

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Subtitle A, Chapter I, Parts 25, 27, 35, 77, and 180

Guidance for Reporting and Use of Information Concerning Recipient Integrity and Performance

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

ACTION: Proposed guidance.

SUMMARY: The Office of Management and Budget (OMB) is proposing guidance to Federal agencies to implement Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) (hereafter referred to as “section 872”), as it relates to grants. Section 872 requires: establishment of a Governmentwide data system to contain specified information related to the integrity and performance of certain entities awarded Federal grants and contracts; and use of the information by Federal officials making awards. The proposed implementing guidance for grants also would apply to cooperative agreements, as a matter of Governmentwide policy.

DATES: Comments are due on or before April 19, 2010.

ADDRESSES: Due to potential delays in OMB’s receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Comments may be sent via <http://www.regulations.gov>, a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type “guidance on recipient integrity and performance matters” (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

FOR FURTHER INFORMATION CONTACT: Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–7844.

SUPPLEMENTARY INFORMATION:

Executive Summary

Under the proposed guidance, the information that section 872 requires

the data system to contain about each entity either would be reported by Federal officials or self-reported by the entity. The guidance would require appropriate Federal officials to report on: Terminations of awards due to material failure to comply with award terms and conditions; administrative agreements with entities to resolve suspension or debarment proceedings; and findings that entities were not qualified to receive awards. Through a new award term, the guidance would require each recipient that has Federal awards with a cumulative total value greater than \$10,000,000 to provide information about certain civil, criminal, and administrative proceedings that reached final disposition within the most recent 5-year period and were connected with the award or performance of a Federal or State award. The award term also requires those recipients to report at least semiannually to maintain the currency of the information. As section 872 requires, an entity also would be able to submit comments to the data system about any information that the system contains about the entity.

Prior to making a decision to award a grant or cooperative agreement to an entity, the Federal agency official authorized to make the award would be required to determine whether the entity is qualified to receive an award, taking into consideration any information about the entity that is in the data system.

In support of the data system, the proposed guidance also would establish requirements for program announcements and award terms to require that applicants, recipients, and first-tier subrecipients obtain Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) numbers and register in the Central Contractor Registration (CCR). This is a modification of a previous OMB proposal.

The proposed guidance is in amendments to 2 CFR, chapter I, that would add four new parts, amend one existing part, and create subchapters to provide organizational structure for the chapter. The amendments relocate some existing OMB guidance into 2 CFR, chapter I, to provide needed context for the proposed new guidance.

Requirements in Section 872 that are related to Federal procurement contracts are being implemented separately from the proposed guidance in this action, through proposed amendments to the Federal Acquisition Regulation [74 FR 45579]. Data elements and Paperwork Reduction Act clearance for non-Federal entities’ reporting to the

Governmentwide data system will be proposed for comment separately.

In the future, OMB may broaden the scope of the data system to include recipient information from authoritative data sources not described in this guidance and information on each entity receiving an award below the \$500,000 threshold. In response to this notice, we are seeking input on the possible impact such scope changes could have on the affected recipients.

I. Purposes of 2 CFR Amendments Proposed in This Document

Following this **Federal Register** preamble are 12 proposed amendments to chapter I of title 2 of the Code of Federal Regulations (CFR). Chapter I is the location of OMB policy and procedural guidance to Federal agencies for the award and administration of grants and agreements.

The twelve proposed amendments would make various kinds of changes to 2 CFR. Some of the changes would create new OMB guidance needed to implement section 872. Other changes would update guidance that currently exists elsewhere and must be relocated into 2 CFR to provide a context in that title for the new guidance needed to implement section 872. The new and updated guidance would be in four new parts of Chapter I that the amendments would add—2 CFR parts 25, 27, 35, and 77—and in amendments to the existing 2 CFR part 180. Each part states its applicability to types of financial assistance awards and types of entities because the applicability varies depending upon the requirements that the part implements.

The remaining changes are administrative in nature. We are proposing these changes primarily to create seven subchapters in 2 CFR, Chapter I. The intent is to provide a better organizational framework for parts that already are located in the chapter, parts that the twelve proposed amendments would add, and other parts to be added in the future. The first of the proposed administrative changes, which is amendment 1 following this preamble, would transfer parts 2–99 into Chapter I, so that the chapter would be comprised of parts 2–199. Changes made by amendments 2, 4, and 6 through 8, as well as portions of amendments 3 and 5, would create the new subchapters. The subchapters would be:

- Subchapter A, “General Matters.”
- Subchapter B, “Pre-Award Responsibilities.”
- Subchapter C, “Award Content and Format.”

- Subchapter D, “Post-Award Responsibilities.”
- Subchapter E, “Cost Principles.”
- Subchapter F, “Audit Requirements.”
- Subchapter G, “National Policy Requirements.”

The remainder of this **SUPPLEMENTARY INFORMATION** section is organized into 6 sections. Section II describes the statutory requirements of section 872. Section III describes proposed amendments that would add new OMB guidance needed to implement section 872 for grants and cooperative agreements. Section IV describes proposed amendments that would update and relocate into 2 CFR existing guidance, in order to provide needed context for the new guidance described in Section III. Section V explains the relationship of one of the proposed amendments to a proposal that OMB made in June 2008. Section VI is an invitation to comment and Section VII describes next steps.

II. Statutory Requirements of Section 872

A. What Information Must Be Reported and Compiled

Section 872 requires the Administrator of General Services to establish by October 14, 2009 (one year after enactment of Pub. L. 110–417) “a database of information regarding the integrity and performance of certain persons awarded Federal agency contracts and grants for use by Federal agency officials having authority over contracts and grants.” The implementation of the “database” required by section 872 is expected to be a data system comprised of multiple Federal databases. In accordance with paragraph (b) of section 872, the data system must cover at least each entity awarded a Federal contract or grant in excess of \$500,000, to the extent that there exists information regarding the entity in any of the categories that the law delineates (note that “person,” the term used in the statute, as well as the term “entity” used in the proposed guidance to implement the statute, are properly understood to include both organizations and individuals that apply for and receive Federal awards). Those categories include information, in the form of a brief description, for the most recent 5-year period regarding the following:

1. Each civil or criminal proceeding, or any administrative proceeding, in connection with the award or performance of a contract or grant with the Federal Government with respect to the entity during the period to the

extent that such proceeding results in the following:

- a. In a criminal proceeding, a conviction.
- b. In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.
- c. In an administrative proceeding, a finding of fault and liability that results in either: (i) The payment of a monetary fine or penalty of \$5,000 or more; or (ii) the payment of a reimbursement, restitution, or damages in excess of \$100,000.
- d. To the maximum extent practicable and consistent with applicable laws and regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the entity if the proceeding could have led to any of the outcomes specified in the preceding paragraphs a, b, or c.

2. Each Federal contract and grant awarded to the entity that was terminated in such period due to default.

3. Each Federal suspension and debarment of the entity in that period.

4. Each Federal administrative agreement entered into by the entity and the Federal Government in that period to resolve a suspension or debarment proceeding.

5. Each final finding by a Federal official in that period that the entity has been determined not to be a responsible source under subparagraph (C) or (D) of section 4(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(7)).

6. Such other information as shall be provided for purposes of this section in the Federal Acquisition Regulation.

7. To the maximum extent practical, information similar to the information covered by paragraphs 1 through 4 in connection with the award or performance of a contract or grant with a State government.

B. Who Reports the Information

Section 872 requires that the data system permit appropriate Federal officials to directly enter and update information about actions they have taken with respect to recipients or contractors. It also requires issuance of regulations to require recipients and contractors who receive more than \$10,000,000 in Federal grants and contracts to provide current information about themselves and update the information on a semiannual basis.

Section 872 also provides recipients and contractors an option for additional comment. An entity must receive timely

notification when information relevant to it is entered into the data system and given an opportunity to submit comments about the information, for inclusion in the data system.

C. How the Data System Is Being Designed

Even though the specific data elements to be reported will be addressed separately from the policy guidance proposed in this **Federal Register** notice, it is important to note that one objective of OMB and the Federal agencies working to implement section 872 is to integrate the policies and procedures for financial assistance and acquisition with the information technology aspects of the implementation in a way that minimizes the burdens on entities that receive Federal grants, cooperative agreements, and procurement contracts, as well as burdens on Federal agencies. Therefore, we are striving to implement the statute in a manner that, to the extent possible—

- Reduces reporting of information by non-Federal entities by relying on Federal officials for as much of the information as possible;
- Provides for use of the same data system for both contracts and grants; and
- Uses existing databases and information systems, such as the Excluded Parties List System, both as a source of information and a place to store new information for Federal officials’ reporting of required information.

We currently anticipate that the data system, which will be known as the Federal Awardee Performance and Integrity Information System (FAPIIS), will involve several business rules to increase the usefulness, accuracy, and confidentiality of information in the system. We expect that:

- Only Federal Government officials will be able to view the information in FAPIIS, with the exception that an entity will be able to view its own information.
- FAPIIS will be designed to automatically notify an entity when new information about itself is posted, in addition to the notification provided by the Federal official who entered the information.
- There will be a point of contact for system errors and a point of contact for each Federal information entry, so that any errors in information in FAPIIS can be brought to the attention of the appropriate Government official.
- Data accessible for a period of 5 years, as section 872 requires, will be archived for an additional period of 1

year to allow for resolution of issues related to the information.

- There will be only a modest amount of space for an entity's comments about each past event reported to FAPIIS, as the purpose is for the entity to provide any additional information it may have about its present qualification to receive awards and not to dispute the past event. The comments will be retained in FAPIIS as long as the associated information is retained (*i.e.*, accessible for a period of 5 years and archived for an additional year). An entity may revise its comments in FAPIIS, but version control will be maintained.

D. How the Information Is To Be Used

Section 872 specifies that before awarding a contract or grant in excess of the simplified acquisition threshold (currently \$100,000), the Federal agency official responsible for making the award must consider the information in the data system with respect to the entity to which the award would be made.

III. Amendments Establishing New Guidance To Implement Section 872

The implementation of section 872 requires OMB guidance to establish some new policies and procedures. The new requirements resulting from this guidance for non-Federal and Federal entities are described in the following sections III.A and III.B.

Section 872 applies to grants and procurement contracts. As a matter of Federal Government policy, the proposed new guidance in 2 CFR would apply the requirements of section 872 to cooperative agreements, as well as grants. Implementation of the statute as it applies to procurement contracts is being addressed through a separate **Federal Register** document proposing changes to the Federal Acquisition Regulation (74 FR 45579, September 3, 2009).

The proposed new 2 CFR guidance does not address data elements or, other than the broad outlines described in Section II.C of this notice, other specifics of the data system that section 872 requires the General Services Administration to establish. It does establish the underlying policy framework, including requirements for recipients and their direct (*i.e.*, first-tier) subrecipients, Federal agency officials who award and administer grants and cooperative agreements, and Federal agency suspending and debarring officials.

A. Proposed New Requirements for Recipients and Subrecipients

Agencies would communicate requirements applicable to non-Federal entities through two new award terms included in the proposed guidance.

The first award term is included in the proposed new part 25, which would be added by amendment 3 following this preamble. It would require recipients and first-tier subrecipients to obtain and provide DUNS numbers to Federal awarding agencies and to maintain current registrations in the CCR. These requirements support the implementation of section 872. They are needed to help correctly identify a recipient or contractor entity, so that information about the entity that resides in multiple Federal Government databases can be properly linked together and provided through an integrating data system to Federal agency awarding officials, as section 872 requires.

