transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the recipient or subrecipient. These costs may be charged on an actual cost basis, a per diem or mileage basis, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip. The method used must be consistent with those normally allowed in like circumstances in the recipient's or subrecipient's other activities and in accordance with the recipient's or subrecipient's established written policies. Notwithstanding the provisions of § 200.444, travel costs of officials covered by that section are allowable with the prior written approval of the Federal agency or pass-through entity when they are specifically related to the Federal award.

(b) *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered

reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the recipient or subrecipient in its regular operations as the result of the recipient's or subrecipient's established written policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

(1) Participation of the individual is necessary for the Federal award; and

(2) The costs are reasonable and consistent with the recipient's or subrecipient's established written policy.

(c)

(1) Temporary dependent care costs (dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

(i) The costs are a direct result of the individual's travel for the Federal award;

(ii) The costs are consistent with the recipient's or subrecipient's established written policy for all travel; and

(iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of six months or more with prior approval of the Federal agency. See § 200.432.

(d) In the absence of an established written policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701-11 ("Travel and Subsistence Expenses; Mileage Allowances"), by the Administrator of General Services, or by the President (or their designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205-46(a)).

(e) *Commercial air travel.*

(1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The recipient or subrecipient must justify and document these conditions on a case-by-case basis for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a recipient's or subrecipient's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the recipient or subrecipient can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* Travel costs by recipient or subrecipient-owned, -leased, or -chartered aircraft include the cost of the lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of these costs that exceed the cost of airfare, as provided for in paragraph (d), is unallowable.

§ 200.476 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See § 200.475.

15. Revise part 200, subpart F, to read as follows:

Subpart F—Audit Requirements

General

Sec.

200.500 Purpose.

Audits

Sec.

200.501 Audit requirements.

200.502 Basis for determining Federal awards expended.

200.503 Relation to other audit requirements.

200.504 Frequency of audits.

200.505 Remedies for noncompliance.

200.506 Audit costs.

200.507 Program-specific audits.

Auditees

Sec.

200.508 Auditee responsibilities.

200.509 Auditor selection.

200.510 Financial statements.

200.511 Audit findings follow-up.

200.512 Report submission.

Federal Agencies

Sec.

200.513 Responsibilities.

Auditors

Sec.

200.514 Scope of audit.

200.515 Audit reporting.

200.516 Audit findings.

200.517 Audit documentation.

200.518 Major program determination.

200.519 Criteria for Federal program risk.

200.520 Criteria for a low-risk auditee.

Management Decisions

Sec.

200.521 Management decisions.

Authority: 31 U.S.C. 503; 31 U.S.C. 6101-6106; 31 U.S.C. 6307; 31 U.S.C. 7501-7507.

Subpart F - Audit Requirements

General

§ 200.500 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

Audits

§ 200.501 Audit requirements.

(a) *Audit required.* A non-Federal entity that expends \$1,000,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) *Single audit.* A non-Federal entity that expends \$1,000,000 in Federal awards during its fiscal year must have a single audit conducted in accordance with § 200.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) or (d).

(c) *Program-specific audit election (in general).* A non-Federal entity may elect to have a program-specific audit conducted in accordance with § 200.507 if the following conditions are met:

(1) The non-Federal entity expends Federal awards under only one Federal program (excluding research and development); and

(2) The Federal program's statutes or regulations, or terms and conditions of the Federal award, do not require a financial statement audit of the non-Federal entity.

(d) *Program-specific audit election for research and development.* A non-Federal entity may elect to have a program-specific audit for research and development conducted in accordance with § 200.507, but only if all of the following conditions are met:

(1) The non-Federal entity expends Federal awards only from the same Federal agency, or the same Federal agency and the same pass-through entity; and

(2) The Federal agency, or pass-through entity in the case of a subrecipient, approves a program-specific audit in advance.

(e) *Exemption when Federal awards expended are less than \$1,000,000.* A non-Federal entity that expends less than \$1,000,000 in Federal awards during its fiscal year is exempt from Federal audit requirements for that year, except as noted in § 200.503. However, in all instances, the records of the non-Federal entity must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and the Government Accountability Office (GAO).

(f) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(g) *Subrecipients and contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. Payments received for goods or services provided as a contractor under a Federal award (see § 200.331) are not subject to audit under this part.

(h) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of a Federal award. Federal award compliance requirements normally do not flow down to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions that

require a contractor to be responsible for program compliance and the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include a determination that these transactions comply with Federal statutes, regulations, and the terms and conditions of a Federal award.

(i) *For-profit subrecipient.* This part does not apply to for-profit organizations. As necessary, the pass-through entity is responsible for establishing requirements to ensure compliance by for-profit subrecipients. The subaward with a for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring throughout the performance of the subaward, and post-award audits (see § 200.332).

§ 200.502 Basis for determining Federal awards expended.

(a) *Determining Federal awards expended.* The determination of when a Federal award is expended must be based on when the activity related to the Federal award occurs. Generally, the activity related to the Federal award pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as:

- (1) Expenditure/expense transactions associated with grants, cooperative agreements, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, and direct appropriations;
- (2) The disbursement of funds to subrecipients;
- (3) The use of loan proceeds under loan and loan guarantee programs;

- (4) The receipt of property (including surplus property);
- (5) The receipt or use of program income;
- (6) The distribution or use of food commodities;
- (7) The disbursement of amounts entitling the non-Federal entity to an interest subsidy;

and

- (8) The period when insurance is in force.

(b) *Loan and loan guarantees (loans)*. Loan and loan guarantees retain their Federal character through the end of the Federal award period of performance unless otherwise specified in statute or Federal agency regulations. The Federal Government is at risk for loans until the debt is repaid. Therefore, the following guidelines must be used to calculate the value of Federal awards expended under loan programs (except as noted in paragraphs (c) and (d)):

- (1) The value of new loans made or received during the audit period; plus
- (2) The balance of loans from previous years at the beginning of the audit period for which the Federal Government imposes continuing compliance requirements; plus
- (3) Any interest subsidy, cash, or administrative cost allowance received.

(c) *Loan and loan guarantees (loans) at Institutions of Higher Education (IHE)*. When loans are made to students of an IHE, but the IHE itself does not have continuing compliance requirements for the loans, then only the value of loans made during the audit period are considered Federal awards expended in that audit period. The balance of loans for previous audit periods is not included as Federal awards expended because the lender accounts for the prior balances.

(d) *Prior loan and loan guarantees (loans)*. Loans, the proceeds of which were received and expended in prior years, are not considered Federal awards expended under this part when Federal statutes, regulations, and the terms and conditions of Federal awards pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) *Endowment funds*. The cumulative balance of Federal awards for endowment funds that are federally restricted is considered Federal awards expended in each audit period in which the funds are still restricted.

(f) *Free rent*. Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of a Federal award to carry out a Federal program must be included in determining Federal awards expended and is subject to audit under this part.

(g) *Valuing non-cash assistance*. Federal non-cash assistance (such as free rent, food commodities, donated property, or donated surplus property that is received as part of a Federal award to carry out a Federal program) must be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency and must be included in determining Federal awards expended under this part

(h) *Medicare*. Medicare payments to a non-Federal entity for providing patient care services to Medicare-eligible individuals are not considered Federal awards expended under this part.

