

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 25, 170, 183, and 200

[2019–OMB–0005]

Guidance for Grants and Agreements

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

ACTION: Proposed Guidance.

SUMMARY: The Office of Management and Budget is proposing to revise sections of Title 2 of the Code of Federal Regulations (CFR) Subtitle A—OMB Guidance for Grants and Agreements. The proposed revisions are limited in scope to support implementation of the President’s Management Agenda, Results-Oriented Accountability for Grants Cross-Agency Priority Goal (Grants CAP Goal) and other Administration priorities; implementation of statutory requirements and alignment of 2 CFR with other authoritative source requirements; and clarifications of existing requirements in particular areas within 2 CFR. These proposed revisions are intended to reduce recipient burden, provide guidance on implementing new statutory requirements, and improve Federal financial assistance management, transparency, and oversight.

DATES: Comments are due on or before March 23, 2020.

ADDRESSES: Comments on this proposal must be submitted electronically before the comment closing date to www.regulations.gov. In submitting comments, please search for recent submissions by OMB to find docket OMB–2019–0005, which includes the full text of the proposed revisions and submit comments there. Please provide clarity as to the section of the guidance that each comment is referencing by beginning each comment with the section number in brackets. *For example; if the comment is on 2 CFR 200.1 include the following before the comment [200.1].* The public comments received by OMB will be a matter of public record and will be posted at <http://www.regulations.gov>. Accordingly, please do not include in your comments any confidential business information or information of a personal-privacy nature. To reference the track changes of the proposed revisions please visit <https://www.performance.gov/CAP/grants/>. In general, responses to the comments will be summarized and included in the preamble of the final guidance.

FOR FURTHER INFORMATION CONTACT: Nicole Waldeck or Gil Tran at the OMB Office of Federal Financial Management at 202–395–3993.

SUPPLEMENTARY INFORMATION:

Background and Objectives

In 2013, OMB partnered with the Council on Financial Assistance Reform (COFAR) to revise and streamline guidance to develop the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) located in Title 2 of the Code of Federal Regulations (2 CFR 200) (79 FR 78589; December 26, 2013). The intent of this effort was to simultaneously reduce administrative burden and the risk of waste, fraud, and abuse while delivering better performance on behalf of the American people. Implementation of the Uniform Guidance became effective on December 26, 2014 (79 FR 75867, December 19, 2014) and must be reviewed every five years in accordance with 2 CFR 200.109. Based on feedback and ongoing engagement with the grants management community, the current Administration established the Results-Oriented Accountability for Grants Cross Agency Priority Goal (Grants CAP Goal) in the President’s Management Agenda on March 20, 2018 (available at: <https://www.performance.gov/CAP/grants/>). The Grants CAP Goal recognizes that grants managers report spending a disproportionate amount of time using antiquated processes to monitor compliance. Efficiencies could be gained from modernization and grants managers could instead shift their time to analyze data to improve results. To address this challenge, the Grants CAP Goal Executive Steering Committee (ESC), which reports to the Chief Financial Officer’s Council (CFOC), identified four strategies to work toward maximizing the value of grant funding by developing a risk-based, data-driven framework that balances compliance requirements with demonstrating successful results for the American taxpayer.

1. Strategy 1: Standardize the Grants Management Business Process and Data
2. Strategy 2: Build Shared IT Infrastructure
3. Strategy 3: Manage Risk
4. Strategy 4: Achieve Program Goals and Objectives

To support these four strategies, various revisions are proposed for 2 CFR. In support of Strategies 1 and 2, OMB is proposing changes to terminology throughout 2 CFR. These proposed changes would help ensure

that there are no conflicts within 2 CFR and the Grants Management Federal Integrated Business Framework (available at: <https://ussm.gsa.gov/fibf/>). This effort recognizes that recipient reporting burden is reduced when the grants management business process and data elements are standardized. OMB is also proposing revisions to strengthen the governmentwide approach to performance and risk, to support efforts under Strategies 3 and 4 by encouraging agencies to measure the recipient’s performance in a way that will help Federal awarding agencies and non-Federal entities to improve program goals and objectives, share lessons learned, and spread the adoption of promising performance practices.

OMB is also proposing revisions to 2 CFR to implement relevant statutory requirements. These revisions include requirements from several National Defense Authorization Acts (NDAAs) and the Federal Funding Accountability and Transparency Act (FFATA), as amended by the Digital Accountability and Transparency Act (DATA Act).