The second award term is included in the proposed part 35, which also would be added by amendment 3 following this preamble. It implements for grants and cooperative agreements the requirement in paragraph (f) of section 872. It does so by requiring a recipient to provide information about itself for inclusion in the data system if it has currently active Federal grants, cooperative agreements, and contracts with a cumulative total value (including any options not yet exercised) greater than \$10 million. Specifically, it requires each recipient to: (1) Provide information about any criminal convictions, civil judgments, and outcomes of administrative proceedings that are listed in section II.A.1 of this **SUPPLEMENTARY INFORMATION** section; and (2) maintain the currency of that information by reviewing it at least semiannually and making any needed updates. The award term requires the recipient to report convictions and outcomes of proceedings associated with both Federal and State awards because section 872 requires inclusion of information about those associated with State awards, to the maximum extent practicable (*see* paragraph II.A.7 of this **SUPPLEMENTARY INFORMATION** section).

The award term in the proposed part 35 would not require non-Federal entities to provide information about Federal suspensions or debarments, terminations of awards, or other actions for which section 872 requires the data system to have information. The reason is that the needed information about those Federal actions can readily be obtained from the Federal awarding,

administering, and suspending and debarring officials who take the actions.

B. Proposed New Requirements for Federal Officials

Most of the proposed guidance addresses responsibilities of Federal officials, including those who award and administer grants and cooperative agreements and Federal agency suspending and debarring officials.

The new responsibilities proposed for suspending and debarring officials are in amendments 10 through 12 following this preamble, which revise 2 CFR part 180. The new responsibilities are to:

- Report information to the data system established under section 872 about each administrative agreement entered into with an entity to resolve a suspension or debarment action and, if needed, subsequently correct or update the information. A suspending or debarring official sometimes negotiates an administrative agreement because he or she determines that it is a better way for the Government to resolve the matter than suspending or debarring the entity.

- Include additional wording in each administrative agreement, as well as in each notice a suspending or debarring official sends to notify an entity that it has been suspended or debarred. The purpose of the additional wording is to inform the entity that information about the action will be available through the new data system established under section 872, how Federal awarding officials will use the information, that the entity may comment about the information in the system, and other related matters.

There are a number of proposed new responsibilities for officials who make awards. Those new pre-award responsibilities would be to:

- Include wording in each program announcement, program regulation, or other issuance containing instructions for applicants, to require each applicant to register in the CCR and provide its DUNS number in each application it submits, unless the applicant is an individual or is otherwise excepted from those requirements (*see* subpart B of the proposed part 25 and Appendix A of the proposed part 27, subdivision II, paragraph II.C.3).

- Include wording in the section of each program announcement describing the review and selection process, to inform potential applicants that, prior to making an award to an entity, the Federal agency awarding official must consider information about the entity that is contained in FAPIIS. The wording also would inform a potential applicant about its right to review information about itself in FAPIIS and

provide comments that the awarding official also would consider in making a determination about the entity's qualification to receive an award. (See Appendix A of the proposed part 27, subdivision II, paragraph II.E.2.b.)

- Determine before making an award to an entity whether the entity is qualified. If the official determined that an entity was not qualified, he or she still would be able to make the award in some cases. However, if the official did not make an award expected to exceed the simplified acquisition threshold (currently \$100,000) because he or she disqualified the entity based on its integrity and business ethics and prior performance under Federal awards, the official would be required under the proposed guidance to report information about the disqualification to FAPIIS. The official would be required to notify the disqualified entity about the reporting of the information to the data system, how Federal awarding officials will use the information, that the entity may comment about the information in the system, and related matters. The official also would be required to make timely corrections to any information submitted about the disqualification that he or she later learned to be erroneous. (See subpart A of the proposed part 35.)

- Include in the award the two proposed new award terms—one for DUNS number and CCR registration requirements (see Subpart B of the proposed part 25 and Appendix A to that part) and one for recipient reporting requirements to the FAPIIS data system (see subpart B of the proposed part 35 and Appendix A to that part).

The proposed guidance also would establish new post-award responsibilities for officials who administer awards. Subpart B of the proposed part 77 contains requirements for those officials to report terminations of awards to FAPIIS; notify the affected non-Federal entities about the reporting of the information, its use, and opportunities for the entities to comment; and correct any submitted information later learned to be erroneous.

IV. Amendments That Update and Relocate Existing OMB Guidance

As discussed in Section I of this **SUPPLEMENTARY INFORMATION** section, some of the proposed amendments following this preamble would update existing OMB guidance and relocate it into 2 CFR to provide needed context for the new guidance that was described in the preceding Section III. The following sections IV.A, IV.B, and IV.C, respectively, describe aspects of the

proposed 2 CFR parts 25, 27, and 35 that relate to existing OMB guidance.

A. Aspects of the Proposed Part 25 That Relate to Policies and Procedures Currently in Effect

1. DUNS Numbers

The proposed part 25 implements and relocates into 2 CFR existing OMB guidance on the use of the DUNS number as a universal identifier. That guidance is in two OMB policy memoranda that require Federal agencies to obtain DUNS numbers from applicants and use them in the award and administration of Federal financial assistance awards. The details are that:

- The policy initially was established by the July 15, 2003, OMB memorandum M-03-16, "OMB Issues Grants Management Policies," which applied to grants and cooperative agreements. That memorandum is available at <http://www.whitehouse.gov/omb/memoranda/m03-16.pdf> and the full text of the policy is available in the **Federal Register** [68 FR 38402, June 27, 2003].

- On May 30, 2008, OMB broadened that policy to include other forms of Federal financial assistance when it issued memorandum M-08-19, "Authority to Collect DUNS Number to Meet Requirements of the Federal Funding Accountability and Transparency Act of 2006." Specifically, the memorandum broadened the 2003 policy to include loans and other forms of financial assistance that are subject to the Federal Funding Accountability and Transparency Act (Pub. L. 109-282, hereafter referred to as "the Transparency Act"). The memorandum is available at <http://www.whitehouse.gov/omb/assets/omb/memoranda/fy2008/m08-19.pdf>.

As proposed, part 25 would implement the existing policy on DUNS numbers as it applies to prime recipients (*i.e.*, those that receive awards directly from Federal agencies) and their direct or "first-tier" subrecipients. Implementing the policy for recipients and first-tier subrecipients parallels the approach used in OMB guidance implementing requirements to track use of funds under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5, hereafter referred to as "the Recovery Act"). That guidance is available at <http://www.recovery.gov> and <http://www.omb.gov>.

2. CCR Registration

With respect to requirements for CCR registration, the proposed part 25 would establish as policy in 2 CFR what already is a requirement for any

applicant who uses Grants.gov to electronically submit its application to a Federal agency. The proposed policy would apply to first-tier subrecipients, in addition to applicants and prime recipients, which is a broadening of the current Grants.gov requirement. Again, this inclusion of first-tier subrecipients parallels the recent OMB implementation of the Recovery Act.

B. Aspects of the Proposed Part 27 That Relate to Policies and Procedures Currently in Effect

Given that the proposed part 27 would require program announcements to include specific content related to section 872, as described in section III.B of this **SUPPLEMENTARY INFORMATION** section, we also are proposing that the part include the more general OMB policies related to program announcements. These include the OMB directives to use the standard format and to electronically post announcements and synopses of them, as described in the following sections IV.B.1 and IV.B.2.

1. Governmentwide Standard Format for Program Announcements

Subpart B of the proposed part 27 specifies that agencies must use the standard format for program announcements, thereby incorporating into 2 CFR the policy originally established by OMB memorandum M-03-16, "OMB Issues Grants Management Policies." The memorandum is available at <http://www.whitehouse.gov/omb/assets/omb/memoranda/m03-16.pdf>. The full text of the policy was in a directive that OMB published in the **Federal Register** [68 FR 37370, June 23, 2003].

We are proposing that the format itself, which OMB published with the policy directive in that 2003 **Federal Register** document, be incorporated as Appendix A to the proposed part 27. Incorporating it into the CFR will enable it to be more easily updated in the future. In incorporating it, we made the following changes:

- We assigned letters and numbers to every paragraph in the format, many of which had none in the 2003 issuance. Doing so required changes to designations that many paragraphs had in that earlier format. While we regret any near-term inconvenience that this transition in paragraph designations may cause for users of the format, it is needed to enable us to efficiently amend individual paragraphs of the text in the future. In making this change, we did incorporate suggestions we heard from users, based on their experiences with

the 2003 format, by using a standard outlining schema.

- We merged the content of the lead-in material from the portion of the 2003 format entitled “Full text of Announcement,” into a new Subdivision 1, “How to Use this Appendix.” The editing of the material to accommodate the change is not intended to be substantive.

- The only two substantive changes are in Subdivision 2 of the appendix, “The Announcement Format,” and are part of the implementation of section 872. First, we added a new paragraph II.C.3, which agencies are required to include in their announcements, to address the DUNS number and CCR requirements stated in the proposed 2 CFR part 25. Second, we added a required paragraph II.E.3, “Recipient Qualification,” to subsection II.E on application review, to require agencies to inform potential applicants about the standards used to determine that a recipient is qualified and the related uses of the new FAPIIS data system to be established under section 872.

2. Electronic Posting of Program Announcements and Synopses

Subpart C of the proposed part 27, “Issuance,” incorporates into 2 CFR, without substantive change, existing policies on electronic issuance of program announcements and synopses of them. The details are that:

- Section 27.305 includes the requirement for an agency to electronically post each program announcement. That requirement was originally established by OMB memorandum M–03–16, “OMB Issues Grants Management Policies.” The full text of the policy was in a directive that OMB published in the **Federal Register** with the announcement format [68 FR 37370, June 23, 2003].

- Section 27.310 includes the requirement for an agency to electronically post each synopsis of an announcement of a funding opportunity that OMB originally established on October 15, 2003, in memorandum M–04–01, “OMB Issues Grants.gov FIND Policy.” The memorandum is available at http://www.whitehouse.gov/omb/memoranda_fy04_m04-01/. OMB published the full text of the policy in the **Federal Register** [68 FR 58146, October 8, 2003].

C. Aspects of the Proposed Part 35 That Relate to Policies and Procedures Currently in Effect

Most of the requirements in the proposed part 35 are new, as described in section III of this **SUPPLEMENTARY INFORMATION** section. One aspect that is

not new is the requirement for an awarding official to check the Excluded Parties List System before making an award to an entity, to ensure that the entity is not debarred, suspended, or otherwise disqualified from receiving the award. That requirement is in 2 CFR part 180, subpart D. Paragraph 35.120(a) in the proposed part 35 refers to that existing requirement because checking the EPLS is a critical step in an awarding official’s determination that an entity is qualified (we anticipate that the awarding official ultimately will be able to check the EPLS database through FAPIIS).

Although it has not been explicitly stated in OMB guidance previously, the requirement in paragraph (a) of the proposed section 35.205 for a Federal agency awarding official to ensure that each award includes the appropriate terms and conditions is a practice, if not an explicit formal policy, of all Federal agencies. It serves in the proposed guidance as a basis for identifying Governmentwide award terms that an awarding official must include, pending more comprehensive guidance on the format and content of grants and cooperative agreements that is under development. One of those award terms, which implements a statute on Trafficking in Persons, is in previously established guidance at 2 CFR 175.15.

V. Relationship of Proposed DUNS Number and CCR Requirements to a Proposal Made in June 2008

On June 6, 2008 [73 FR 32417], OMB published in the **Federal Register** a proposed new 2 CFR part 33 with policies and procedures for implementing Transparency Act requirements for Federal financial assistance awards. As it was proposed in June 2008, the new part 33 would have required direct recipients of Federal agency awards and, with some exceptions, subrecipients at all lower tiers (if their subawards were subject to Transparency Act reporting requirements) to have DUNS numbers and register in the CCR.