(i) *Medicaid*. Medicaid payments to a subrecipient for providing patient care services to Medicaid-eligible individuals are not considered Federal awards expended under this part unless

a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) *Certain loans provided by the National Credit Union Administration.* For purposes of this part, loans from the National Credit Union Share Insurance Fund and the Central Liquidity Facility funded by contributions from insured non-Federal entities are not considered Federal awards expended.

§ 200.503 Relation to other audit requirements.

(a) An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such an audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a Federal agency must rely upon and use that information.

(b) Notwithstanding subsection (a), a Federal agency, Inspectors General, or GAO may conduct or arrange additional audits to carry out its responsibilities under Federal statute or regulation. The provisions of this part do not authorize any non-Federal entity to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits not to be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be planned and

performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed by other auditors.

(c) The provisions of this part do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or other Federal officials. For example, requirements that may be applicable under the FAR or CAS and the terms and conditions of a cost-reimbursement contract may include additional applicable audits to be conducted or arranged for by Federal agencies.

(d) *Federal agency to pay for additional audits.* A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) *Request for a program to be audited as a major program.* A Federal agency may request that an auditee have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. Such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited to allow for planning. After consultation with its auditor, the auditee should promptly respond to such a request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 200.518 and, if not, the estimated incremental cost. The Federal agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. With

approval of the Federal agency, a pass-through entity may use the provisions of this paragraph for a subrecipient.

§ 200.504 Frequency of audits.

Audits required by this part must be performed annually except as provided in paragraphs (a) and (b):

(a) A State, local government, or Indian Tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo biennial (every other year) audits pursuant to this part. This requirement must still be in effect for the biennial period.

(b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo biennial audits pursuant to this part. Biennial audits must cover both fiscal years within the biennial period.

§ 200.505 Remedies for noncompliance.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies or pass-through-through entities must take appropriate action as provided in § 200.339.

§ 200.506 Audit costs.

See § 200.425.

§ 200.507 Program-specific audits.

(a) *Program-specific audit guide available.* In some cases, a program-specific audit guide will be available to provide specific guidance to the auditor concerning internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing

of current program-specific audit guides can be found in the compliance supplement (Part 8, Appendix VI, Program-Specific Audit Guides). When a current program-specific audit guide is available, the auditor must follow Generally Accepted Government Auditing Standards (GAGAS) and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available.*

(1) When a current program-specific audit guide is not available, the auditee and auditor must basically have the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee must prepare the financial statement(s) for the Federal program that includes a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 200.511(b), and a corrective action plan consistent with the requirements of § 200.511(c).

(3) The auditor must:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements for a major program in accordance with § 200.514(c);

(iii) Determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements for a major program under § 200.514(d);

(iv) Follow up on prior audit findings and perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511. When the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding, the auditor must report this condition as a current-year audit finding.; and

(v) Report any audit findings consistent with the requirements of § 200.516.

(4) The auditor's report(s) may be in the form of either combined or separate reports. It may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance that includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 200.515(d)(1) and findings and questioned costs consistent with the requirements of § 200.515(d)(3).

(c) *Report submission for program-specific audits.*

(1) The audit must be completed and submitted in accordance with paragraph (c)(2) or (c)(3). Unless a different period is specified in the program-specific audit guide, the audit must be submitted within 30 calendar days after receiving the auditor's report(s) or nine months after the end of the audit period (whichever is earlier). The reporting package is due the next business day when the due date falls on a Saturday, Sunday, or Federal holiday. Unless restricted by Federal law or regulation, the auditee must make copies of the report(s) available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(2) *Program-specific audit guide available.* When a program-specific audit guide is available, the auditee must electronically submit the data collection form prepared in accordance with § 200.512(b), as applicable to the program-specific audit, to the Federal Audit Clearinghouse (FAC). The submission must also include the reporting required by the program-specific audit guide.

(3) *Program-specific audit guide not available.* When a program-specific audit guide is not available, the auditee must electronically submit the data collection form prepared in accordance with § 200.512(b) to the FAC. The submission must consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, a corrective action plan as described in paragraph (b)(2), and the auditor's report(s) described in paragraph (b)(4).

(d) *Other sections of this part may apply.* Program-specific audits are subject to:

- (1) 200.500 Purpose through 200.503 Relation to other audit requirements, paragraph (d);
- (2) 200.504 Frequency of audits through 200.506 Audit costs;

- (3) 200.508 Auditee responsibilities through 200.509 Auditor selection;
- (4) 200.511 Audit findings follow-up;
- (5) 200.512 Report submission, paragraphs (e) through (h);
- (6) 200.513 Responsibilities;
- (7) 200.516 Audit findings through 200.517 Audit documentation;
- (8) 200.521 Management decision; and
- (9) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

Auditees

§ 200.508 Auditee responsibilities.

The auditee must:

(a) Arrange for the audit required by this part in accordance with § 200.509, and ensure it is properly performed and submitted in accordance with § 200.512.

(b) Prepare financial statements, including the schedule of expenditures of Federal awards in accordance with § 200.510.

(c) Promptly follow up and take corrective action on audit findings. This includes preparing a summary schedule of prior audit findings and a corrective action plan in accordance with § 200.511(b) and (c), respectively.

(d) Provide the auditor access to personnel, accounts, books, records, supporting documentation, and any other information needed for the auditor to perform the audit required by this part.

§ 200.509 Auditor selection.

(a) *Auditor procurement.* When procuring audit services, the auditee must follow the procurement standards in §§ 200.317 through 200.327 of subpart D or the FAR (48 CFR part 42), as applicable. When requesting proposals for audit services, the objectives and scope of the audit must be made clear, and the non-Federal entity must request a copy of the audit organization's peer review report, which the auditor must provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make efforts to contract with businesses as stated in § 200.321 or the FAR (48 CFR part 42), as applicable.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceed \$1 million. This restriction applies to the base year used to prepare the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they fully comply with the requirements of this part.

§ 200.510 Financial statements.

(a) *Financial statements.* The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational

unit and fiscal year chosen to meet this part's requirements. However, organization-wide financial statements of the non-Federal entity may also include departments, agencies, and other organizational units that have separate audits in accordance with § 200.514(a) and prepare separate financial statements.

(b) *Schedule of expenditures of Federal awards.* The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. The schedule must include the total Federal awards expended as determined in accordance with § 200.502. The auditee may choose to provide information requested by Federal agencies or pass-through-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may separately list the amount of Federal awards expended for each year of a Federal award. The schedule must:

(1) List individual Federal programs by Federal agency using the applicable Assistance Listing number(s). For a cluster of programs, the non-Federal entity must provide the cluster name, a list of individual Federal programs within the cluster, and provide the Federal agency name and the applicable Assistance Listing number(s). For research and development, total Federal awards expended must be shown either by individual Federal award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision within the Department of Health and Human Services.

(2) For audits covering multiple recipients (such as departments, agencies, IHEs, and other organizational units), identify the recipient of the Federal award.