Finally, OMB is proposing revisions to 2 CFR to clarify areas of misinterpretation. The proposed revisions are intended to reduce recipient burden by improving consistent interpretation.

OMB proposes these revisions after consultation and in collaboration with agency representatives identified by the Grants CAP Goal ESC. In addition, OMB solicited feedback from the broader Federal financial assistance community and made changes to the proposed revisions as appropriate.

In summary and as discussed further in the sections below, OMB proposes revisions to 2 CFR parts 25, 170, and 200 within the below scope. Additionally, OMB proposes adding part 183 to 2 CFR to implement Never Contract with the Enemy.

I. To support implementation of the President’s Management Agenda Results-Oriented Accountability for Grants CAP Goal and other Administration priorities;

II. To meet statutory requirements and to align with other authoritative source requirements; and

III. To clarify existing requirements.

I. Support Implementation of the President’s Management Agenda and Other Administration Priorities

A. Changes to the Procurement Standards To Better Target Areas of Greater Risk and Conform to Statutory Requirements

To better target 2 CFR requirements on areas of greater risk, and consistent

with the intent of the Grants CAP Goal, OMB proposes allowing all Federal recipients the flexibility provided in the NDAA for 2017 for institutions of higher education, related or affiliated nonprofit entities, nonprofit research organizations, and independent research institutes to request an increased micro-purchase threshold.

Procurement by micro-purchases was included in the final guidance published on December 26, 2013 (78 FR 78589) in response to comments provided to the proposed guidance published on February 1, 2013 (available at www.regulations.gov under docket number OMB-2013-0001). The intent of the procurement by micro-purchase guidance was to alleviate burden associated with the Uniform Guidance procurement standards, allowing for recipients to make purchases below the micro-purchase threshold without soliciting price or rate quotations, if the non-Federal entity considers the price to be reasonable. Following the publication of the final guidance, OMB received feedback from the recipient community requesting additional time to comply with the Uniform Guidance procurement standards at 2 CFR 200.317 through 200.326. In response, OMB allowed recipients a one-year grace period provided the non-Federal entity appropriately documented delayed implementation in their policies and procedures and they continued to comply with previous OMB guidance. Towards the end of this initial grace period, OMB received requests to delay implementation of the procurement standards further, specifically citing the challenges associated with implementing procurement by micro-purchase. In response, OMB allowed for an additional grace period. Following the allowance of the additional grace period, new cost-burden data was provided by the recipient community regarding the implementation of procurement by micro-purchase. This data reflected that many non-Federal entities have existing micro-purchase thresholds that are substantially higher than the micro-purchase threshold at that time of \$3,500. Recipients report that to make purchases above the micro-purchase threshold, they rely on individuals with specialized skills for their procurement offices and the final guidance would require non-Federal entities to hire additional staff at a substantial cost to non-Federal entities. Further, since finalization of 2 CFR 200, several statutes have been enacted that impact the procurement thresholds in

the current guidance as summarized below.

The NDAA for Fiscal Year (FY) 2017 (NDAA 2017) increased the micro-purchase threshold from \$3,500 to \$10,000 for institutions of higher education, or related or affiliated nonprofit entities, nonprofit research organizations or independent research institutes (41 U.S.C. 1908). The NDAA 2017 also establishes an interim uniform process by which these recipients can request, and Federal awarding agencies can approve requests to apply, a higher micro-purchase threshold. Specifically, the NDAA 2017 allows a threshold above \$10,000, if approved by the head of the relevant executive agency and consistent with clean audit findings under chapter 75 of title 31, internal institutional risk assessment, or State law. The NDAA 2018 increases the micro-purchase threshold to \$10,000 for all recipients and also increases the simplified acquisition threshold from \$100,000 to \$250,000 for all recipients. A proposal to increase the micro-purchase and simplified acquisition thresholds in the Federal Acquisition Regulation (FAR) was published in the **Federal Register** on October 2, 2019 (84 FR 52420), FAR Case 2018-004. In addition, the American Innovation and Competitiveness Act of 2017 (AICA), section 207(b) requires that 2 CFR 200 be revised to conform with the requirements concerning the micro-purchase threshold.