The proposed part 25 in amendment 3 following this preamble is intended to supersede the DUNS number and CCR elements of the June 2008 proposal. As stated earlier, part 25 includes the requirements for prime recipients and subrecipients at the first tier below the prime award. If future implementation of the Transparency Act or other statute requires extending the requirement for DUNS numbers, CCR registration, or both to subrecipients at lower tiers, as we proposed in June 2008, we would amend part 25 through a **Federal**

Register process that afforded an opportunity for public comment.

We appreciate the many thoughtful comments we received from the affected public and Federal agencies on the DUNS number and CCR aspects of the June 2008 proposal. We considered those comments in developing the proposed part 25 following this preamble. The following paragraphs summarize the comments we received in 2008 that are most pertinent to the newly proposed part 25. They also provide responses to those comments as additional background related to the basis for the current proposal.

Comment: Sixteen commenters suggested not using the DUNS number as the means to uniquely identify recipient and subrecipient entities. The Employer Identification Number (EIN) was offered as one alternative. Among reasons the commenters gave for not using DUNS numbers were that: (1) The requirement to have a DUNS number could preclude subawards to small entities that do not have the organizational infrastructure to support DUNS numbers; and (2) the time required to obtain a DUNS number could delay applications from, or awards to, first-time subrecipients, especially as the large number of entities needing to obtain DUNS numbers could strain the system’s ability to process their requests; and (3) an entity can have multiple DUNS numbers, even at the same operating location, which is a source of potential confusion. Commenters that offered the EIN as an alternative noted that many States already use EINs as identifiers for subrecipients in their electronic data systems.

Response: The DUNS number still is the only identifier with the advantages that led us to establish it in 2003 as the universal identifier for recipients of grants and cooperative agreements (see the preamble to 68 FR 38403, June 27, 2003). Although other numbering systems currently are in use—and will continue because they are used for different purposes—none is adequate to identify family tree relationships or to provide the access and validation capabilities that the DUNS numbers provide.

We agree with the commenters that some entities have multiple DUNS numbers that are not justified but believe the proper solution is for Dun and Bradstreet (D&B) to continue to advise organizations on ways to properly control their DUNS hierarchies, something for which each organization necessarily is responsible. We do not agree that the one-time activity to obtain a DUNS number,

which can be almost immediate and should take no more than 48 hours, will create significant delays in applications or awards. While we appreciate that first-tier subrecipients who are not also prime recipients of other Federal awards may need to adjust their procedures and systems initially to accommodate the DUNS number requirement, we judge that the long-term benefits justify those changes.

Comment: Twenty-nine commenters questioned whether the administrative burden associated with CCR registration of subrecipients was justified by the benefits. Six questioned the value for prime recipients.

Response: We believe the benefits do justify the requirement. For entities applying for Federal assistance awards, CCR registration already is a valuable adjunct to Grants.gov, the central site through which applications may be submitted electronically in a more uniform way to all Federal agencies. For prime recipients, we anticipate that information in CCR will be used in conjunction with all payments under Federal awards (they already are used for payments under some Federal financial assistance awards, as well as procurement contracts). For first-tier subrecipients, CCR registration will help ensure that Federal Government databases correctly identify entities receiving subaward funding that must be reported in compliance with the Transparency or Recovery Act.

Comment: Two commenters suggested that the Federal Government create crosswalks between DUNS numbers and other identifiers. One commenter suggested providing a crosswalk between DUNS numbers and EINs, since some recipients already have EINs for subrecipients in their data bases. Another commenter suggested cross linking organizational data in the D&B files for DUNS numbers with organizational information in files associated with other identifiers that Federal agencies require, such as the Inventory of Substance Abuse Treatment Services (I-SATS) number, and the National Provider Identifier (NPI) that one obtains through the National Provider System. The commenter noted that linking the files could reduce burdens for reporting the same information multiple times and help prevent there being duplicative or even inconsistent information about an organization in files associated with different identifiers.

Response: We appreciate the suggestion but are not aware of any current plans to link data bases of organizational information associated

with the identifiers cited, which are used for different purposes.

Comment: One commenter suggested that DUNS numbers apparently were designed for grant recipients and contractors, and not for loan recipients.

Response: The DUNS number is pertinent to loan recipients due to its use as the universal identifier for reporting under the Transparency Act.

Comment: One commenter expressed concern about entities with multiple locations, each doing a limited amount of business, being required to have a DUNS number assigned for each location. The commenter urged OMB to work to minimize burdens on small entities.

Response: An entity with multiple locations would need a DUNS number for each location only if each received awards or subawards of Federal funds. Moreover, D&B maintains DUNS numbers for over one hundred million entities for much broader purposes, so individual locations of many recipient and subrecipient entities likely already have DUNS numbers for business reasons unrelated to Federal awards. We share the commenter's concern about minimizing burdens but note that obtaining a DUNS number is not a very great burden because it is a one-time activity.

Comment: One commenter asked how and when Federal agencies collect and report DUNS information. Three other commenters suggested not requiring an entity to provide its DUNS number or be registered in the CCR until the time at which the Federal agency makes its award, rather than requiring the entity to provide its DUNS number at the time of its application.

Response: Federal agencies collect DUNS information from each applicant at the time of application and use it during the pre-award processing leading to the issuance of the award, as well as in post-award administration. At time of award, an agency reports the DUNS number as a required field in submissions of Transparency Act data for prime award obligations to recipients. An entity that applies electronically through Grants.gov must have a DUNS number prior to applying because Grants.gov requires applicants to be registered in the CCR, which in turn requires a DUNS number.

Comment: One commenter asked whether an applicant for a Federal agency award was required to provide a DUNS number for each entity to which it proposed in its application that it would make a subaward.

Response: An applicant is not required to submit a proposed subrecipient's DUNS number to a

Federal agency as part of the application process. However, after receiving a Federal award, a recipient will need to include the subrecipient's DUNS number with the data it submits for each subaward obligation that must be reported under the Transparency or Recovery Act.

Comment: A commenter questioned whether a recipient would have to receive Federal agency permission to change a subrecipient if it: (1) Proposed an entity as a subrecipient in its application to the agency; (2) received an award; and then (3) learned that the entity it had proposed as a subrecipient would not provide a DUNS number.

Response: Both OMB Circular A-110 and the common rule implementing OMB Circular A-102 permit an agency to require a recipient to obtain its prior approval for any subawards of work under the award. If the agency did not waive that requirement, its approval of the application would serve as the prior approval if the recipient made the subaward to the same entity it identified in its application. All of that is unchanged by the new guidance that is proposed following this preamble. However, due to the new guidance prohibiting first-tier subawards to entities that have not provided a DUNS number to the recipient, an applicant who plans to propose in its application that it will make subawards to specific entities may want to consider the benefits of having DUNS numbers for those entities before submitting its application to a Federal agency.

Comment: Two commenters asked if there would be additional guidance to clarify how an agency would exercise the discretion provided (which now is in section 25.205 of the proposed guidance following this preamble) when considering an award to an entity that had not yet complied with the requirement to provide a valid DUNS number or register in the CCR. The proposed section would permit, but not require, an agency to give the entity a period of time to come into compliance before it determined, based on the entity's noncompliance, that the entity was not qualified to receive the award. The section did not specify how long the period of time might be.

Response: The guidance deliberately leaves that matter to agency discretion. A wide variety of Federal programs use grants, cooperative agreements, and other Federal financial assistance awards subject to the DUNS and CCR requirements. Flexibility in the guidance is essential because the programs have differing constraints in their program statutes, the periods of availability of their appropriated funds,

and the criticality of their program schedules. The different constraints necessarily affect how each awarding office will be able to use the discretion provided.

VI. Invitation To Comment

We are requesting comment on all of the proposed new guidance, as well as changes to previously existing guidance, that would be made by in the amendments following this preamble. With respect to portions of the guidance that the amendments are relocating into 2 CFR without substantive change, we are not seeking to revisit substantive issues raised by comments that were resolved when those portions of the guidance originally were issued. However, we invite comments on any unintended changes we have made in those portions of the guidance.

In the future, OMB may expand the scope of the data system to include recipient information from authoritative data sources not described in this guidance and information on recipients receiving awards below the \$500,000 threshold. In response to this notice, we are also seeking input on the possible impact that expanding the system scope could have on the affected recipients.

VII. Next Steps

We will finalize the guidance to Federal agencies after resolving any comments we receive on what is proposed following this preamble. When the guidance is final, each Federal agency will implement it, thereby giving it effect for applicants, recipients, and Federal agency officials with responsibilities for carrying out required actions.

List of Subjects

2 CFR Part 25

Administrative practice and procedures, Grants administration, Grant programs, Loan programs.

2 CFR Part 27

Administrative practice and procedures, Grant programs, Information.

2 CFR Part 35

Administrative practice and procedures, Archives and records, Cooperative agreements, Ethical conduct, Grant programs, Reporting and recordkeeping requirements.

2 CFR Part 77

Administrative practice and procedures, Archives and records, Cooperative agreements, Grants administration, Grant programs.

2 CFR Part 180

Administrative practice and procedure, Debarment and suspension, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Danny Werfel,
Controller.

Authority and Issuance

For the reasons set forth above, the Office of Management and Budget amends 2 CFR, subtitle A, as follows:

1. In subtitle A to title 2, parts 2 through 99, which are currently reserved, are transferred to chapter I.

2. Subchapter A to chapter I, consisting of parts 2 through 19, is established and reserved to read as follows:

Subchapter A—General Matters— [Reserved]

PARTS 2–19—[RESERVED]

3. Subchapter B to chapter I, consisting of parts 20 through 39, is established and added to read as follows:

Subchapter B—Pre-Award Responsibilities

PARTS 20–24—[RESERVED]

PART 25—UNIVERSAL IDENTIFIER AND CENTRAL CONTRACTOR REGISTRATION

Sec.

Subpart A—General

- 25.100 Purposes of this part.
- 25.105 Types of awards to which this part applies.
- 25.110 Types of recipient and subrecipient entities to which this part applies.
- 25.115 Deviations.

Subpart B—Policy

- 25.200 Requirements for program announcements, regulations, and application instructions.
- 25.205 Effect of noncompliance with a requirement to obtain a DUNS number or register in the CCR.
- 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—Definitions

- 25.300 Agency.
- 25.305 Award.
- 25.310 Central Contractor Registration (CCR).
- 25.315 Data Universal Numbering System (DUNS) Number.
- 25.320 Entity.
- 25.325 For-profit organization.
- 25.330 Foreign public entity.
- 25.335 Indian tribe (or “Federally recognized Indian tribe”).

- 25.340 Local government.
 - 25.345 Nonprofit organization.
 - 25.350 State.
 - 25.355 Subaward.
 - 25.360 Subrecipient.
- Appendix A to Part 25—Award Term

Authority: Pub. L. 109–282; 31 U.S.C. 6102.

Subpart A—General

§ 25.100 Purposes of this part.

This part provides guidance to agencies to establish:

(a) The Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number as a universal identifier for Federal financial assistance applicants, as well as recipients and their direct subrecipients.

(b) The Central Contractor Registration (CCR) as the repository for standard information about those applicants, recipients, and subrecipients.

§ 25.105 Types of awards to which this part applies.

This part applies to an agency’s grants, cooperative agreements, loans, and other types of Federal financial assistance included in the definition of “award” in § 25.305.

§ 25.110 Types of recipient and subrecipient entities to which this part applies.

(a) *General.* Through an agency’s implementation of the guidance in this part, this part applies to all entities, other than those excepted in paragraphs (b), (c), and (d) of this section, that—

(1) Apply for or receive agency awards; or

(2) Receive subawards directly from recipients of those agency awards.

(b) *Exceptions for individuals.* None of the requirements in this part apply to an individual who applies for or receives Federal financial assistance as a natural person (*i.e.*, unrelated to any business or non-profit organization he or she may own or operate in his or her name).