(3) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity must be included.

(4) Provide total Federal awards expended for each individual Federal program and the Assistance Listings number or other identifying number when the Assistance Listings information is unavailable. For a cluster of programs, the auditee must also provide the total for the cluster.

(5) Include the total amount provided to subrecipients from each Federal program.

(6) For loan or loan guarantee programs described in § 200.502(b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This requirement is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.

(7) Include notes describing the significant accounting policies used in preparing the schedule and whether the auditee elected to use the 15 percent de minimis indirect cost rate (see § 200.414).

§ 200.511 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under § 200.516(c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements, which must be reported in accordance with GAGAS.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) or no longer valid or not warranting further action in accordance with paragraph (b)(3).

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or only partially corrected, the summary schedule must describe the reasons for the finding's recurrence, planned corrective action, and any partial corrective action taken. When the corrective action taken significantly differs from the corrective action previously reported in a corrective action plan or the Federal agency's or pass-through-through entity's management decision, the summary schedule must provide an explanation.

(3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee must prepare a corrective action plan to address each audit finding included in the auditor's report for the current year. The corrective action plan must be a document separate from the auditor's findings described in § 200.516. The corrective action plan must also provide the name(s) of the contact person(s) responsible for the corrective action, the corrective action to be taken, and the anticipated completion date. When the auditee does not agree with the audit findings or believes corrective action is not required, the corrective action plan must include a detailed explanation of the reasons.

§ 200.512 Report submission.

(a) *General.*

(1) The audit must be completed and include the data collection form described in paragraph (b) and the reporting package described in paragraph (c). The audit must be submitted within 30 calendar days after receiving the auditor's report(s) or nine months after the end of the audit period (whichever is earlier). If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

(2) The auditee must make copies available for public inspection unless restricted by Federal statute or regulation. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) *Data collection.* The FAC is the repository of record for subpart F reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

(1) The auditee must submit the required data collection form (SF-SAC) described in Appendix X to Part 200. This form provides information about the auditee, its Federal programs, the results of the audit, and whether the audit was completed in accordance with this part. The form must include all information required by this part that is necessary for Federal agencies to use the audit to ensure the integrity of Federal programs. The form includes data elements and a format that OMB must approve, is available from the FAC, and include collections of information from the reporting package described in paragraph (c).

(2) A senior-level representative of the auditee (for example, a State controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection form stating that the auditee complied with the requirements of this part, including that:

- (i) The data collection form was prepared in accordance with this part (and the instructions accompanying the form);
- (ii) The reporting package does not include protected personally identifiable information;
- (iii) The information included in its entirety is accurate and complete; and
- (iv) The FAC is authorized to make the reporting package and the form publicly available on a website.

(3) *Exception for Indian Tribes and Tribal Organizations.* An auditee that is an Indian Tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(1)) may opt not to authorize the FAC to make the reporting package publicly available on a Web site. To opt-out, an Indian Tribe or tribal organization must exclude the authorization described in paragraph (b)(2)(iv). In these instances,

the Indian Tribe is responsible for submitting the reporting package directly to any pass-through entities through which it has received a Federal award and to pass-through entities for which the summary schedule of prior audit findings reported the status of any findings related to those Federal awards that the pass-through entity provided. Unless restricted by Federal statute or regulation, if the auditee opts not to authorize publication, the Indian Tribe must make copies of the reporting package available for public inspection.

(4) The auditor must complete the applicable data elements of the data collection form using the information included in the reporting package described in paragraph (c). The auditor must sign a statement to be included as part of the data collection form stating:

- (i) The source of information included in the data collection form;
- (ii) The auditor's responsibility for the information;
- (iii) The data collection form is not a substitute for the reporting package described in paragraph (c); and
- (iv) The content of the form is limited to the collection of information prescribed by OMB.

(c) *Reporting package.* The reporting package must include the following:

- (1) Financial statements and schedule of expenditures of Federal awards discussed in § 200.510(a) and (b), respectively;
- (2) Summary schedule of prior audit findings discussed in § 200.511(b);
- (3) Auditor's report(s) discussed in § 200.515; and
- (4) Corrective action plan discussed in § 200.511(c).

(d) *Submission to FAC.* The auditee must electronically submit the data collection form described in paragraph (b) and the reporting package described in paragraph (c) to the FAC.

(e) *Requests for management letters issued by the auditor.* Auditees must submit a copy of any management letters issued by the auditor when requested by a Federal agency or pass-through entity.

(f) *Report retention requirements.* Auditees must keep a copy of the data collection form described in paragraph (b) and a copy of the reporting package described in paragraph (c) on file for three years from the date of submission to the FAC. Copies of audit records must be maintained in accordance with § 200.336.

(g) *FAC responsibilities.* The FAC must make available the reporting packages received in accordance with paragraph (c) and § 200.507(c) to the public, except for Indian Tribes exercising the option in paragraph (b)(3), and maintain a database of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that the FAC knows have not submitted the required data collection forms and reporting packages.

(h) *Electronic filing.* Nothing in this part must preclude electronic submissions to the FAC in such a manner as may be approved by OMB.

Federal Agencies

§ 200.513 Responsibilities.

(a) *Cognizant agency for audit responsibilities.*

(1) A non-Federal entity expending more than \$50 million a year in Federal awards must have a cognizant agency for audit. The cognizant agency for audit must be the Federal agency that provides the largest amount of direct funding to a non-Federal entity (as listed on the

Schedule of expenditures of Federal awards, see § 200.510(b)) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total expenditures (as direct and subawards) by the non-Federal entity, then the Federal agency with the predominant amount of total funding is the designated cognizant agency for audit.

(2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2019 and every fifth year after that.

(3) Notwithstanding how audit cognizance is determined, a Federal agency may reassign cognizance to another Federal agency that provides substantial funding to an auditee if it agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must notify the change to the FAC, the auditee, and, if known, the auditor.

(4) The cognizant agency for audit must:

(i) Provide technical audit advice and assistance to auditees and auditors.

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors and provide the results to other interested organizations.

(iii) Cooperate and support the Federal agency designated by OMB to lead a government-wide analysis to assess the quality of single audits. The government-wide analysis may rely on the current and ongoing quality control review work performed by Federal agencies, State auditors, and professional audit associations. This government-wide audit analysis must be performed at an interval determined by OMB, and the results must be posted publicly. In

providing support to the government-wide analysis, a Federal agency must provide the following:

(A) An assessment of the extent to which single audits conform to the requirements, standards, and procedures of this part; and

(B) Recommendations to address audit quality issues, including recommendations for any changes to this part's requirements, standards, and procedures.

(iv) Promptly inform the appropriate Federal law enforcement officials and impacted Federal agencies of any direct reporting by the auditee or its auditor required by GAGAS, Federal statute, or regulation.

(v) Advise the community of independent auditors of any noteworthy or important factual trends related to the quality of audits stemming from quality control reviews. Significant problems or quality issues consistently identified through quality control reviews of audit reports must be referred to appropriate State licensing agencies and professional bodies.