In response to these statutory changes, OMB issued OMB Memorandum M-18-18, Implementing Statutory Changes to the Micro-Purchase and the Simplified Acquisition Thresholds for Financial Assistance (June 20, 2018). Consistent with the requirements of NDAA 2017, this memo outlined the process for institutions of higher education, related or affiliated nonprofit entities, nonprofit research organizations, and independent research institutes to request a higher micro-purchase threshold from their cognizant Federal awarding agency for indirect cost rates. The proposed changes to 2 CFR 200.319 and 200.320 incorporate the guidance available in M-18-18 and proposes to extend the flexibility to request a higher micro-purchase threshold to all non-Federal entities. Proposed changes also reflect the higher micro-purchase threshold set forth in the 2017 and the American Innovation and Competitiveness Act of 2017. The micro-purchase threshold identified in the aforementioned legislation is \$10,000.

B. Strengthening Merit Review and Notices of Funding Opportunities

OMB proposes revisions to 2 CFR 200.204 *Federal awarding agency review of merit proposals* and 2 CFR 200.203 *Notices of funding opportunities* to strengthen merit review and the notices of funding opportunities. These proposed revisions require agencies to extend their merit review process for all grants and cooperative agreements to all awards in which the Federal awarding agency has the discretion to choose the recipient. Proposed changes to 2 CFR 200.204 *Federal awarding agency review of merit proposals* also clarify the objective of the merit review process—to select recipients most likely to be successful in delivering results based on the program objectives outlined in section 2 CFR 200.202 *Program planning and design*—and thus the merit review process should be designed accordingly.

Further, Federal awarding agencies are required to systematically review Federal award selection criteria for effectiveness. These proposed changes support the Administration's priority to ensure a fair and transparent process for the selection of award recipients and supports efforts under the PMA to ensure that grants and cooperative agreements are designed to achieve program goals and objectives. OMB seeks comments on the impacts this revision will have on the financial assistance community.

C. Support for Domestic Preferences for Procurement

As expressed in Executive Order 13788 of April 18, 2017 (Buy American and Hire American) and Executive Order 13858 of January 21, 2019 (Executive Order on Strengthening Buy-American Preferences for Infrastructure Projects), it is the policy of this Administration to maximize, consistent with law, the use of goods, products, and materials produced in the United States, in Federal procurements and through the terms and conditions of Federal financial assistance awards. In support of this policy, OMB proposes to add 2 CFR 200.321 (Domestic preferences for procurement), encouraging Federal award recipients, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States when procuring goods and services under Federal awards. This Part will apply to procurements under a grant or cooperative agreement.

D. Promoting Free Speech

Revisions are proposed to 2 CFR 200.300 Statutory and national policy requirements, to align with Executive Orders (E.O.) 13798 “Promoting Free Speech and Religious Liberty” and E.O. 13864 “Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities.” These Executive Orders advise agencies on the requirements of religious liberty laws, including those laws that apply to grants and provided a policy for free inquiry at institutions receiving Federal grants. The revision to 2 CFR underscores the importance of compliance with the First Amendment.

E. Standardization of Terminology and Implementation of Standard Data Elements

OMB proposes to standardize terms across 2 CFR part 200 to support efforts under the Grants CAP Goal to standardize the grants management business process and data.

Some examples of proposed revisions include terms associated with time periods (period of performance, budget period and renewal), financial obligation, and assistance listing. The current terms used to describe time periods are inconsistently used by Federal awarding agencies. OMB proposes revisions to the definition of “period of performance” in 2 CFR part 200 to reflect that the term is the anticipated time interval between the start and end date of an initial Federal award or subsequent renewal. The intent is to clarify that the recipient may not incur obligations during the entire period of performance in instances where a Federal awarding agency incrementally funds the Federal award and funding has not been received for a subsequent budget period within the period of performance. For example, a recipient may receive a Federal award that reflects a five-year period of performance, but only received one year worth of funding as reflected in the first year budget period. The recipient may only incur costs during the first year budget period until subsequent budget periods are funded based on the availability of appropriations, satisfactory performance, and compliance with the terms and conditions of the award. The proposed change also ensures consistent use of the term for purposes of transparency reporting as required by FFATA. Further, OMB is proposing definitions for budget period and renewal to further clarify the use of time period terms throughout 2 CFR.

In addition, OMB proposes to replace the term “obligation” to either “financial obligation” or “responsibility” within the guidance as appropriate, to ensure alignment with DATA Act definitions. OMB requests comments on the anticipated impact of replacing the term “obligation” from 2 CFR part 200 to “financial obligation”; specifically, OMB asks if replacing “obligation” will help to align requirements set out in 2 CFR 200 and the DATA Act.