(c) *Exceptions for Federal agencies.* The requirement in this part to maintain a current registration in the CCR does not apply to an agency of the Federal Government that receives an award from another agency.

(d) *Other exceptions.* (1) Under a condition identified in paragraph (d)(2) of this section, an agency may except an entity from an applicable requirement to obtain a DUNS number, register in the CCR, or both.

(i) In that case, the agency must use a generic DUNS number in any data that it reports for a prime award to the entity, as required by the Federal

Funding Accountability and Transparency Act (Pub. L. 109–282, hereafter cited as “Transparency Act”). The agency must use the generic DUNS number in accordance with the current guidance at the CCR Web site.

(ii) The agency also may provide a generic DUNS number for an entity receiving a subaward to the non-Federal entity that is making the subaward, for use in reporting information about the subaward under the Transparency Act.

(2) The conditions under which an agency may exempt an entity are—

(i) For any entity, if the agency determines that it must protect information about the entity from disclosure, to avoid compromising classified information or national security or jeopardizing the personal safety of the entity’s clients.

(ii) For a foreign entity applying for or receiving an award or subaward for a project or program performed outside the United States, if the agency deems it to be impractical for the entity to comply with the requirement(s).

§ 25.115 Deviations.

Deviations from this part require the prior approval of the Office of Management and Budget (OMB).

Subpart B—Policy

§ 25.200 Requirements for program announcements, regulations, and application instructions.

(a) Each agency that awards types of Federal financial assistance included in the definition of “award” in § 25.305 must include the requirements described in paragraph (b) of this section in each program announcement, regulation, or other issuance containing instructions for applicants that either:

(1) Is issued on or after the effective date of this part; or

(2) Has application or plan due dates or anticipated award dates after October 1, 2010.

(b) The program announcement, regulation, or other issuance must require each entity that applies and does not have an exception under § 25.110 to:

(1) Be registered in the CCR prior to submitting an application or plan;

(2) Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by an agency; and

(3) Provide its DUNS number in each application or plan it submits to the agency.

(c) For purposes of this policy:

(1) The applicant is the entity that meets the agency’s or program’s eligibility criteria and has the legal

authority to apply and to receive the award. For example, if a consortium applies for an award to be made to the consortium as the recipient, the consortium must have a DUNS number. If a consortium is eligible to receive funding under an agency program but the agency’s policy is to make the award to a lead entity for the consortium, the DUNS number of the lead entity will be used.

(2) A “program announcement” 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 something else.

§ 25.205 Effect of noncompliance with a requirement to obtain a DUNS number or register in the CCR.

(a) An agency may not make an award to an entity until the entity has complied with the requirements described in § 25.200 to provide a valid DUNS number and maintain an active CCR registration with current information (other than any requirement that is not applicable because the entity is excepted under § 25.110).

(b) At the time an agency is ready to make an award, if the intended recipient has not complied with an applicable requirement to provide a DUNS number or maintain an active CCR registration with current information, as specified in the program announcement or other instructions, the agency:

(1) May determine that the applicant is not qualified to receive an award; and

(2) May use that determination as a basis for making an award to another applicant.

§ 25.210 Authority to modify agency application forms or formats.

To implement the policies in §§ 25.200 and 25.205, an agency may add a DUNS number field to application forms or formats previously approved by OMB, without having to obtain further approval to add the field.

§ 25.215 Requirements for agency information systems.

Each agency that makes awards (as defined in § 25.325) must ensure that systems processing information related to the awards, and other systems as appropriate, are able to accept and use the DUNS number as the universal identifier for financial assistance applicants and recipients.

§ 25.220 Use of award term.

(a) To accomplish the purposes described in § 25.100, an agency must

include in each award (as defined in § 25.305) the award term in Appendix A to this part.

(b) An agency may use different letters and numbers than those in Appendix A to this part to designate the paragraphs of the award term, if necessary, to conform the system of paragraph designations with the one used in other terms and conditions in the agency’s awards.

Subpart C—Definitions

§ 25.300 Agency.

Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

§ 25.305 Award.

(a) *Award* means an award of Federal financial assistance that a non-Federal entity described in § 25.110(a) receives or administers in the form of—

- (1) A grant;
- (2) A 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. (3710(a)));
- (3) A loan;
- (4) A loan guarantee;
- (5) A subsidy;
- (6) Insurance;
- (7) Food commodities;
- (8) A direct appropriation;
- (9) Assessed or voluntary contributions; or
- (10) Any other financial assistance transaction that authorizes the non-Federal entity’s expenditure of Federal funds.

(b) An *Award* does not include:

- (1) Technical assistance, which provides services in lieu of money; and
- (2) A transfer of title to Federally owned property provided in lieu of money, even if the award is called a grant.

§ 25.310 Central Contractor Registration (CCR).

Central Contractor Registration (CCR) has the meaning given in paragraph C.1 of the award term in Appendix A to this part.

§ 25.315 Data Universal Numbering System (DUNS) Number.

Data Universal Numbering System (DUNS) Number has the meaning given in paragraph C.2 of the award term in Appendix A to this part.

§ 25.320 Entity.

Entity, as it is used in this part, has the meaning given in paragraph C.3 of the award term in Appendix A to this part.

§ 25.325 For-profit organization.

For-profit organization means a non-Federal party organized for profit. It includes, but is not limited to:

- (a) An “S corporation” incorporated under Subchapter S of the Internal Revenue Code;
- (b) A corporation incorporated under another authority;
- (c) A partnership;
- (d) A limited liability corporation or partnership; and
- (e) A sole proprietorship.

§ 25.330 Foreign public entity.

Foreign public entity means:

- (a) A foreign government or foreign governmental entity;
- (b) 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. 288–288(f));
- (c) An entity owned (in whole or in part) or controlled by a foreign government; and
- (d) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

§ 25.335 Indian tribe (or “Federally recognized Indian tribe”).

Indian tribe (or “*Federally recognized Indian tribe*”) means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*)) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

§ 25.340 Local government.

Local government means a:

- (a) County;
- (b) Borough;
- (c) Municipality;
- (d) City;
- (e) Town;
- (f) Township;
- (g) Parish;
- (h) Local public authority, including any public housing agency under the United States Housing Act of 1937;
- (i) Special district;
- (j) School district;
- (k) Intrastate district;
- (l) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and
- (m) Any other instrumentality of a local government.

§ 25.345 Nonprofit organization.

Nonprofit organization—

- (a) Means any corporation, trust, association, cooperative, or other 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; and
 - (3) Uses net proceeds to maintain, improve, or expand the operations of the organization.
- (b) Includes nonprofit—
 - (1) Institutions of higher education;
 - (2) Hospitals; and
 - (3) Tribal organizations other than those included in the definition of “Indian tribe.”

§ 25.350 State.

State means—

- (a) Any State of the United States;
- (b) The District of Columbia;
- (c) Any agency or instrumentality of a State other than a local government or State-controlled institution of higher education;
- (d) The Commonwealths of Puerto Rico and the Northern Mariana Islands; and
- (e) The United States Virgin Islands, Guam, American Samoa, and a territory or possession of the United States.

§ 25.355 Subaward.

Subaward has the meaning given in paragraph C.4 of the award term in Appendix A to this part.

§ 25.360 Subrecipient.

Subrecipient has the meaning given in paragraph C.5 of the award term in Appendix A to this part.

Appendix A to Part 25—Award Term**I. Central Contractor Registration and Universal Identifier Requirements.**

A. *Requirement for recipients.* Unless you are excepted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the Central Contractor Registration (CCR) until you submit the final financial report required under this award or receive the final payment, whichever is later.

B. *Requirement for subrecipients.* If you are authorized to make subawards under this award, you:

- 1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its Data Universal Numbering System (DUNS) number to you and is registered in the CCR.
- 2. May not make a subaward to an entity unless the entity has provided its DUNS number to you and is registered in the Central Contractor Registration.

C. *Definitions.* For purposes of this award term:

1. *Central Contractor Registration (CCR)* means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).

2. *Data Universal Numbering System (DUNS) number* means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3. *Entity*, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* Sec. __.210 of the attachment to OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations”).

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. *Subrecipient* means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

PART 26—[RESERVED]**PART 27—ANNOUNCEMENTS OF FUNDING OPPORTUNITIES**

Sec.

27.5 Purpose of this part.

27.10 Applicability.

27.15 Federal agency implementation.

Subpart A—Competition—[Reserved]**Subpart B—Form and Content of Announcements**

27.200 Purpose of subpart B.

27.205 Definition of “program announcement”.

27.210 Use of the Governmentwide standard format for program announcements.

Subpart C—Issuance

27.300 Purpose of subpart C.

27.305 Electronic posting of program announcements.

27.310 Grants.gov posting of synopses of program announcements.
Appendix A to Part 27—Governmentwide Standard Announcement Format

Authority: 31 U.S.C. 503; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939; Sec. 872, Pub. L. 110–417, 122 Stat. 4555.

§ 27.5 Purpose of this part.

This part provides the Office of Management and Budget (OMB) guidance for a Federal agency's responsibilities at the time of the announcement of a funding opportunity for a program under which the agency may make discretionary grant or cooperative agreement awards.

§ 27.10 Applicability.

(a) *Types of entities.* This part provides OMB guidance only to Federal agencies. Federal agencies' implementation of this part governs the rights and responsibilities of other entities affected by the guidance, which may include both—

(1) Organizations other than Federal agencies; and
(2) Individuals.

(b) *Programs.* This part applies to any Federal agency program under which the agency may make discretionary awards of grants and cooperative agreements.

§ 27.15 Federal agency implementation.

Each Federal agency with offices that make discretionary grant or cooperative agreement awards must issue any needed direction to those offices to require conformance with the policies and procedures in this part. It must:

(a) Issue any implementation other than a regulation within six months of the issuance of the part or any change to it.

(b) Submit any regulatory implementation to the OMB for review within nine months of the issuance of this part or update to it, prior to publication for comment, and issue final regulations within eighteen months of the issuance.

Subpart A—Competition—[Reserved]

Subpart B—Form and Content of Announcements

§ 27.200 Purpose of subpart B.

The purpose of this subpart is to provide guidance on the substantive content and format of Federal agencies' program announcements.

§ 27.205 Definition of “program announcement”.

For the purposes of this part, a “program announcement” is any paper

or electronic issuance that an agency uses to announce a funding opportunity under which it may make discretionary grant or cooperative agreement awards, whether that issuance is called a “program announcement,” “notice of funding availability,” “broad agency announcement,” “research announcement,” “solicitation,” or something else.

§ 27.210 Use of the Governmentwide standard format for program announcements.

(a) The format in the Appendix to this part is the Governmentwide standard format for program announcements under which agencies make discretionary awards of grants or cooperative agreements. An agency must use this format for:

(1) All program announcements except those under which domestic entities are not eligible recipients; and

(2) All programs except those that do not issue separate announcements apart from their program descriptions in the Catalog of Federal Domestic Assistance (CFDA). For those excepted programs, the format will continue to conform to the guidance in OMB Circular A–89 for program information in the CFDA.

(b) To comply with the policy in paragraph (a) of this section, each agency program announcement:

(1) Must include the information elements that are marked “required” in the standard format in Appendix A to this part. It must include the information elements in the sequence provided and the content of each element must conform with guidance that the standard format provides for that element.

(2) May also include any or all of the elements that are marked “optional” in the standard format, as appropriate for the particular program. Whether or not the announcement includes any “optional” elements, the information that the announcement does include must be organized to conform with the standard format.

(c) An agency must request exceptions from OMB for any program announcement with information organized in a way that deviates from the policy in this section.

(d) An agency, at its discretion, may extend the use of the format in the Appendix to this part to programs that use forms of financial assistance other than grants and cooperative agreements.