(vi) Advise the auditor, Federal awarding agencies, and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee must work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit must notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors must be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

(vii) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon, rather than duplicate, audits performed in accordance with this part.

(viii) Coordinate a management decision for cross-cutting audit findings that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee. 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 agency or pass-through entity).

(ix) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(x) Provide advice to auditees as to how to handle changes in fiscal year.

(b) *Oversight agency for audit responsibilities.* An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 200.1 *oversight agency for audit*. A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:

(1) Must provide technical advice and assistance to auditees and auditors.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) *Awarding Federal agency responsibilities.* In addition to all other requirements of this part, the awarding Federal agency must:

(1) Ensure that audits are completed, and reports are received in a timely manner in accordance with the requirements of this part.

(2) Provide technical advice and assistance to auditees and auditors.

(3) Follow-up on audit findings to ensure that non-Federal entities take appropriate and timely corrective action. Follow-up includes:

(i) Issuing a management decision in accordance with § 200.521;

(ii) Monitoring the non-Federal entity's progress implementing a corrective action;

(iii) Using a cooperative audit resolution approach to improve Federal program outcomes through better audit resolution, follow-up, and corrective action, which means the use of audit follow-up techniques promoting 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:

(A) A strong commitment by Federal agency and non-Federal entity leadership to Federal program integrity;

(B) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; non-Federal entities and their auditors working cooperatively with Federal agencies;

(C) A focus on current conditions and corrective action going forward;

(D) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(E) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

(iv) Tracking the effectiveness of the Federal agency's follow-up processes, the effectiveness of single audits in improving non-Federal entity accountability, and the use of single audits in making Federal award decisions. The Federal agency should develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow up on audit findings.

(4) Provide OMB with annual updates to the compliance supplement. These updates include working with OMB to ensure that the compliance supplement focuses the auditor on testing the compliance requirements most likely to cause improper payments, fraud, waste, abuse, or generate audit findings for which the Federal agency will take action in accordance with § 200.505. Federal agencies are encouraged to engage with external audit stakeholders and the Federal agency's Office of Inspector General's National Single Audit Coordinator (NSAC) prior to submitting compliance supplement drafts to OMB.

(5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the Federal agency. The accountable official must be:

(i) Responsible for ensuring that the Federal agency fulfills the requirements of this section and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.

(ii) Accountable for improving the effectiveness of the Federal agency's single audit processes in accordance with paragraph (c)(3)(iv).

(iii) Responsible for designating the Federal agency's key management single audit liaison.

(6) Provide OMB with the name of a key management single audit liaison. The liaison must:

(i) Serve as the Federal agency's point of contact for the single audit process within and outside the Federal Government.

(ii) Promote interagency coordination, consistency, and information sharing. This includes coordinating audit follow-up, identifying high-risk non-Federal entities, providing input on single audit and follow-up policy, enhancing the utility of the FAC, and identifying ways to use single audit results to improve Federal award accountability and best practices.

(iii) Oversee training for the Federal agency's program management personnel related to the single audit process.

(iv) Promote the Federal agency's use of a cooperative audit resolution approach as described in paragraph (c)(3)(iii).

(v) Coordinate the Federal agency's audit follow-up processes and ensure non-Federal entities implement corrective actions for audit findings.

(vi) Manage the Federal agency's audit follow-up processes for the cognizant agency for an audit if there are cross-cutting audit findings. Cross-cutting audit findings means an audit finding where the same underlying condition or issue affects all Federal awards (including Federal awards of more than one Federal agency or pass-through entity).

(vii) Ensure the Federal agency provides OMB with annual updates to the compliance supplement consistent with the compliance supplement preparation guide.

(viii) Support the mission of the Federal agency's single audit accountable official and coordinate with the Federal agency's Office of Inspector General's National Single Audit Coordinator (NSAC).

Auditors

§ 200.514 Scope of audit.

(a) *General.* The audit must be conducted in accordance with GAGAS. The audit must also cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during the audit period. In these instances, the audit must include the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period.

(b) *Financial statements.* The auditor must determine whether the auditee's financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles. The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(c) *Internal control.*

(1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control-Integrated

Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(2) In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.

(3) Except as provided in paragraph (c)(4), the auditor must:

(i) Plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(3)(i).

(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.*

(1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements, and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor must follow the compliance supplement's guidance for programs not included.

(4) The compliance testing must include tests of transactions and other auditing procedures necessary to provide the auditor with sufficient audit evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor must follow up on prior audit findings regardless of whether a prior audit finding is related to a major program in the current year. Audit follow-up includes performing procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511. When the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding, the auditor must report this condition as a current-year audit finding.

(f) *Data collection form.* As required in § 200.512(b)(4), the auditor must complete and sign specified sections of the data collection form.

§ 200.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports. It may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) from the auditor determining whether the financial statement(s) of the auditee is presented fairly in all material respects in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory as required by State law). The auditor must also decide whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(b) A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of internal control and compliance testing and the results of the tests. Where applicable, the report must refer to the separate schedule of findings and questioned costs described in paragraph (d).

(c) A report on compliance for each major program and a report on internal control over compliance. This report must describe the scope of testing of internal control over compliance and include an opinion (or disclaimer of opinion) as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described in paragraph (d).

(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the auditor's results, which must include:

(i) The type of report the auditor issued (unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion) on whether the audited financial statements were prepared in accordance with GAAP;

(ii) A statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements, if applicable;

(iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee;

(iv) A statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit, if applicable;

(v) The type of report the auditor issued (unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion) on compliance for major programs;

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 200.516(a);

(vii) An identification of major programs by listing each individual major program; however, in the case of a cluster of programs, only the cluster name as shown on the schedule of expenditures of Federal Awards is required for a cluster of programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 200.518(b)(1) or (3) when a recalculation of the Type A threshold is required for large loan or loan guarantees; and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § 200.520.

(2) Findings relating to the financial statements required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which must include audit findings as defined in § 200.516(a) and be reported in the following manner:

(i) Audit findings (for example, internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue must be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings that relate to both the financial statements (paragraph (d)(2)) and Federal awards (paragraph (d)(3)) must be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form and reference a detailed reporting in the other section.

(e) Nothing in this part precludes combining the reporting required by this section with the reporting required by § 200.512(b) when allowed by GAGAS and Appendix X.

§ 200.516 Audit findings.

(a) *Audit findings reported.* The auditor must report the following as an audit finding in the schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or a material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(3) Known questioned costs when either known or likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. When reporting questioned costs, the auditor must include information to provide proper perspective for evaluating the prevalence and consequences of the questioned costs.

(4) Known questioned costs greater than \$25,000 for a Federal program that is not audited as a major program. Except for audit follow-up, the auditor is not required to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (for example, as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$25,000, the auditor must report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion. This must be included unless the circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs.