OMB also proposes changes across 2 CFR to ensure consistent use of terms across parts 25, 170, 180 and 200 where possible, relying on 2 CFR part 200 as the primary source. As reflected in the proposed changes, there are instances where the terms within 2 CFR cannot be made consistent. For example, the term “non-Federal entity” cannot be consistently defined across 2 CFR: parts 25 and 170 apply to Federal awards to foreign organizations, foreign public entities, and for-profit organizations, while part 200 only applies to these type of non-Federal entities when a Federal awarding agency elects for part 200 to apply. For definitions that are consistent across 2 CFR parts 25, 170 and 200, revisions have been made to parts 25 and 170 to refer definitions to part 200 as the authoritative source.

The definitions “Catalog for Federal Domestic Assistance (CFDA) number” and “CFDA program title” have been replaced with the terms “Assistance listing number” and “Assistance listing program title” to reflect the change in terminology.

OMB proposes a number of additional revisions to definitions for clarity. For example, the term management decision is revised to emphasize that it is a written determination provided by a Federal awarding agency or pass-through entity.

To promote uniform application of standard data elements in future information collection requests, OMB is also proposing revisions to 2 CFR 200.206 and 200.328 to reflect that information collection requests must adhere to the standards available from the OMB-designated standards lead. This proposed change further supports OMB Memorandum M–19–16 Centralized Mission Support Capabilities for the Federal Government, which requires that future shared service solutions must adhere to the Federal Integrated Business Framework standards (available at: <https://ussm.gsa.gov/fibf/>).

Further, OMB proposes updates throughout 2 CFR part 200 to replace the term “standard form” with “common form.” A common form is an

information collection that can be used by two or more agencies, or governmentwide, for the same purpose. A standard form is a type of common form; however, standard forms must be used by all Federal awarding agencies, which may not be appropriate for Federal financial assistance given the variety of programs. The purpose of clarifying the term “common form” within 2 CFR is to help encourage agencies to seek common data solutions, increase efficiency, and better account for the burden imposed on the public by Federal agencies. More information regarding common forms and flexibility under the Paperwork Reduction Act is available at: <https://www.whitehouse.gov/omb/information-regulatory-affairs/federal-collection-information/>.

Finally, OMB proposes to reformat the definitions section of 2 CFR part 200, subpart A—Acronyms and Definitions by removing the section numbers to facilitate future additions to this section.

F. Improving the Governmentwide Approach to Performance and Risk

The President’s Management Agenda, Results-Oriented Accountability for Grants CAP goal is working toward shifting the balance between compliance and performance while reducing burden. Agencies are encouraged to promote promising performance practices that support the achievement of program goals and objectives. Many Federal agencies are working together to innovate and develop a risk-based approach that incorporates performance to achieve results-oriented grants (where applicable). By shifting the focus to the balance between performance and compliance, agencies may have the opportunity to streamline burdensome compliance requirements for programs that demonstrate results. To support this goal, OMB proposes changes to emphasize the importance of focusing on performance to achieve program results throughout the Federal award lifecycle, starting with a proposed new section 2 CFR 200.202 *Program planning and design*. This new section formally requires practices that are already expected of Federal awarding agencies to develop a strong program design by establishing program goals, objectives, and indicators, to the extent permitted by law, before the applications are solicited. Proposed changes to 2 CFR 200.207 *Specific conditions* allow Federal awarding agencies to apply less restrictive conditions based on risk and require Federal awarding agencies to ensure that specific Federal award conditions

are consistent with the program design and include clear performance expectations of recipients. Consistent changes are proposed in 2 CFR 200.210 *Information contained in a Federal award* and 2 CFR 200.310 *Performance measurement* requiring Federal awarding agencies to provide recipients with clear performance goals, indicators, and milestones. Further, OMB proposes changes to 200.102 *Exceptions* section to emphasize that Federal awarding agencies are encouraged to request exceptions to certain provisions of 2 CFR 200 in support of innovative program designs that apply a risk-based, data-driven framework to alleviate select compliance requirements and hold recipients accountable for good performance. OMB recognizes that Federal financial assistance program goals and their intended results will differ by type of Federal program. For example, criminal justice grant programs may focus on specific goals such as reducing crime, basic scientific research grant programs may focus on expanding knowledge, and infrastructure projects may fund building or infrastructure projects. OMB is interested in receiving public comments on existing promising performance practices that Federal awarding agencies may be able to leverage within existing and proposed flexibilities or future exceptions, and in general on how grant makers can better hold recipients accountable for results. This is of particular interest as Federal agencies implement and carry out the requirements of the *Foundations of Evidence-Based Policymaking Act of 2018*, which emphasizes collaboration and coordination to advance data and evidence-building functions in the Federal government.