Subpart C—Issuance

§ 27.300 Purpose of subpart C.

The purpose of this subpart is to provide guidance related to the release

of the program announcement to the public.

§ 27.305 Electronic posting of program announcements.

(a) Each agency must post on the Web or Internet each program announcement under which domestic entities are eligible recipients. Ways to comply with this requirement include, but are not limited to:

(1) Publication of an announcement in the **Federal Register**, since it is available on the Internet.

(2) Posting an announcement at Grants.gov (*see* § 27.310(b)(2)(iii)).

(b) If an agency has a statutory or policy requirement to publish an announcement at a location that is not on the Web or Internet, it must comply with that requirement also (*i.e.*, not in lieu of posting the announcement as described in paragraph (a) of this section).

§ 27.310 Grants.gov posting of synopses of program announcements.

(a) *Policy.* It is a policy of the Federal Government to make available to the public at Grants.gov (or an alternative Web site or Internet location, if specified by OMB) a synopsis of each program announcement that may lead to discretionary awards of grants or cooperative agreements, in order to provide potential applicants:

(1) Enough information about the funding opportunity to decide whether they are interested in viewing the full program announcement;

(2) One or more ways (*e.g.*, an Internet site, e-mail address or telephone number) to get the full announcement with the detailed information about the funding opportunity; and

(3) A single Web site to search for all Federal grant opportunities by key word, date, CFDA number, or specific agency or agencies.

(b) *General requirement.* (1) Each agency:

(i) Must post a synopsis of each program announcement under which it will make discretionary awards of grants and cooperative agreements at Grants.gov (<http://www.grants.gov>) or an alternative Web site or Internet address designated by OMB.

(ii) Is encouraged to post any other funding opportunities at the designated site.

(2) Each synopsis must:

(i) Follow the format provided at the designated site.

(ii) Use the standard data elements at that site and provide information for all required data elements. The synopsis must include the CFDA number unless the program has an exception from that

requirement, in which case the agency must obtain an alternate identifier from the Grants.gov Program Management Office for use in the synopsis.

(iii) Either—

(A) State that the full announcement also may be found at Grants.gov FIND, if the agency elects to post it at that site; or

(B) Provide a link to the Uniform Resource Locator (URL) for the full program announcement if the agency elects to post it at another site.

(iv) Be posted no later than 3 business days after release of the full program announcement.

(c) *Exceptions.* The requirements in paragraph (b) of this section do not apply to:

(1) An agency program that does not issue a separate announcement apart from its program descriptions in the CFDA.

(2) A program announcement under which no award will have a total value of \$25,000 or more and for which 100 percent of eligible applicants are foreign entities that reside or are located outside the United States.

(3) A single source program announcement under which all awards are directed to known recipients.

Appendix A to Part 27— Governmentwide Standard Announcement Format

Subdivision 1. How To Use This Appendix

I. Content and Organization of This Appendix

Sections I and II of Subdivision 2 of this appendix provide guidance for the two segments of a program announcement. Section I, "Overview Information," describes both required and optional information elements to precede the full text of an announcement. Section II, "Full Text of

Announcement," defines sections into which detailed information about a funding opportunity is to be organized and provides guidance on the required and optional content of each section of the program announcement.

II. Standard Scheme for Designating Announcement Sections

Note that letters and numbers that an agency uses to designate sections within the program announcement should adhere to the standard scheme shown in the table following this paragraph. Using the standard scheme will make it easier for potential applicants to locate specific types of information about the funding opportunity. If an agency elects not to include material in a section that is optional, the agency should reserve that section in order to preserve the designations of subsequent sections. The sections of the overview and full text segments of an announcement, shown in the form of a notional table of contents, are:

| Segment of announcement | Notional table of contents, showing both required and optional sections |
|---|--|
| A. Overview information preceding the full text | <p>I. OVERVIEW OF THE FUNDING OPPORTUNITY</p> <p>A. Required Overview Content</p> <ol style="list-style-type: none"> 1. Federal Agency Name(s)—Required. 2. Funding Opportunity Title—Required. 3. Announcement Type—Required. 4. Funding Opportunity Number—Required, if Applicable. 5. Catalog of Federal Domestic Assistance (CFDA) Number(s)—Required. 6. Dates—Required. <p>B. Optional Overview Content</p> |
| B. Full text of announcement | <p>II. DETAILED INFORMATION ABOUT THE FUNDING OPPORTUNITY</p> <p>A. Funding Opportunity Description—Required</p> <p>B. Award Information—Required</p> <p>C. Eligibility Information</p> <ol style="list-style-type: none"> 1. Eligible Applicants—Required. 2. Cost Sharing or Matching—Required. 3. Dun and Bradstreet Universal Numbering System (DUNS) Number and Central Contractor Registration (CCR)—Required. 4. Other—Required, if applicable. <p>D. Application and Submission Information</p> <ol style="list-style-type: none"> 1. Address To Request Application Package—Required. 2. Content and Form of Application Submission—Required. 3. Submission Dates and Times—Required. 4. Intergovernmental Review—Required, if applicable. 5. Funding Restrictions—Required. 6. Other Submission Requirements—Required. <p>E. Application Review Information</p> <ol style="list-style-type: none"> 1. Criteria—Required. 2. Review and Selection Process—Required. 3. Recipient Qualification—Required. 4. Anticipated Announcement and Award Dates—Optional. <p>F. Award Administration Information</p> <ol style="list-style-type: none"> 1. Award Notices—Required. 2. Administrative and National Policy Requirements—Required. 3. Reporting—Required. <p>G. Agency Contact(s)—Required</p> <p>H. Other Information—Optional</p> |

III. How To Use the Guidance for the Full Text of a Program Announcement

A. The guidance in section II of Subdivision 2 of this appendix is organized into sections corresponding to the sections of the full text of the announcement. Immediately following the title of each section is an indicator stating whether that

section is required in every announcement or is an agency option.

B. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each section of guidance in Section II of Subdivision 2 of this appendix to describe the types of information

that an agency would include in the corresponding section of an announcement.

C. An agency that wishes to include information on a subject that the format does not specifically discuss may address that subject in whichever section(s) is most appropriate. For example, if an agency chooses to address performance goals in the announcement, it might do so in the funding

opportunity description, the application content, and/or the reporting requirements.

D. Similarly, when the guidance in Section II of Subdivision 2 of this appendix calls for a type of information to be in one particular section of the announcement, an agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections (there should be hyperlinks for cross-references in any electronic versions of the announcement). For example, an agency may want to include in subsection II.A information about the types of recipients who are eligible to apply. The format specifies a standard location for that information in subsection II.C.1 but that does not preclude repeating the information in subsection II.A or creating a cross reference between subsections II.A and II.C.1, as long as a potential applicant can find the information quickly and easily from the standard location.

Subdivision 2. The Announcement Format

I. Overview Segment of the Program Announcement

A. *Required overview content.* The agency must display prominently the information described in paragraphs I.A.1 through I.A.6 of this subdivision, in the sequential order shown, in a location preceding the full text of the announcement.

1. *Federal Agency Name(s)—Required.* Include the name of your department or agency and the specific office(s) within the agency (e.g., bureau, directorate, division, or institute) that are involved in the funding opportunity.

2. *Funding Opportunity Title—Required.* If your agency has a program name that is different from the Funding Opportunity Title, you also could include that name here.

3. *Announcement Type—Required.* Indicate whether this is the initial announcement of this funding opportunity or a modification of a previously announced opportunity. If it modifies a previous announcement, provide the date of that announcement and identify the portions that are being modified. Note that a modification does not need to include all of the sections of the full announcement text.

4. *Funding Opportunity Number—Required, if applicable.* Your agency may wish to assign identifying numbers to announcements. If you assign a number, you must include it. If it modifies a previous announcement, provide the number of that announcement.

5. *Catalog of Federal Domestic Assistance (CFDA) Number(s)—Required.* You also may wish to include the program name listed in the CFDA for each CFDA number that you give.

6. *Dates—Required.* Include key dates that potential applicants need to know. Key dates include due dates for applications or Executive Order 12372 submissions, as well as any letters of intent or pre-applications. 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.

B. *Optional, additional overview content.* Following the required overview information

described above, the agency may present other information. Present any optional overview information in a sequential order that parallels the organization of the full text of the announcement. Examples of overview information that could help potential applicants decide whether to read the full announcement are: A concise description of the funding opportunity, the total amount to be awarded, the anticipated amounts and/or numbers of individual awards, the types of instruments that may be awarded, who is eligible to apply, whether cost sharing is required, and any limitations on the numbers of applications that each applicant may submit. You also may include other information that could later help applicants more quickly and easily find what they need (e.g., where one can get application materials).

C. *Method of presentation.* The agency may include the summary information in any of the following ways:

1. *Executive summary.* An agency may wish to include an executive summary of the announcement before the full text. Especially for announcements that are long (25 pages or more in length) or complex, agencies should consider including executive summaries with at least the required overview information described above in subsection I.A of this subdivision, as well as any additional information described in subsection I.B. An executive summary should be short, preferably one page, with information in concise bullets to give an overview of the funding opportunity.

2. *Cover and/or inside cover.* If the agency does not wish to include an executive summary, an alternative is to provide at least the required overview information described above in subsection I.A of this subdivision on the cover and/or inside cover of the announcement (or the first screen a potential applicant would see, in the case of an electronic announcement).

3. *Federal Register format.* For an announcement that appears as a notice in the **Federal Register**, some of the required overview information will appear with other information near the beginning of the notice, due to the **Federal Register's** standard format for notices. Nonetheless, the agency must display the required overview information (described above in subsection I.A of this subdivision) in a single location preceding the full text of the announcement, which would be in the **SUPPLEMENTARY INFORMATION** section of the **Federal Register** notice. The agency may elect to include additional information, as described above in subsection I.B of this subdivision.

II. Full Text of Announcement

A. Funding Opportunity Description—Required

This subsection contains the full programmatic description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the agency's funding priorities or the technical or focus areas in which the agency intends to provide assistance. As appropriate, it may include any program history (e.g., whether this is a

new program or a new or changed area of program emphasis). This subsection may communicate indicators of successful projects (e.g., if the program encourages collaborative efforts) and may include examples of projects that have been funded previously. This subsection also may include other information the agency deems necessary, such as citations for authorizing statutes and regulations for the funding opportunity.

B. Award Information—Required

1. Provide sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that your agency expects to award through the announcement; the anticipated number of awards; the expected amounts of individual awards (which may be a range); the amount of funding per award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new awards. This subsection also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new awards.

2. This subsection also must indicate the type(s) of assistance instrument (i.e., grant, cooperative agreement, and/or other instrument) that may be awarded if applications are successful. If cooperative agreements may be awarded, this subsection either should describe the "substantial involvement" that the agency expects to have or should reference where the potential applicant can find that information (e.g., in the funding opportunity description in subsection II.A of this subdivision or award administration information in subsection II.F). If procurement contracts also may be awarded, you must say so.

C. Eligibility Information

This subsection addresses considerations or factors that make an applicant or application eligible or ineligible for consideration. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. You should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in your agency's returning the application without review or, even though an application may be reviewed, will preclude the agency from making an award. Key elements to be addressed are:

1. Eligible Applicants—Required

You must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this paragraph may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if your program is limited to non-profit organizations subject to Section 501(c)(3) of the tax code, your announcement should say so. Similarly, it is better to state explicitly that Native American

tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that non-profit organizations may apply. Eligibility also can be expressed by exception, (e.g., open to all types of domestic applicants other than individuals). This paragraph should refer to any portion of subsection II.D specifying documentation that must be submitted to support an eligibility determination (e.g., proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in paragraph II.D.5 could affect the eligibility of an applicant or project, you must either restate that restriction in this section or provide a cross-reference to its description in paragraph II.D.5.