(6) Known or likely fraud affecting a Federal award, unless the fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs. This paragraph does

not require the auditor to publicly report information that could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511(b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail and clarity.* Audit findings must be presented with sufficient detail and clarity for both the auditee to prepare a corrective action plan and take corrective action and for Federal agencies or pass-through-through entities to arrive at a management decision. As applicable, the following information must be included in audit findings:

(1) The Federal program and specific Federal award identification, including the Assistance Listings title and number, Federal award identification number and year, the name of the Federal agency, and name of the applicable pass-through entity. When information, such as the Assistance Listings title and number or Federal award identification number, is unavailable, the auditor must provide the best information available to describe the Federal award.

(2) The criteria or specific requirement for the audit finding (for example, the specific Federal statute, regulation, or term and condition of the Federal award). The criteria or specific requirement provides a context for evaluating evidence and understanding findings. As a result, the criteria should generally identify the required or desired state or expectation with respect to the program or operation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action

(5) The possible asserted effect to provide sufficient information to the auditee and Federal agency or pass-through entity to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) The identification of known questioned costs, by applicable Assistance Listing number(s) and Federal award identification number(s), and how these questioned costs were computed.

(7) When there are known questioned costs but the dollar amount is undetermined or not reported, a description of why the dollar amount was undetermined or otherwise could not be reported.

(8) Information to provide proper perspective for evaluating the prevalence and consequences of the audit finding. For example, whether the audit finding represents an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. In addition, the audit should indicate whether the sampling was a statistically valid sample.

(9) The identification of whether the audit finding is a repeat of a finding in the immediately prior audit. The audit must identify the applicable prior year audit finding numbers in these instances.

(10) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(11) Views of the responsible officials of the auditee.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission (see § 200.512(b)).

§ 200.517 Audit documentation.

(a) *Retention of audit documentation.* The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee. The cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity may extend the retention period by providing written notification to the auditor. When the auditor is aware that the Federal agency, pass-through entity, or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to the destruction of the audit documentation and reports.

(b) *Access to audit documentation.* Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the

purposes of this part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation as is reasonable and necessary.

§ 200.518 Major program determination.

(a) *General.* The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must consider current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process described in paragraphs (b) through (h) below must be followed.

(b) *Step one.*

(1) The auditor must identify and label the larger Federal programs as Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the following table:

Total Federal awards expended	Type A threshold
Equal to or exceed \$1,000,000 but less than or equal to \$25 million	\$750,000.
Exceed \$25 million but less than or equal to \$100 million	Total Federal awards expended times .03.
Exceed \$100 million but less than or equal to \$1 billion	\$3 million.
Exceed \$1 billion but less than or equal to \$10 billion	Total Federal awards expended times .003.
Exceed \$10 billion but less than or equal to \$20 billion	\$30 million.

Total Federal awards expended	Type A threshold
Exceed \$20 billion	Total Federal awards expended times .0015.

(2) Federal programs not labeled Type A under paragraph (b)(1) must be labeled Type B programs.

(3) Including large loans and loan guarantees (loans) must not result in the exclusion of other programs as Type A programs. A Federal program providing loans is considered a large loan program when it exceeds four times the largest non-loan program. For these large loan programs, the auditor must consider the Federal program as a Type A program and exclude its values in determining other Type A programs. This recalculation of the Type A program is performed after removing the total of all large loan programs. For this paragraph, a program is only considered a Federal program providing loans if the value of Federal awards expended for loans within the program comprises 50 percent or more of the total Federal awards expended for the program. A cluster of programs is treated as one program, and the value of Federal awards expended under a loan program is determined as described in § 200.502.

(4) For biennial audits (see § 200.504), the determination of Type A and Type B programs must be based on the Federal awards expended during the two-year audit period.

(c) *Step two.*

(1) The auditor must identify Type A programs that are low-risk. In making this determination, the auditor must consider whether the requirements in § 200.519(c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate

significantly increased risk and therefore preclude the program from being low-risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must not have had:

(i) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);

(ii) A modified opinion on the program in the auditor's report on major programs as required under § 200.515(c); or

(iii) Known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.

(2) Notwithstanding paragraph (c)(1), OMB may approve a Federal agency request that a Type A program not be considered low-risk for a specific recipient. For example, it may be necessary for a large Type A program to be audited as a major program each year for a particular recipient for the Federal agency to comply with 31 U.S.C. 3515. The Federal agency must notify the auditee and, if known, the auditor of OMB's approval at least 180 calendar days prior to the end of the fiscal year to be audited.

(d) *Step three.*

(1) The auditor must identify high-risk Type B programs using professional judgment and the criteria in § 200.519. However, the auditor is not required to identify more high-risk Type B programs than at least one-fourth of the number of low-risk Type A programs identified as low-risk under step two. Except for known material weakness in internal control or compliance problems as discussed in § 200.519(b)(1) and (2) and (c)(1), a single criterion in risk would

rarely cause a Type B program to be considered high-risk. When identifying which Type B programs to assess for risk, the auditor is encouraged to use an approach that provides an opportunity for different high-risk Type B programs to be audited as major programs over a period of time.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed 25 percent (0.25) of the Type A threshold determined in step one.

(e) *Step four.* At a minimum, the auditor must audit all of the following as major programs:

(1) All Type A programs not identified as low-risk under step two.

(2) All Type B programs identified as high-risk under step three.

(3) Additional programs as necessary to comply with the percentage of coverage rule described in paragraph (f). This rule may require the auditor to audit more programs as major programs than the number of Type A programs.

(f) *Percentage of coverage rule.* When the auditee meets the criteria in § 200.520, the auditor only needs to audit the major programs identified in paragraphs (e)(1) and (2) and such additional Federal programs with Federal awards expended that, in the aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in paragraphs (e)(1) and (2) and such additional Federal programs with Federal awards expended that, in the aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

(g) *Documentation of risk.* The auditor must include in the audit documentation the risk analysis used for determining major programs.

(h) *Auditor's judgment.* The auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct when the determination was performed and documented in accordance with this part. Challenges by a Federal agency or pass-through entity must only be for clearly improper use of the requirements in this part. However, a Federal agency or pass-through entity may provide auditors guidance about the risk of a particular Federal program. The auditor must consider this guidance in determining major programs in audits not yet completed.

§ 200.519 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as those described in paragraphs (b), (c), and (d), to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) *Current and prior audit experience.*

(1) Weaknesses in internal control over Federal programs would indicate higher risk. Therefore, consideration should be given to the control environment over Federal programs. This includes considering factors such as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of Federal awards, and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (for example, one college campus) or pervasive throughout the entity.

(ii) A weak system for monitoring subrecipients would indicate higher risk when significant parts of a Federal program are passed to subrecipients through subawards.

(2) Prior audit findings would indicate higher risk, especially when the situations identified in the audit findings could significantly impact a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than those recently audited as major programs without audit findings.

(c) *Oversight exercised by Federal agencies and pass-through entities.*

(1) The oversight exercised by Federal agencies or pass-through-through entities may be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) With the concurrence of OMB, a Federal agency may identify Federal programs that are higher risk. OMB will identify these Federal programs in the compliance supplement.

(d) *Inherent risk of the Federal program.*

(1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third-party contracts or

have eligibility criteria may be higher risk. Federal programs primarily involving staff payroll costs may be at high risk for noncompliance with the requirements of § 200.430 but otherwise be at low risk.