Related to the above proposals to strengthen program planning and Federal award terms and conditions, OMB proposes changes to 200.210 *Information contained in a Federal award* and 200.339 *Termination* to strengthen the ability of the Federal awarding agency to terminate Federal awards, to the greatest extent authorized by law, when the Federal award no longer effectuates the program goals or Federal awarding agency priorities. Federal awarding agencies must clearly articulate the conditions under which a Federal award may be terminated in their applicable regulations and in the terms and conditions of Federal awards. The intent of this proposal is to ensure that Federal awarding agencies prioritize ongoing support to Federal awards that meet program goals. For

instance, following the issuance of a Federal award, if additional evidence reveals that a specific award objective is ineffective at achieving program goals, it may be in the government's interest to terminate the Federal award. Further, additional evidence may cause the Federal awarding agency to significantly question the feasibility of the intended objective of the award, such that it may be in the interest of the government to terminate the Federal award. OMB also proposes the elimination of the termination for cause provision because this term is not substantially different than the provision allowing Federal awarding agencies to terminate Federal awards when the recipient fails to comply with the terms and conditions. OMB seeks feedback on the impact of these proposed changes and whether the language meets the intended outcome of these provisions.

In addition, OMB proposes changes to the definition of fixed amount awards in 200.1 to allow Federal awarding agencies to apply the provision to both grant agreements and cooperative agreements.

The revisions in 2 CFR 200.301 emphasize that agencies are encouraged to measure recipient performance to improve program goals and objectives, share lessons learned, and spread the adoption of promising practices. While understanding that grant program goals and their intended results will differ by type of program, the Grants CAP Goal is working to shift the culture of Federal grant making from a heavy focus on compliance to a balanced approach that includes a focus on the degree to which grant programs achieve their goals and intended results.

To provide clarity and consistency among Federal awarding agencies, a revision to include program evaluation costs as an example of a direct cost under a Federal award has been included in 2 CFR 200.413 *Direct costs*. Please refer to OMB Circular A-11 200.22 for a definition on program evaluation. Evaluation costs are allowed as a direct cost in existing guidance. This language is intended to strengthen this intent and ensure that agencies are applying this consistently. Agencies are reminded that evaluation costs are allowable costs (either as direct or indirect), unless prohibited by statute or regulation. The work under the Grants CAP goal performance work group emphasizes evaluation as an important practice to understand the results achieved with Federal funding. OMB seeks comments on the impact of this revision within the guidance.

G. Eliminate References to Non-Authoritative Guidance

To support implementation of Executive Order 13892 of October 9, 2019 (Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication) and to prohibit Federal awarding agencies from including references to non-authoritative guidance in the terms and conditions of Federal awards, OMB proposes changes to 200.210 *Information contained in Federal awards*. These proposed changes are intended reduce recipient burden and prevent Federal awarding agencies from imposing non-binding guidance on recipients that has not gone through appropriate public notice and comment.

H. Emphasis on Machine-Readable Information Format

OMB proposes clarifying the methods for collection, transmission, and storage of data in 2 CFR 200.335 to further explain and promote the collection of data in machine-readable formats. A Machine-readable format is a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost (44 U.S.C. 3502(18)). The proposal reinforces the machine-readable requirements in the *Foundations of Evidence-Based Policymaking Act of 2018* (Pub. L. 115-435) and accompanying OMB guidance, and reflects the need to continually evaluate which formats (and structures) maximize accessibility and usability for all stakeholders. Machine-readable formats will also help support the Leveraging Data as a Strategic Asset Cross-Agency Priority Goal (CAP Goal #2) and efforts under the Grants CAP Goal to Build Shared IT Infrastructure.

I. Changes to Closeout Provisions To Reduce Recipient Burden and Support GONE Act Implementation

Based on lessons learned from the implementation of 2 CFR part 200 and the Grants Oversight and New Efficiency Act (GONE Act), OMB proposes several changes to § 200.343 (Closeout) to support timely closeout, improve the accuracy of final closeout reports, and reduce burden.