2. Cost Sharing or Matching—Required

You must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, you must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (e.g., provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as well as those imposed by administrative decision of the agency. This paragraph should refer to the appropriate portion(s) of subsection II.D stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if an award is made.

3. Dun and Bradstreet Universal Numbering System (DUNS) Number and Central Contractor Registration (CCR)—Required

This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the agency under 2 CFR 25.110(d)) is required to: (i) Be registered in the CCR prior to submitting its application; (ii) provide a valid DUNS number in its application; and (iii) continue to maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by an agency. It also must state that the agency may not make an award to an applicant until the applicant has complied with all applicable DUNS and CCR requirements and, if an applicant has not fully complied with the requirements by the time the agency is ready to make an award, the agency may determine that the applicant is not qualified to receive an award and use that determination as a basis for making an award to another applicant.

4. Other—Required, if Applicable

If there are other eligibility criteria (*i.e.*, criteria that have the effect of making an application or project ineligible for award, whether you refer to them as

“responsiveness” criteria, “go-no go” criteria, “threshold” criteria, or in other ways), you must clearly state them. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. In this paragraph you also must state any limit on the number of applications an applicant may submit under the announcement and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both. Also use this paragraph to address any eligibility criteria for beneficiaries or for program participants other than award recipients.

D. Application and Submission Information

1. Address To Request Application Package—Required

You must tell potential applicants how to get application forms, kits, or other materials they need to apply (if this announcement contains everything they need, this paragraph need only say so). You may give an Internet address where they can access the materials.¹ Since high-speed Internet access is not yet universally available for downloading documents, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD) or Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.

2. Content and Form of Application Submission—Required

a. This paragraph must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this paragraph may refer to where those requirements may be found. This paragraph also should address any preliminary submissions that the agency requires or encourages, either to facilitate its own planning or to provide potential applicants with feedback to help them decide whether to submit a full proposal.

b. For a full application, this includes all content and forms or formats that constitute a complete application, including: General information (e.g., applicant name and address), budgetary information, narrative programmatic information, biographical sketches, and all other required information (e.g., documentation that an applicant meets stated eligibility criteria or certifications or assurances of compliance with applicable requirements, such as evidence of compliance with human subjects requirements). You must either include required forms or formats as part of this announcement or state where the applicant may obtain them.

c. In paragraph II.D.2, you should specifically address content and form or format requirements for:

i. Pre-applications, letters of intent, or white papers that your agency requires or encourages (*see* paragraph II.D.3), including any limitations on the number of pages or other formatting requirements similar to those for full applications.

ii. The application as a whole. For hard copy submissions, that could include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required,² that could include special requirements for formatting or signatures.

iii. Component pieces of the application (e.g., if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (e.g., references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).

iv. Information that successful applicants must submit after your agency notifies them of its intent to make awards, but prior to award. This could include evidence of compliance with human subjects requirements or information your agency needs to comply with the National Environmental Policy Act (NEPA).

3. Submission Dates and Times—Required

a. Your announcement must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (e.g., letters of intent, white papers, or pre-applications). It also includes any other submissions of information before award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, paragraph II.D.3 should say so. Note that the information on dates that is included in this paragraph also must appear with other overview information in a location preceding the full text of the announcement (*see* “Overview Information” segment of this format, in section I of this subdivision).

b. For each type of submission that you address, indicate whether the submission is encouraged or required and, if required, any deadline date for submission (or dates, if the agency plans more than one cycle of application submission, review, and award under the announcement). The announcement must state (or provide a reference to another document that states):

i. Any deadline in terms of a date and local time.

ii. What the deadline means (e.g., whether it is the date and time by which the agency must receive the application, the date by which the application must be postmarked, or something else) and how that depends, if at all, on the submission method (e.g., mail, electronic, or personal/courier delivery).

iii. The effect of missing a deadline (e.g., whether late applications are neither reviewed nor considered or are reviewed and considered under some circumstances).

¹ With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998.

² *See* footnote 1 to subdivision II, paragraph II.D.1 of this appendix.

iv. How the receiving Federal office determines whether an application or pre-application has been submitted before the deadline. This includes the form of acceptable proof of mailing or system-generated documentation of receipt date and time.

c. Paragraph II.D.3 also may indicate whether, when, and in what form the applicant will receive an acknowledgment of receipt.

d. You should consider displaying the above information in ways that will be easy to understand and use. It can be difficult to extract all needed information from narrative

paragraphs, even when they are well written. A tabular form for providing a summary of the information may help applicants for some programs and give them what effectively could be a checklist to verify the completeness of their application package before submission. For example, a summary table might look like:

| What to submit | Required content | Required form or format | When to submit it |
|---|--|---|--|
| i. <i>Preapplication</i> (optional, but encouraged). | Described in paragraph II.D.2 of this announcement. | Format required by section _____ of grants policy manual (give URL or where to access it). ³ | By (give pre-application due date). |
| ii. <i>Application</i> : | | | |
| (1) Cover sheet | (per required form) | Form SF—____, available from (give source). | By (give pre-application due date). |
| (2) Budget information | (per required form) | Form SF—____, available from (give source). | |
| (3) Narrative | Described in paragraph II.D.2 of this announcement. | Format described in paragraph II.D.2. | |
| (4) Assurances | (per required form) | Form SF—____, available from (give source). | |
| (5) Letters from third parties contributing to cost sharing. | Third parties' affirmations of amounts of their commitments. | No specific form or format | Prior to award, when requested by grants officer (if application is successful). |
| iii. <i>Statement of intent to comply with human subjects requirements.</i> | (per required form) | Form SF—____, available from (give source). | |

4. Intergovernmental Review—Required, if Applicable

If the funding opportunity is subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs," you must say so. In alerting applicants that they must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372, you may wish to inform them that the names and addresses of the SPOCs are listed in the Office of Management and Budget's home page at: <http://www.whitehouse.gov/omb/grants/spoc.html>.

5. Funding Restrictions—Required

You must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs). You also must tell applicants if awards will not allow reimbursement of pre-award costs.

6. Other Submission Requirements—Required

a. Paragraph II.D.6 must address any other submission requirements not included in the other paragraphs of subsection II.D. This might include the format of submission, *i.e.*, paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and paragraph II.D.6 should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

b. Paragraph II.D.6 also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this should include the name of an office, official, individual or function (*e.g.*, application receipt center) and a complete mailing address. For electronic submission, this should include the URL or e-mail address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact that will be available in the event the applicant experiences technical difficulties.⁴

E. Application Review Information

1. Criteria—Required

a. Paragraph II.E.1 must address the criteria that your agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (*e.g.*, minority status or Native American tribal 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 give applicants visibility into the evaluation process so that they can make informed decisions when preparing their applications and so that the process is as fair and equitable as possible.

b. The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative

percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (*e.g.*, whether they result in additional points being assigned).

c. If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in paragraph II.C.2 of this subdivision), the announcement must specifically address how it will be considered (*e.g.*, 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, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on the types of cost (*e.g.*, in-kind contributions) that are acceptable as cost sharing.

2. Review and Selection Process—Required

a. Paragraph II.E.2 may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for award (*e.g.*, geographical dispersion, program balance, or diversity).

b. You also may include other details you deem appropriate. For example, paragraph II.E.2 may indicate who is responsible for evaluation against the merit criteria (*e.g.*,

³ See footnote 1 to subdivision II, paragraph II.D.1 of this appendix.

⁴ See footnote 1 to subdivision II, paragraph II.D.1 of this appendix.

peers external to the agency or Federal agency personnel) and/or who makes the final selections for award. If you have a multi-phase review process (e.g., an external panel advising internal agency personnel who make final recommendations to the deciding official), you may describe the phases. You also may include: The number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. In addition, if you permit applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in paragraph II.E.2.

3. Recipient Qualification—Required

This paragraph must inform potential applicants about the standards that will be used to determine that an entity is qualified to receive an award, in accordance with the agency's implementation of the OMB guidance at 2 CFR 35.115. It must inform them:

a. That every Federal agency awarding official, prior to making an award to an entity, is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) to review and consider any information about the entity that is in the Federal Awardee Performance and Integrity Information System (FAPIS);

b. That an applicant, at its option, may go to FAPIS (when it is available, the FAPIS Web site should provide information on how and where to enter comments) to comment on any information about itself that a Federal Government official previously entered and is currently in FAPIS;

c. That the awarding official will consider that comment, in addition to the other information in FAPIS, in making a judgment about the entity's integrity, business ethics, and record of performance under Federal awards that may affect the official's determination that the applicant is qualified to receive an award.

d. About any agency-specific standards for recipient qualification that the agency uses, as permitted under 2 CFR 35.115(b).

4. Anticipated Announcement and Award Dates—Optional

This paragraph is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the agency can include in this paragraph information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having awards in place. If applications are received and evaluated on a "rolling" basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the agency's decision.

F. Award Administration Information

1. Award Notices—Required

This paragraph must address what a successful applicant can expect to receive

following selection. If your practice is to provide a separate notice stating that an application has been selected before you actually make the award, this paragraph would be the place to indicate that the letter is not an authorization to begin performance (to the extent that you allow charging to awards of pre-award costs at the recipient's own risk). This paragraph should indicate that the notice of award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants.

2. Administrative and National Policy Requirements—Required

a. Paragraph II.F.2 must identify the usual administrative and national policy requirements your agency's awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before award. The announcement need not include all of the award terms and conditions, but may refer to a document (with information about how to obtain it) or Internet site⁵ where applicants can see the terms and conditions.

b. If this funding opportunity will lead to awards with some special terms and conditions that differ from your agency's usual (sometimes called "general") terms and conditions, paragraph II.F.2 should highlight those special terms and conditions. Doing so will alert applicants who have received awards from your agency previously and might not otherwise expect different terms and conditions. For the same reason, you should inform potential applicants about special requirements that could apply to particular awards after review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

3. Reporting—Required

This paragraph must include general information about the type (e.g., financial or performance), frequency, and means of submission (paper or electronic) of post-award reporting requirements. Highlight any special reporting requirements for awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what your agency's awards usually require.

G. Agency Contact(s)—Required

You must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so you should consider approaches such as giving:

1. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or e-mail, as well as regular mail).

2. A fax or e-mail address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.

3. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

H. Other Information—Optional

This subsection may include any additional information that will assist a potential applicant. For example, the subsection might:

1. Indicate whether this is a new program or a one-time initiative.

2. Mention related programs or other upcoming or ongoing agency funding opportunities for similar activities.

3. Include Internet addresses for agency Web sites that may be useful to an applicant in understanding the program (**Note:** You should make certain that any Internet sites are current and accessible).⁶

4. Alert applicants to the need to identify proprietary information and inform them about the way the agency will handle it.

5. Include certain routine notices to applicants (e.g., that the Government is not obligated to make any award as a result of the announcement or that only grants officers can bind the Government to the expenditure of funds).

PARTS 28-34—[RESERVED]

PART 35—TIME-OF-AWARD RESPONSIBILITIES

Sec.

35.5 Purpose of this part.

35.10 Applicability.

35.15 Federal agency implementation.

Subpart A—Recipient Qualification Matters

35.100 Purpose of subpart A.

35.105 Policy.

35.110 Federal agency awarding officials' responsibilities.

35.115 Standards.

35.120 Required procedures for determining recipient qualification.

35.125 Additional procedures for determining recipient qualification.

35.130 Reporting disqualification of a recipient.

Subpart B—The Award

35.200 Purpose of subpart A.

35.205 Award content.

35.275 Use of award term.

Appendix A to Part 35—Award Term for Recipient Integrity and Performance Matters

Authority: 31 U.S.C. 503; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966-1970, p. 939; Sec. 872, Pub. L. 110-417, 122 Stat. 4555.