(2) The phase of a Federal program in its lifecycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(3) The phase of a Federal program in its lifecycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to the start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

§ 200.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 200.518.

(a) Single audits were performed on an annual basis in accordance with the provisions of this subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in § 200.512. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor issued unmodified opinions on both the schedule of expenditures of Federal awards and whether the financial statements were prepared in accordance with GAAP (or a basis of accounting required by State law).

(c) No internal control deficiencies were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);

(2) A modified opinion on a major program in the auditor's report on major programs as required under § 200.515(c); or

(3) Known or likely questioned costs that exceeded five percent (.05) of the total Federal awards expended for a Type A program during the audit period.

Management Decisions

§ 200.521 Management decisions.

(a) *General.* The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from

the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial statements, which are required to be reported in accordance with GAGAS.

(b) *Federal agency.* The cognizant agency for audit is responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency (see § 200.513(a)(4)(vii)). The awarding Federal agency is responsible for issuing a management decision for audit findings that affect the Federal awards it makes to a non-Federal entity (see § 200.513(c)(3)(i)).

(c) *Pass-through entity.* The pass-through entity is responsible for issuing a management decision for audit findings that affect subawards it issues to subrecipients under a Federal award (see § 200.332(d)).

(d) *Time requirements.* The Federal agency or pass-through entity responsible for issuing a management decision must do so within six months of the FAC's acceptance of the audit report. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(e) *Reference numbers.* Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with § 200.516(c).

16. Revise the text of part 200, appendix I, to read as follows:

Appendix I to Part 200 - Full Text of Notice of Funding Opportunity

(a) General Requirements.

(1) In developing a notice of funding opportunity (NOFO), Federal agencies must:

(i) Be concise and use plain language per the guidance at *PlainLanguage.gov* wherever possible.

(ii) For electronic NOFOs and other information about them, comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

(2) Federal agencies may:

(i) Link to standard content to include required information rather than including the full language in the NOFO. The NOFO should make clear if linked information is critical—for example, standard terms and conditions, administrative and national policy requirements, and standard templates.

(ii) Include links to relevant regulations and other sources.

(iii) Use cross-references between the sections, including hyperlinks in electronic versions.

(3) *Required Consistency.* Potential applicants must be able to find similar information across all Federal NOFOs. To that end, Federal agencies must include the same or similar section headings and a table of contents with at least these sections:

(i) Basic Information

(ii) Eligibility

(iii) Program Description

(iv) Application Contents and Format

(v) Submission Requirements and Deadlines

- (vi) Application Review Information
- (vii) Award Notices
- (viii) Post-Award Requirements and Administration

(b) *Required Sections and Information.*

As required below, the Federal agency must include the following sections and information in the text of a NOFO and a table of contents.

(1) *Basic Information.*

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal.

(i) This section must include the following:

(A) Federal Agency Name.

(B) Funding Opportunity Title.

(C) Announcement Type (whether the funding opportunity is the initial announcement or a modification of a previously announced opportunity).

(D) Funding Opportunity Number (required, if the Federal agency has assigned a number to the funding opportunity announcement).

(E) Assistance Listing Number(s).

(F) Funding Details. The total amount of funding that the Federal agency expects to award, the anticipated number of awards, and the expected dollar values of individual awards, which may be a range.

(G) Key Dates. Key dates include due dates for submitting applications or Executive Order 12372 submissions, as well as for any letters of intent or preapplications. For any

announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the Federal agency. If possible, the Federal agency should provide an anticipated award date. If the NOFO is evaluated on a “rolling” basis, the Federal agency should provide an estimate of the time needed to process an application and notify the applicant of the Federal agency's decision.

(H) Executive Summary. A brief description that is written in plain language and summarizes the goals and objectives of the program, the target audience, and eligible recipients. The text of the executive summary should not exceed 500 words

(I) Agency contact information.

(ii) This section could include the following:

(A) The amount of funding per Federal award, on average, experienced in previous years.

(B) Whether this is a new program or a one-time initiative.

(2) **Eligibility.**

This section addresses the factors that determine applicant or application eligibility.

(i) *Eligible Applicants.* This subsection must identify the following:

(A) A complete and specific list of entity types eligible to apply.

(B) Any additional restrictions on eligibility beyond the type of entity.

(C) Eligibility factors for the principal investigator or project director, if any.

(D) Criteria that would make any particular projects ineligible.

(E) A reference to any funding restriction elsewhere in the NOFO that could affect an applicant's or project's eligibility.

(F) A reference or link to any other factors that would disqualify an applicant or application, such as the responsiveness criteria in 6a.

(G) Any limit on the number of applications an applicant may submit under the announcement. Make clear whether the limitation is on the submitting organization, individual investigator or program director, or both.

(ii) *Cost Sharing*. This subsection must state:

(A) Whether there is required cost sharing. This statement must be clear that not committing to the required cost sharing will make the application ineligible. If cost sharing is not required, the announcement must say so.

(B) An explanation of the calculation for the required cost sharing. Required cost sharing may be a certain percentage or amount or in the form of contributions of specified items or activities (*for example*, provision of equipment).

(C) Any restrictions on the types of cost, such as in-kind contributions, acceptable as cost sharing.

(D) Any requirement to commit to cost sharing. This section should refer to the appropriate portions of section D stating any pre-award requirements for the submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.

(3) ***Program Description***.

This section contains the full program description of the funding opportunity.

(i) This section must include the following:

Pre-publication Version

(A) The general purpose of the funding and what it is expected to achieve for the public good.

(B) The Federal agency's funding priorities or focus areas, if any.

(C) Program goals and objectives.

(D) A description of how the award will contribute to achieving the program's goals and objectives.

(E) The expected performance goals, indicators, targets, baseline data, data collection, and other outcomes the Federal agency expects recipients to achieve.

(F) For cooperative agreements, the “substantial involvement” that the Federal agency expects to have or should reference where the potential applicant can find that information.

(G) Information on program specific unallowable costs so that the applicant can develop an application and budget consistent with program requirements and any limits on indirect costs.

(H) Any eligibility criteria for beneficiaries or program participants other than Federal award recipients.

(I) Citations for authorizing statutes and regulations for the funding opportunity.

(ii) This section could also include the following:

(A) Any program history, such as whether it is a new program or a new or changed area of program emphasis.

(B) Examples of successful projects funded in the past.

(C) Other information the Federal agency finds necessary.

(4) *Application Contents and Format.*

This subsection must identify the required content of an application and the forms or formats an applicant must use. If any requirements are stated elsewhere, this section should refer to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them.

(i) This subsection must specifically address content and form or format requirements for:

(A) Pre-applications, letters of intent, or white papers are required or encouraged if they apply.

(B) The application as a whole.

(C) Component pieces of the application.

(D) Information that successful applicants must submit after notification of intent to make a Federal award but prior to a Federal award. For example, this could include evidence of compliance with requirements relating to human subjects or information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.).

(ii) Within each of the categories above, this subsection must include, where relevant:

(A) Limitations on page numbers.

(B) Formatting requirements, including font and font size, margins, paper size, and color limitations.