OMB proposes to increase the number of days for recipients to submit closeout reports and liquidate all financial obligations from 90 days to 120 days. This proposal takes into consideration that it is challenging for pass-through entities with a large number of subawards to reconcile subawards and submit final reports to Federal awarding

agencies within 90 days. Recognizing the need for pass-through entities to receive timely reports from subrecipients to report back to Federal awarding agencies, OMB proposes to continue to require subrecipients to submit their reports to the pass-through entity within 90 days. The intent of this proposed change is to support financial reconciliation, help ease the burden associated with submitting reports for closeout, and promote improved accuracy. However, OMB recognizes that providing additional time may increase the likelihood that non-Federal entities will not submit their final closeout reports. To mitigate this risk, OMB is also proposing for Federal awarding agencies to report when a non-Federal entity does not submit final closeout reports as a failure to comply with the terms and conditions of the award to the OMB-designated integrity and performance system. Finally, OMB proposes the requirement of Federal awarding agencies to make every effort to close out Federal awards within one year after the end of the period of performance unless otherwise directed by authorizing statute. The proposed language is intended to promote timely closeout of awards, assist with reconciling closeout activities, and hold recipients accountable for submitting required closeout reports.

OMB seeks comments on the advantages and disadvantages of changes to 2 CFR 200.343 (Closeout), including feedback on the amount of burden this may reduce as well as the potential risk to Federal awarding agencies.

J. Changes to Performing the Governmentwide Audit Quality Project

Proposed revisions to 2 CFR 200.513 include a change in the date for the requirement for a governmentwide audit data quality project that must be performed once every 6 years beginning with audits submitted in 2018. This date has been changed to 2021, given the significant changes to the 2019 Compliance Supplement in support of the Grants CAP Goal.

K. Expanded Use of the De Minimus Rate

The first proposed revision to 2 CFR 200.414(f) allows the use of the de minimus rate of 10% of modified total direct costs (MTDC) to all non-Federal entities (except for those described in Appendix VII to Part 200—State and Local Government and Indian Tribe Indirect Cost Proposals, paragraph D.1.b). Currently, the de minimus rate can only be used for non-Federal entities that have never received a

negotiated indirect cost rate. The use of the de minimus rate has reduced burden for both the non-Federal entities and the Federal agencies for preparing, reviewing and negotiating indirect cost rates. Since the publication of the final rule in 2013, both Federal agencies and non-Federal entities have advocated to expand the use of the de minimus rate for non-Federal entities that have negotiated an indirect cost rate previously, but for some circumstances, the negotiated rates have expired. The expiration may be due to breaks in Federal relationships and grant funding, or lack of resources for preparing an indirect cost proposal. This proposed change will further reduce the administrative burden for non-federal entities and Federal agencies and shift more resources toward accomplishing the program mission.

Another proposed revision adds language to 2 CFR 200.414(f) to clarify that when a non-Federal entity is using the de minimus rate for its federal grants, it is not required to provide proof of costs that are covered under that rate. The 10% de minimus rate was designed to reduce burden for small non-federal entities and the requirement to document the actual indirect costs would eliminate the benefits of using the de minimus rate. Lastly, for transparency purposes, a proposed revision adds a new subsection to 200.414(h) to require that all grantees' negotiated agreements for indirect cost rates are collected and displayed on public website. The agency responsible for this task and the public website will be designated by OMB.

II. Meeting Statutory Requirements and Aligning 2 CFR With Other Authoritative Source Requirements

A. Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment

OMB proposes revisions to 2 CFR to align with section 889 of the NDAA 2019. The NDAA 2019 prohibits the head of an executive agency from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain the equipment, services, or systems prohibited systems as identified in NDAA 2019. To implement this requirement, OMB proposes 2 CFR 200.216 Prohibition on certain telecommunication and video surveillance services or equipment, which prohibit Federal award recipients from using government funds to enter into contracts (or extend or renew

contracts) with entities that use covered telecommunications equipment or services. This prohibition applies even if the contract is not intended to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services. As described in section 889 of the NDAA of 2019, covered telecommunications equipment or services includes:

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

OMB has limited data on the impact of this prohibition on Federal award recipients and contractors who use covered technology and seeks feedback on the feasibility, burden, programmatic impact, and cost associated with implementing this requirement. Commenters are encouraged to provide relevant data on the impacts of this proposed change and suggestions on how to support implementation of this prohibition.