⁵ See footnote 1 to subdivision II, paragraph II.D.1 of this appendix.

⁶ See footnote 1 to subdivision II, paragraph II.D.1 of this appendix.

§ 35.5 Purpose of this part.

This part provides the Office of Management and Budget (OMB) guidance for Federal agencies' responsibilities at the time of the award of a grant or cooperative agreement.

§ 35.10 Applicability.

(a) *Types of entities.* This part provides OMB guidance only to Federal agencies. Federal agencies' implementation of this part governs the rights and responsibilities of other entities affected by the guidance, which may include both—

(1) Organizations other than Federal agencies; and

(2) Individuals.

(b) *Types of awards.* This part applies to Federal agencies' grants and cooperative agreements.

§ 35.15 Federal agency implementation.

Each Federal agency with offices that award grants or cooperative agreements must issue any needed direction to those offices to require conformance with the policies and procedures in this part. It must:

(a) Issue any implementation other than a regulation within six months of the issuance of the part or any change to it.

(b) Submit any regulatory implementation to the OMB for review within nine months of the issuance of this part or update to it, prior to publication for comment, and issue final regulations within eighteen months of the issuance.

Subpart A—Recipient Qualification Matters**§ 35.100 Purpose of subpart A.**

The purpose of this subpart is to specify policies and procedures for a Federal agency awarding official's determination of recipient qualifications prior to award.

§ 35.105 Policy.

(a) *General.* Federal agency awarding officials normally will award grants or cooperative agreements only to qualified recipients that meet the standards in § 35.115. This practice conforms with the Governmentwide policy to do business only with responsible persons, as stated at 2 CFR 180.125(a).

(b) *Exceptions.*

(1) The general policy in paragraph (a) of this section does not apply to types of awards listed at 2 CFR 180.215.

(2) A Federal agency awarding official may make an award to a recipient that does not fully meet the standards in § 35.115, as described in paragraphs (b)(2)(i) and (ii) of this section, as applicable.

(i) If an entity currently is listed in the Excluded Parties List System (EPLS) as being suspended, debarred, or otherwise ineligible for the award, the awarding official must comply with the agency's implementation of the exception provision in 2 CFR 180.400.

(ii) If there are special award conditions that can appropriately mitigate the effects of the entity's failure to fully meet the standards, such as special administrative requirements an agency may include in accordance with the agency's implementation of 2 CFR 215.14 (OMB Circular A-110) or section __.12 of the Governmentwide common rule implementing OMB Circular A-102, then the awarding official may make the award with those conditions.

§ 35.110 Federal agency awarding officials' responsibilities.

To comply with the policy in § 35.105, the Federal agency awarding official is responsible for determining a recipient's qualification prior to award. The official's signature on the award document shall signify his or her determination that either:

(a) The potential recipient meets the standards in § 35.115 and is qualified to receive the grant or cooperative agreement; or

(b) An award is otherwise justified, pursuant to § 35.105(b).

§ 35.115 Standards.

(a) *Governmentwide minimum standards.* To be qualified, a potential recipient must at least—

(1) Have a satisfactory record of executing programs or activities under Federal assistance or procurement awards, if it is a prior recipient of such awards; and

(2) Have a satisfactory record of integrity and business ethics.

(b) *Agency-specific standards.* An agency in its implementation of this part may establish additional standards for recipient qualification.

§ 35.120 Required procedures for determining recipient qualification.

(a) *Use of Excluded Parties List System (EPLS).* (1) In deciding that an entity is qualified in accordance with the standards in § 35.115, a Federal agency awarding official must determine whether the entity is identified in the EPLS as being debarred, suspended, or otherwise ineligible to receive the award, as required by his or her agency's implementation of the Governmentwide guidance on nonprocurement debarment and suspension (2 CFR part 180).

(2) If the entity is listed in the EPLS, the awarding official must comply with

other applicable provisions of his or her agency's implementation of 2 CFR part 180.

(3) As stated at 2 CFR 180.425 and 180.430, the Federal agency awarding official's responsibilities include checking the EPLS for:

(i) Potential recipients of prime awards; and

(ii) A recipient's principals (as defined at 2 CFR 180.995), potential recipients of subawards, and principals of those potential subaward recipients, if Federal agency approval of those principals or lower-tier recipients is required under the terms of the award.

(b) *Use of the Federal Awardee Performance and Integrity Information System (FAPIS).* (1) For each award with a total value expected to exceed the simplified acquisition threshold defined at 41 U.S.C. 403(11) (currently \$100,000), a Federal agency awarding official must review any information about the recipient that is contained in FAPIS (which will be at a Web site for which the Universal Resource Locator, or URL, is not yet available) and consider all such information in making the determination that the recipient meets the minimum qualification standards in § 35.115(a).

(2) For grants, the requirement to consider all information in the data system is a statutory requirement under section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). This requirement also applies to cooperative agreements as a matter of Federal Government policy.

(3) Awarding officials should note that:

(i) The data system is required by law to include information about all suspensions and debarments that began during the most recent 5-year period, which may include suspensions or debarments that subsequently expired or were terminated. However, under the Governmentwide policy at 2 CFR part 180, a suspension or debarment of an entity, or a proposal to debar the entity under the Federal Acquisition Regulation, restricts the entity's eligibility to receive Federal awards only until the date on which the suspension is lifted, the proposed debarment is terminated, or the period of debarment expires.

(ii) Therefore, even though information about an expired or terminated suspension or debarment action may be in the data system after that date, the relevance of the information to an awarding official's determination of an entity's current qualification for an award is limited by

the fact that it is a past action that no longer has an exclusionary effect.

§ 35.125 Additional procedures for determining recipient qualification.

(a) A Federal agency awarding official may use methods in addition to those required under § 35.120 to determine recipient qualification. In deciding on appropriate methods to use and levels of effort to expend, the Federal agency awarding official should consider factors such as:

(1) Whether the recipient has no previous experience under Federal awards and therefore may be unfamiliar with Federal Government requirements or not have previously established systems for compliance with them;

(2) Federal agencies' past experience with the recipient;

(3) The amount of the prospective award and complexity of the project or program to be carried out under the award.

(b) There is no Governmentwide requirement to obtain a pre-award credit report, audit, or any other specific piece of information. If a Federal agency awarding official judges in a specific case that there is a need to obtain any such information to assist in deciding whether the recipient meets the standards in § 35.115, then the guidance in paragraphs (b)(1) and (2) of this section applies.

(1) Before judging that a pre-award credit report, audit, or survey is needed, the Federal agency awarding official should consider whether any pre-existing surveys or audits of the recipient, such as the single audit of the recipient's internal control systems under OMB Circular A-133,¹ will satisfy the need.

(2) If the Federal agency awarding official decides to obtain a credit report, audit, or other information, and the report or other information discloses that a potential recipient is delinquent on a debt to an agency of the United States Government, then—

(i) The Federal agency awarding official must take such information into account when determining whether the potential recipient is qualified with respect to the grant or cooperative agreement; and

(ii) If the awarding official decides to make the award to the recipient, unless there are compelling reasons to do otherwise, he or she must delay the award of the grant or cooperative agreement until payment is made or

satisfactory arrangements are made to repay the debt; and

(iii) The awarding official should refer to the agency's suspending and debarment official any evidence of substantial debt delinquency, as described at 2 CFR 180.800(c)(3) as a cause for debarment.

§ 35.130 Reporting the disqualification of a recipient.

(a) *Requirement to report a disqualification.* (1) *Determinations that must be reported.* If a Federal agency awarding official does not make an award to an entity because the official determines that the entity does not meet either or both of the minimum qualification standards in § 35.115(a), the official must report that determination, as described in paragraph (a)(3) of this section, only if all of the following apply:

(i) The only basis for disqualification is the entity's prior record of executing programs or activities under Federal awards or its record of integrity and business ethics (i.e., the entity was determined to be qualified based on all factors other than those two standards); and

(ii) The total value of the award that otherwise would be made to the entity is expected to exceed the simplified acquisition threshold at 41 U.S.C. 403(11) (currently \$100,000).

(2) *Determinations that need not be reported.* The official is not required to report a determination that an entity is not qualified if he or she makes the award to the entity and includes special award conditions, as described in § 35.105(b)(2);

(3) *Reporting procedures.* The Federal agency awarding official must report each determination described in paragraph (a)(1) of this section to FAPIIS (which will be at a Web site for which the Universal Resource Locator, or URL, is not yet available). The official must provide a copy of the notice sent to the disqualified entity and the information about the determination that is required at that Internet site.

(b) *Requirement to notify the disqualified entity.* If a Federal agency awarding official reports a determination that an entity is not qualified to FAPIIS, as described in paragraph (a) of this section, the official also must notify the entity that—

(1) The determination was made and reported to FAPIIS;

(2) The information will be kept in that data system for a period of 5 years from the date of the determination, as required by section 872 of Public Law 110-417, archived for one additional year, and then discarded;

(3) Each awarding official who considers making an award to the entity during that period must consider that information in judging whether the entity is qualified to receive the award;

(4) The entity may go to FAPIIS (when it is available, the FAPIIS Web site should provide information on how and where to enter comments) and comment on any information the data system contains about itself, for future consideration by Federal awarding officials; and

(5) An awarding official will consider that entity's comment in determining whether the entity is qualified for a future award.

(c) *Correction or updating of information previously submitted.* If a Federal agency awarding official, after entering information into the data system about a disqualification, subsequently:

(1) Learns that any of that information is erroneous, he or she must correct the information in the data system within 3 business days.

(2) Obtains an update to that information that could be helpful to other Federal agency officials who must use the data system, he or she is strongly encouraged to amend the information in the data system to incorporate the update in a timely way.

(d) *Source of the requirements.* The requirements in this section are matters of Federal Government policy that are parallel and analogous to the requirements for a Federal contracting officer to report a determination that a potential contractor is not presently responsible, under section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

Subpart B—The Award

§ 35.200 Purpose of subpart B.

The purpose of this subpart is to specify policies and procedures related to the creation, execution, and dissemination of electronic or paper award documents and other actions at the time of award.

§ 35.205 Award content.

(a) *Responsibility.* Each Federal agency must issue any needed direction to offices that make awards, to specify that the agency official authorized to sign or otherwise approve an award, thereby obligating the Government, is responsible for ensuring that the award contains the appropriate terms and conditions.

(b) *Governmentwide award terms.* Pending issuance of comprehensive Governmentwide guidance on award

¹ Electronic copies may be obtained at Internet site <http://www.whitehouse.gov/OMB>. For paper copies, contact the Office of Management and Budget, EOP Publications, 725 17th St., NW., New Executive Office Building, Washington, DC 20503.

format and content, Federal agencies' awards must contain each of the following terms and conditions that is applicable in accordance with the associated guidance:

(1) The award term "Central Contractor Registration and Universal Identifier Requirements," in accordance with the guidance in 2 CFR 25.220.

(2) The award term "Requirements Related to Recipient Integrity and Performance Matters," in accordance with the guidance in § 35.275.

(3) The award term "Trafficking in Persons," in accordance with the guidance in 2 CFR 175.15.

§ 35.275 Use of award term.

(a) An agency must include the award term in Appendix A to this part in each grant or cooperative agreement award.

(b) An agency may use different letters and numbers to designate the paragraphs of the award term, if necessary, to conform the system of paragraph designations with the one used in other terms and conditions in the agency's awards.

Appendix to Part 35—Award Term for Recipient Integrity and Performance Matters

I. Reporting of matters related to recipient integrity and performance.

A. General reporting requirement. If there is any period of time during which the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal agencies exceeds \$10,000,000, then you as the recipient are required during that period of time to maintain the currency of information about all civil, criminal, or administrative proceedings described in paragraph B. of this award term that reached their final disposition during the most recent 5-year period. This is a statutory requirement under section 872 of Public Law 110-417.