(C) Any requirements for file naming, file size limitations, or file format such as PDF.

(D) The number of copies required if paper submissions are allowed.

(E) The sequence required for application sections or components.

(F) Signature requirements, including those for electronic submissions.

(G) Any requirements for third-party information such as references, letters of support, or letters of commitment to the project or to contribute to cost sharing.

(H) A reference to any requirements in Section 6 to provide documentation to support an eligibility determination, such as proof of 501(c)(3) status or an authorizing tribal resolution.

(I) Instructions needed to develop the narrative portions of the application. Include any requirements for its order, format, or required headings.

(J) If applicable, the need to identify proprietary information. Include how to do so and how the Federal agency will handle it.

(5) *Submission Requirements and Deadlines.*

(i) *Address to Request Application Package.* This subsection must include the following:

(A) How to get application forms, kits, or other materials needed to apply. If the announcement contains everything needed, this section needs only say so. If not, the guidance must include:

(1) An Internet address where the materials can be accessed.

(2) An email address.

(3) A U.S. Postal Service mailing address.

(4) Telephone number.

(5) Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, or other appropriate telecommunication relay service.

(ii) *Unique entity identifier and System for Award Management (SAM.gov).* This subsection must state the requirements for unique entity identifiers and registration in SAM.gov.

It must include the following:

(A) Each applicant must:

(1) Be registered in SAM.gov before submitting its application;

(2) Provide a valid unique entity identifier in its application; and

(3) Continue to maintain an active registration in SAM.gov with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal agency.

(B) If individuals are eligible to apply, they are exempt from this requirement under 2 CFR 25.110(b).

(C) If the Federal agency exempts any applicants from this requirement under 2 CFR 25.110(c) or (d), a statement to that effect.

(iii) *Submission Instructions.* This subsection addresses how the applicant will submit the application. It must include the following:

(A) Actions needed prior to applying:

(1) Instructions on any registrations required to access electronic submission systems or links to them. Where possible, provide the expected time frames needed to complete the registration process.

(B) The methods for submitting the application:

(1) Whether the applicant must submit in electronic or paper form or whether the applicant has an option. Applicants should not be required to submit in more than one format.

(2) Instructions on how to submit electronically or links to them. Must include the URL to the electronic submission system and information on or links to information about the system or software requirements needed by the system.

(3) If the Federal agency allows paper submissions, the process used to approve this option if it is not automatically allowed.

(4) If the Federal agency allows paper submissions, the method for submitting the application. This information must include a postal address and “care of” information needed to route the application to the appropriate person, office, or email address, if the Federal agency allows such submissions.

(C) If applicable, this subsection also must say how applicants must submit pre-applications, letters of intent, third-party information, or other information required before the award. It must include the following:

(1) Instructions on how to submit electronically or links to them.

(2) Whether the applicant must submit in electronic or paper form or whether the applicant has an option.

(3) If the Federal agency allows paper submissions, the method for submitting the required information. This information must include a postal address and “care of” information needed to route the application to the appropriate person, office, or email address.

(D) This subsection must also include what to do in the event of system problems and a point of contact who will be available if the applicant experiences technical difficulties.

(iv) *Submission Dates and Times*. This subsection must include due dates and times for all submissions. If they are different for electronic and paper submissions, be clear about the differences. This includes the following:

(A) Full applications.

(B) Any preliminary submissions, such as letters of intent, white papers, or pre-applications.

(C) Any other submissions required before Federal award separate from the full application.

(D) If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so.

(v) *Intergovernmental Review*. This subsection must include the following:

(A) Whether or not the funding opportunity is subject to Executive Order 12372, “Intergovernmental Review of Federal Programs”.

(B) If it is applicable, include the following:

(1) A short description of this requirement.

(2) Where applicants can find their State’s Single Point of Contact, learn whether their State has an intergovernmental review process, and if so, get information on their State’s process. The list of SPOCs is on the Office of Management and Budget's website.

(6) *Application Review Information*.

(i) *Responsiveness Review*. This section includes information on the criteria that make an application or project ineligible. These are sometimes referred to as “responsiveness” criteria, “go-no-go” criteria, or “threshold” criteria. Federal agencies may change the title of this subsection as appropriate. This subsection must include the following:

(A) A brief understanding of the Federal agency responsiveness review process.

(B) A list and enough detail to understand the criteria or disqualifying factors to be reviewed.

(C) A reference to the regulation or requirement that describes the restriction, if applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, say so.

(ii) *Review Criteria.* This section must address the review criteria that the Federal agency will use to evaluate applications for merit. This information includes the merit and other review criteria evaluators will use to judge applications, including any statutory, regulatory, or other preferences that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize the fairness of the process.

(A) This subsection must include the following:

(1) A clear description of each criterion and sub-criterion used.

(2) If criteria vary in importance, the relative percentages, weights, or other means used to distinguish between them.

(3) For statutory, regulatory, or other preferences, an explanation of those preferences with an explicit indication of their effect, for example, if they result in additional points being assigned.

(4) How an applicant's proposed cost sharing will be considered in the review process if it is not an eligibility criterion in Section 2b. For example, to assign a certain number of additional points to applicants who offer cost sharing or to break ties among applications with equivalent scores after evaluation against all other factors. If cost sharing will not be considered in the

evaluation, the announcement should say so. Do not include statements that cost sharing is encouraged without providing clarity about what that means.

(5) The relevant information if the Federal agency permits applicants to nominate reviewers of their applications or suggest those, they feel may be inappropriate due to a conflict of interest.

(B) This section could include the following:

(1) The types of people responsible for evaluation against the merit criteria. For example, peers external to the Federal agency or Federal agency personnel.

(2) The number of people on an evaluation panel and how it operates, how reviewers are selected, reviewer qualifications, and how conflicts of interest are avoided.

(iii) *Review and Selection Process.*

This section may vary in the level of detail provided.

(A) It must include the following:

(1) Any program policy, factors, or elements that the selecting official may use in selecting applications for the award. For example, geographical dispersion, program balance, or diversity.

(2) A brief description of the merit review process, including how the Federal agency uses merit review outcomes in final decision-making. For example, whether they are advisory only.

(B) It could also include the following:

(1) Who makes the final selections for awards.

(2) Any multi-phase review methods. For example, an external panel that advises on, makes, or approves final recommendations to the deciding official.

(iv) *Risk Review.*

(A) This section must include the following:

(1) A brief description of the factors used for the Federal agency's risk review as required by § 200.206.

(2) If the Federal agency expects that any award under the NOFO will be more than the simplified acquisition threshold during its period of performance, include the following information:

(i) That before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, the Federal agency must review and consider any information about the applicant that is in the responsibility/qualification records available in SAM.gov (see 41 U.S.C. 2313).

(ii) That an applicant can review and comment on any information in the responsibility/qualification records available in SAM.gov.

(iii) That before making decisions in the risk review required by § 200.206 the Federal agency will consider any comments by the applicant, along with information available in the responsibility/qualification records in SAM.gov.

(7) *Award Notices.*

This section must address what a successful applicant can expect to receive following selection.