B. Never Contract With the Enemy

To meet statutory requirements, OMB proposes adding Part 183 to 2 CFR to implement Never Contract with the Enemy, consistent with the fact that the law applies to only a small number of grants and cooperative agreements. Never Contract with the Enemy applies only to grants and cooperative agreements that exceed \$50,000, are performed outside the United States, including U.S. territories, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which

members of the Armed Forces are actively engaged in hostilities.

To implement Never Contract with the Enemy and to reflect current practice, OMB proposes requiring Federal awarding agencies to utilize the System for Award Management (SAM) Exclusions and Federal Awardee Performance and Integrity Information System (FAPIS) to ensure compliance before awarding a grant or cooperative agreement. Federal awarding agencies are prohibited from making any awards to persons or entities listed in SAM Exclusions pursuant to Never Contract with the Enemy and are required to list in FAPIS any grant or cooperative agreement terminated due to Never Contract with the Enemy as a Termination for Material Failure to Comply. The proposed revisions also require agencies to insert terms and conditions in grants and cooperative agreements regarding non-Federal entities' responsibilities to ensure no Federal award funds are provided directly or indirectly to the enemy, to terminate subawards in violation of Never Contract with the Enemy, and to allow the Federal Government access to records to ensure that no Federal award funds are provided to the enemy.

The law allows Federal awarding agencies to terminate, in whole or in part any grant, cooperative agreement, or contract that provides funds to the enemy, as defined in the NDAA for FY 2015. This statute applies to procurement as well as to grants and cooperative agreements and OMB will coordinate with the procurement community as appropriate before issuing final guidance, including the roles and responsibilities of the covered combatant command and Federal awarding agencies. With the exception of access to records, the Never Contract with Enemy provision will sunset in December 2019; however, there is a current proposal to extend these requirements. OMB anticipates that these statutory requirements may be extended, and therefore seeks comments at this time on these proposed revisions.

C. Requirement for the Federal Awardee Performance and Integrity Information System (FAPIS) To Include Information on a Non-Federal Entity's Parent, Subsidiary, or Successor Entities

To meet statutory requirements, OMB proposes revisions to 2 CFR parts 25 and 200 to implement Sec. 852 of the NDAA 2013, which requires that the Federal Awardee Performance and Integrity Information System (FAPIS) include information on a non-Federal entity's parent, subsidiary, or successor entities. OMB proposes to require

financial assistance applicants to provide information in SAM on their immediate owner and highest-level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract, grant, or cooperative agreement within the last three years. In addition, OMB proposes to require that prior to making a grant or cooperative agreement, agencies must consider all of the information in FAPIS with regard to an applicant's immediate owner or highest-level owner and predecessor, or subsidiary, if applicable. These revisions are consistent with the Federal Acquisition Regulation (FAR) final rule regarding this law published at 81 FR 11988 on March 7, 2016. OMB seeks comments and data on the following: The burden on recipients regarding the implementation of the statute, the applicability of this requirement to different types of entities (*i.e.*, states, local governments, and tribes), the alignment of these revisions with the FAR, and any deviations from the FAR change that OMB should consider.

D. Increase Transparency Through FFATA, as Amended by the DATA Act

OMB proposes several revisions to increase transparency regarding Federal spending as required by FFATA, as amended by the DATA Act, which mandates Federal agencies to report Federal appropriations received or expended by Federal agencies and non-Federal entities. OMB also proposes revisions to the reporting thresholds to further align financial assistance requirements with those of the Federal acquisition community.

To increase transparency, OMB proposes to expand the applicability of Federal financial assistance in 2 CFR part 25 and 2 CFR part 170 beyond grants and cooperative agreements so that it includes other types of financial assistance that Federal agencies receive or administer such as loans, insurance, contributions, and direct appropriations.

OMB also proposes to make changes throughout 2 CFR to make it clear that Federal agencies may receive Federal financial assistance awards. This will increase transparency for Federal awards received by Federal agencies.

To further align implementation of FFATA, as amended by DATA Act, between the Federal financial assistance and acquisition communities, OMB proposes revisions to Federal awarding agency and pass-through entity reporting thresholds. For Federal awarding agencies, OMB proposes revisions to 2 CFR part 170 to require agencies to report Federal awards that equal or exceed the micro-purchase

threshold as set by the FAR at 48 CFR subpart 2.1. Consistent with the FAR threshold for subcontract reporting, OMB is proposing to raise the reporting threshold for subawards that equal or exceed \$30,000. OMB seeks comments that includes an analysis on the advantages and disadvantages of raising this threshold.