B. Proceedings about which you must report. During any period of time when you are subject to the requirement in paragraph A. of this award term, submit information about each proceeding that is connected with the award or performance of a grant, cooperative agreement, or procurement contract from either the Federal Government or a State, and is:

1. A criminal proceeding that resulted in a conviction;

2. A civil proceeding that resulted in a finding of fault and liability and your paying a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

3. An administrative proceeding, as defined in paragraph e. of this award term, that resulted in a finding of fault

and liability and your payment of either monetary fine or penalty of \$5,000 or more or a reimbursement, restitution, or damages in excess of \$100,000; or

4. Any other criminal, civil, or administrative proceeding if:

a. It is practical for you to judge that it could have led to an outcome described in paragraph B.1, 2, or 3 of this award term;

b. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

c. The requirement in this award term to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. *Reporting procedures.* Submit the information specified at the Federal Awardee Performance and Integrity Information System, or FAPIIS (when it is available, the FAPIIS Web site should provide information on how and where to enter the information), about each proceeding described in paragraph B. of this award term, in accordance with the procedures specified at that Internet site. You do not need to submit the information a second time under assistance instruments that you received if you already submitted the information to FAPIIS 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 to FAPIIS no less frequently than semiannually following your initial report of any proceedings for the most recent 5-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report.

E. *Definitions.* For purposes of this award term:

1. *Administrative proceeding* means any Federal Government, State, or local or foreign government proceeding, other than a criminal or civil proceeding, to render a decision concerning an entity's alleged violation of or failure to comply with a Federal, State, local, or foreign statute or regulation if the proceeding may result in both:

i. A finding of fault or misconduct; and

ii. Imposition of a fine or penalty, assessment of damages, or a requirement for restitution or repayment.

2. *Total value* of currently active grants, cooperative agreements, and procurement contracts includes the value of all options, even if not yet exercised.

PARTS 36–39—[RESERVED]

4. Subchapter C to chapter I, consisting of parts 40 through 59, is established and reserved to read as follows:

Subchapter C—Award Content and Format—[Reserved]

PARTS 40–59—[RESERVED]

5. Subchapter D to chapter I, consisting of parts 60 through 79, is established and added to read as follows:

Subchapter D—Post-Award Responsibilities

PARTS 60–76—[RESERVED]

PART 77—REMEDIES AND TERMINATION

Sec.

77.5 Purpose of this part.

77.10 Applicability.

77.15 Federal agency implementation.

Subpart A—[Reserved]

Subpart B—Termination

77.200 Purpose of subpart B.

77.220 Reporting.

Authority: 31 U.S.C. 503; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939; Sec. 872, Pub. L. 110-417, 122 Stat. 4555.

§ 77.5 Purpose of this part.

This part provides Office of Management and Budget (OMB) guidance concerning—

(a) Remedies available to Federal agencies for recipient non-compliance matters; and

(b) Termination of an award prior to the end of the project or program period.

§ 77.10 Applicability.

(a) *Types of entities.* This part provides OMB guidance only to Federal agencies. Federal agencies' implementation of this part governs the rights and responsibilities of other entities affected by the guidance, which may include both—

(1) Organizations other than Federal agencies; and

(2) Individuals.

(b) *Types of awards.* This part applies to Federal agencies' grants and cooperative agreements.

§ 77.15 Federal agency implementation.

Each Federal agency with offices that award grants or cooperative agreements must issue any needed direction to those offices to require conformance with the policies and procedures in this part. It must:

(a) Issue any implementation other than a regulation within six months of

the issuance of the part or any change to it.

(b) Submit any regulatory implementation to the OMB for review within nine months of the issuance of this part or update to it, prior to publication for comment, and issue final regulations within eighteen months of the issuance.

Subpart A—[Reserved]

Subpart B—Termination

§ 77.200 Purpose of subpart B.

The purpose of this subpart is to specify policies and procedures concerning terminations of awards.

§ 77.220 Reporting.

(a) *Reporting requirement.* (1) If a Federal agency official terminates an award to a recipient prior to the end of the project or program period on the basis of the recipient's material failure to comply with award terms and conditions, he or she must—

(i) Report the termination to the Federal Awardee Performance and Integrity Information System, or FAPIIS (which will be at a Web site for which the Universal Resource Locator, or URL, is not yet available); and

(ii) Provide a copy of the notice of termination and information about the termination that is specified at that Internet site.

(2) If the agency has administrative procedures by which the recipient may appeal the agency official's decision to terminate the award, the information required under paragraph (a) of this section is not to be reported to FAPIIS until the recipient either—

(i) Has exhausted the appeal procedures available to it and the agency has sustained the termination; or

(ii) Has not, within 30 days of being notified of the termination, informed the agency that it intends to appeal the agency official's decision to terminate.

(b) *Notification requirement.* The Federal agency's notice of termination must notify the recipient that—

(1) The termination will be reported to FAPIIS;

(2) The information will be kept in FAPIIS for a period of 5 years from the date of the termination, as required by section 872 of Public Law 110–417, archived for one additional year, and then discarded;

(3) Each awarding official who considers making an award to the entity during that period must consider that information in judging whether the entity is qualified to receive the award;

(4) The entity may go to FAPIIS (when it is available, the FAPIIS Web site

should provide information on how and where to enter comments) and comment on any information FAPIIS contains about the entity, for future consideration by Federal awarding officials; and

(5) An awarding official will consider that entity's comment in determining whether the entity is qualified for a future award.

(c) *Correction or updating of information previously submitted.* If a Federal agency official, after entering information into FAPIIS about a termination, subsequently:

(1) Learns that any of that information is erroneous, he or she must correct the information in FAPIIS within 3 business days.

(2) Obtains an update to that information that could be helpful to Federal agency awarding officials who must use FAPIIS, he or she is strongly encouraged to amend the information in FAPIIS to incorporate the update in a timely way.

(d) *Sources of the requirements.* Both reporting information about terminations and notifying recipients are statutory requirements for grants under section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). The requirements also apply to cooperative agreements, as a matter of Federal Government policy.

PARTS 78–79—[RESERVED]

6. Subchapter E to chapter I, consisting of parts 80 through 99, is established and reserved to read as follows:

Subchapter E—Cost Principles—[Reserved]

PARTS 80–99—[RESERVED]

7. Subchapter F to chapter I, consisting of parts 100 through 119, is established and reserved to read as follows:

Subchapter F—Audit Requirements—[Reserved]

PARTS 100–119—[RESERVED]

8. Subchapter G to chapter I, consisting of parts 120 through 199, is established, and a new subchapter heading is added to read as follows:

Subchapter G—National Policy Requirements

PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

9. The authority citation for part 180 continues to read as follows:

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

10. Add §§ 180.650, 180.655, 180.660, and 180.665 to subpart F to read as follows:

§ 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 agencies know about an administrative agreement that is the result of a settlement?

The suspending or debarring official who enters into an administrative agreement with you must report information about the agreement to the Federal Awardee Performance and Integrity Information System (FAPIIS) (the specific information that must be reported is specified at the Internet site for that data system). This reporting is required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417).

§ 180.660 Will I be told how Federal agencies use information about me in the Federal Awardee Performance and Integrity Information System and allowed to comment on it?

Yes, the suspending or debarring official who enters into an administrative agreement with you must include wording in the agreement to inform you that:

(a) Information about the administrative agreement will be reported to FAPIIS;

(b) The information will be kept in FAPIIS for a period of 5 years from the date of the administrative agreement (or for the period of time during which the agreement is in effect, if that is more than 5 years), as required by section 872 of Public Law 110–417, archived for one additional year, and then discarded;

(c) Each Federal agency official who considers awarding a grant, cooperative agreement, or procurement contract to you during that period must consider the information about you that is in FAPIIS prior to making the award, to determine whether you are qualified to receive the award based on your business ethics and integrity and prior performance of programs under Federal awards;

(d) You may go to FAPIIS (when it is available, the FAPIIS Web site should provide information on how and where to enter comments) and comment on any information the data system contains about you; and

(e) A Federal agency awarding official will consider your comment in determining whether you are qualified for a future award.

§ 180.665 Will information about me in the Federal Awardee Performance and Integrity Information System be corrected or updated?

Yes, the suspending or debarring official who entered information into FAPIIS about an administrative agreement with you:

(a) Must correct the information within 3 business days if he or she subsequently learns that any of it is erroneous.

(b) Must correct in FAPIIS, within 3 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) Is strongly encouraged to amend the information in FAPIIS in a timely way to incorporate any update that he or she obtains that could be helpful to Federal agency officials who must use FAPIIS.

11. In § 180.715, revise paragraphs (f) and (g), and add a new paragraph (h) to read as follows:

§ 180.715 What notice does the suspending official give me if I am suspended?

* * * * *

(f) Of the applicable provisions of this subpart, Subpart F of this part, and any other agency procedures governing suspension decisionmaking;

(g) Of the Governmentwide effect of your suspension from procurement and nonprocurement programs and activities; and

(h) That the information about the suspension that is reported to the EPLS, in accordance with § 180.520, also will be available to Federal agency officials responsible for awarding contracts, grants, and cooperative agreements through another Governmentwide data system, FAPIIS, *and that—*

(1) The information will be kept in FAPIIS for a period of 5 years from the date of the suspension (or for the period of time during which the suspension is in effect, if that is more than 5 years), as required by section 872 of Public Law 110–417, archived for one additional year, and then discarded;

(2) Each Federal agency official who considers awarding a grant, cooperative agreement, or procurement contract to you during that period must consider the information about you that is in FAPIIS prior to making the award, to determine whether you are qualified to receive the award based on your business ethics and integrity and prior performance of programs under Federal awards;

(3) You may go to FAPIIS (when it is available, the FAPIIS Web site should provide information on how and where to enter comments) and comment on any information the data system contains about you;

(4) The purpose of any comment you make in FAPIIS about the suspension is for future consideration by Federal awarding officials and is separate from the process described in this subpart for contesting the suspension; and

(5) A Federal agency awarding official will consider your comment in determining whether you are qualified for a future award.

12. In § 180.870, revise paragraphs (b)(2)(iii) and (iv), and add a new paragraph (b)(2)(v) to read as follows:

§ 180.870 When do I know if the debarring official debars me?

* * * * *

(b) * * *

(2) * * *

(iii) States the period of your debarment, including the effective dates;

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of

the Federal Government unless an agency head or an authorized designee grants an exception; and

(v) Informs you that the information about the debarment that is reported to the EPLS, in accordance with § 180.520, also will be available to Federal agency officials responsible for awarding contracts, grants, and cooperative agreements through another Governmentwide data system, FAPIIS, *and that—*

(A) The information will be kept in FAPIIS for a period of 5 years from the date of the debarment (or for the period of time during which the debarment is in effect, if that is more than 5 years), as required by section 872 of Public Law 110–417, archived for one additional year, and then discarded;

(B) Each Federal agency official who considers awarding a grant, cooperative agreement, or procurement contract to you during that period must consider the information about you that is in FAPIIS prior to making the award, to determine whether you are qualified to receive the award based on your business ethics and integrity and prior performance of programs under Federal awards;

(C) You may go to FAPIIS (when it is available, the FAPIIS Web site should provide information on how and where to enter comments) and comment on any information the data system contains about you;

(D) The purpose of any comment you make in FAPIIS about the debarment is for future consideration by Federal awarding officials, is separate from any request you make under § 180.875 for reconsideration of the debarment, and is not to appeal the debarring official's decision; and

(E) A Federal agency awarding official will consider your comment in determining whether you are qualified for a future award.

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