(i) It must include the following:

(A) If the Federal agency's practice is to provide a separate notice stating that an application has been selected before it makes the Federal award, indicate that the letter is not an authorization to begin performance and that the Federal award is the authorizing document.

(B) If pre-award costs are allowed, beginning performance is at the applicant's own risk.

(C) This section should indicate that the notice of Federal award signed by the grants officer, or equivalent, is the official document that obligates funds, and whether it is provided through postal mail or by electronic means and to whom.

(D) The timing, form, and content of notifications to unsuccessful applicants. See also § 200.211.

(8) *Post-Award Requirements and Administration.*

(i) *Administrative and National Policy Requirements.* Providing information on administrative and policy requirements lets a potential applicant identify any requirements with which it would have difficulty complying. This subsection must include the following:

(A) A statement related to the "general" terms and conditions of the award, including requirements that the Federal agency normally includes.

(B) Any relevant special terms and conditions.

(C) Any special requirements that could apply to specific awards after the review of applications and other information based on the particular circumstances of the effort to be supported. For example, if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing, or security requirements.

(D) As in other sections, the announcement need not include all terms and conditions of the award but may refer to documents with details on terms and conditions.

(ii) *Reporting.*

This subsection includes information needed to understand the post-award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ from what the Federal agency's Federal awards usually require. For example, differences in report type, frequency, form, format, or circumstances for use. This section must include the following:

(A) The type of reporting required, such as financial or performance.

(B) The reporting frequency.

(C) The means of submission, such as paper or electronic.

(D) References to all relevant requirements, such as those at 2 CFR 180.335 and 180.350.

(E) If the Federal share of any Federal award may include more than \$500,000 over the period of performance, this section must inform potential applicants about the post-award reporting requirements reflected in appendix XII to this part.

(9) *Other Information – Optional.*

This section may include any additional information to help potential applicants. For example, the section could include the following:

(i) Related programs or other upcoming or ongoing Federal agency funding opportunities for similar activities.

(ii) Current Internet addresses for Federal agency Web sites that may be useful to an applicant in understanding the program.

(iii) Routine notices to applicants. For example, the Federal Government is not obligated to make any Federal award as a result of the announcement, or only grants officers can bind the Federal Government to the expenditure of funds.

17. Revise part 200, Appendix III, by amending the title of A.1. to read as follow:

A. General

* * * * *

1. Major Functions/Activities of an IHE

18. Revise part 200, Appendix III, by amending paragraph C.2 to read as follows:

C. Determination and Application of Indirect (F&A) Cost Rate or Rates

* * * * *

2. The Distribution Basis

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and up to the first \$50,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in § 200.1. For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

19. Revise part 200, appendix IV, by amending paragraph B.2.c. to read as follows:

B. Allocation of Indirect Costs and Determination of Indirect Cost Rates

* * * * *

2. * * *

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as subawards for \$50,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in § 200.1.

20. Revise part 200, appendix IV, by amending paragraph B.4.a.iii. to read as follows:

B. Allocation of Indirect Costs and Determination of Indirect Cost Rates

* * * * *

4. * * *

a. * * *

(iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, information technology and the like are prorated individually as direct costs to each category and to each Federal award or other activity using a base most appropriate to the particular cost being prorated.

21. Revise part 200, appendix VII, by amending paragraphs C.2.c.(1) to read as follows:

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

* * * * *

2. * * *

c. * * *

(1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, subcontracts in excess of \$50,000, and participant support costs),

22. Revise part 200, appendix VII, by amending paragraph C.3.e.(1) to read as follows:

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

* * * * *

3. * * *

e. * * *

(1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, subawards in excess of \$50,000, and participant support costs),

23. Revise part 200, appendix VII, by:

- a. Amending paragraph D.1.b.;
- b. Inserting paragraph D.1.c.;
- c. Redesignating paragraph D.1.c. to D.1.d.; and
- d. Redesignating paragraph D.1.d. to D.1.e.

The revisions read as follows:

D. Submission and Documentation of Proposals

* * * * *

1. * * *

b. A governmental department or agency (such as a state or local Department of Health, Department of Transportation, or Department of Housing) that receives more than \$35 million in direct Federal funding during its fiscal year must submit its indirect cost rate proposal to its cognizant agency for indirect costs.

c. If a governmental department or agency (such as a state or local Department of Health, Department of Transportation, or Department of Housing) receives \$35 million or less in direct Federal funding during its fiscal year, it must develop an indirect cost proposal in accordance with the requirements of this part and maintain the proposal and related supporting documentation for audit. This established rate must be accepted by any Federal agency to which the governmental department or agency applies for funding. Federal agencies must not compel the governmental department or agency to accept the de minimis rate or some other rate established by the Federal agency. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs.

d. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant agency for indirect costs).

e. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the

same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

24. Revise the text of part 200, appendix X, to read as follows:

The Data Collection Form SF–SAC is available as a webform on the Federal Audit Clearinghouse (FAC). Form and submission instructions can be found at <https://www.fac.gov/>.

25. Revise the text of part 200, appendix XII, to read as follows:

I. Reporting of Matters Related to Recipient Integrity and Performance

(a) General Reporting Requirement.

(1) If the total value of your active grants, cooperative agreements, and procurement contracts from all Federal agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient must ensure the information available in the responsibility/qualification records through the System for Award Management (SAM.gov), about civil, criminal, or administrative proceedings described in paragraph (b) of this award term is current and complete. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in responsibility/qualification records in SAM.gov on or after April 15, 2011 (except past performance reviews required for Federal procurement contracts) will be publicly available.

(b) Proceedings About Which You Must Report.

(1) You must submit the required information about each proceeding that—

(i) Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

(ii) Reached its final disposition during the most recent five-year period; and

(iii) Is one of the following—

(A) A criminal proceeding that resulted in a conviction;

(B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

(C) An administrative proceeding that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

(D) Any other criminal, civil, or administrative proceeding if—

(1) It could have led to an outcome described in paragraph (b)(1)(iii)(A) through (C);

(2) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(3) The requirement in this award term to disclose information about the proceeding does not conflict with applicable laws and regulations.

(c) Reporting Procedures.

Enter the required information in SAM.gov for each proceeding described in paragraph (b) of this award term. You do not need to submit the information a second time under grants and

cooperative agreements that you received if you already provided the information in SAM.gov because you were required to do so under Federal procurement contracts that you were awarded.

(d) Reporting Frequency.

During any period of time when you are subject to the requirement in paragraph (a) of this award term, you must report proceedings information in SAM.gov for the most recent five-year period, either to report new information about a proceeding that you have not reported previously or affirm that there is no new information to report. If you have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000, you must disclose semiannually any information about the criminal, civil, and administrative proceedings.

(e) Definitions.

For purposes of this award term—

Administrative proceeding means a non-judicial process that is adjudicatory in nature to make a determination of fault or liability (for example, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with the performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

Total value of currently active grants, cooperative agreements, and procurement contracts includes the value of the Federal share already received plus any anticipated Federal share under those awards (such as continuation funding).

II. [Reserved]

Deidre A. Harrison,

Deputy Controller, performing the delegated duties of the Controller

Office of Federal Financial Management.