OMB also proposes revisions to 2 CFR part 25 to allow agencies the flexibility to exempt a foreign entity applying for or receiving an award or subaward for a project or program performed outside the United States valued at less than \$100,000. Currently, Federal awarding agencies have the flexibility to exempt this requirement for awards valued at less than \$25,000. Federal awarding agencies may exempt the registration requirement up to \$100,000 in cases where the agency has conducted a risk-based analysis and deems it impractical for the entity to comply with the requirements(s). OMB proposes this revision after receiving feedback from the international community that requiring certain foreign entities to register in SAM introduces substantial burden with no significant value for the Federal awarding agency. Federal awarding agencies will remain responsible for reporting these awards for transparency purposes. Recognizing the benefits of SAM registration, OMB is interested in feedback in support or against the proposal to raise the threshold.

Finally, OMB proposes requiring Federal awarding agencies to associate Financial Assistance Listings with the authorizing statute to make listings more consistent. This supports implementation of the DATA Act which requires agencies to report award level Financial Assistance Listings information for display on www.usaspending.gov.

OMB seeks comments on whether the proposed revisions increase transparency regarding Federal spending and support implementation of the DATA Act.

E. Aligning 2 CFR With Authoritative Sources

OMB proposes a revision to 2 CFR 200.431 Compensation—fringe benefits to allow states to conform with Generally Accepted Accounting Principles (GAAP), specifically Governmental Accounting Standards Board (GASB) Statement 68, and to continue to claim pension costs that are both actual and funded. OMB proposes this revision because GASB issued Statement 68, *Accounting and Financial Reporting for Pensions* which amends GASB Statement 27 and allows non-

Federal entities (NFE) to claim only estimated pension costs in their financial statements. OMB's revision will allow non-Federal entities to continue to claim pension costs that are both actual and funded.

OMB also proposes a revision to the definitions of 2 CFR 200.12 Capital assets, 2 CFR 200.59 Intangible property, 2 CFR 200.449.

The definition for "Improper Payment" has been revised to refer to the authoritative source for clarity, OMB Circular A-123—Management's Responsibility for Internal Control in Federal Agencies, Appendix C—Requirements for Payment Integrity Improvement. In addition, both the "Improper Payment" and "Questioned Cost" definitions have been revised to clarify that questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123, Appendix C.

III. Clarifying Requirements Regarding Areas of Misinterpretation

Following the publication of the Uniform Guidance, OMB received a substantial amount of questions from stakeholders requesting clarifications about key aspects of the guidance. In other instances, it has come to OMB's attention that the interpretation of certain provisions was not consistent with the intent of the Uniform Guidance. In response, OMB proposes a number of clarifications that are aimed at reducing recipient administration burden and ensuring consistent interpretation of guidance.

A. Responsibilities of the Pass-Through Entity To Address Only a Subrecipient's Audit Findings Related to Their Subaward

To clarify requirements regarding responsibility for audit findings, OMB proposes a revision to 2 CFR 200.331 *Requirements for pass-through entities* to clarify that pass-through entities (PTE) are responsible for addressing only a subrecipient's audit findings that are specifically related to their subaward. For example, a PTE is not required to address all of the subrecipient's audit findings. In addition, the PTE may rely on the subrecipient's auditors and cognizant agency's oversight for routine audit follow-up and management decisions. These changes reduce the burden for PTEs by allowing a PTE to rely on the cognizant agency to address a subrecipient's entity-wide issues.

B. Reducing Burden on Universities by Clarifying Timing of the Disclosure Statement

OMB also proposes to clarify the timing of submission of the disclosure statement (DS-2), which is only required for universities that meet certain thresholds as defined in 48 CFR 9903.202-1(f). This revision reduces burden for universities while maintaining the requirement for universities to implement policies in compliance with 2 CFR. OMB seeks comments on whether the proposed revisions clarify 2 CFR requirements and reduce burden for PTEs and universities.

C. Response to Frequently Asked Questions Related to the Prior Release of 2 CFR

In July 2017, OMB developed and posted Frequently Asked Questions (FAQs) on the Chief Financial Officers Council website in response to stakeholder requests for clarification on the first publication of 2 CFR (<https://cfo.gov/wp-content/uploads/2017/08/July2017-UniformGuidanceFrequentlyAskedQuestions.pdf>). Due to the volume of questions related to these topics, OMB proposes clarifying the following: The meaning of the words "must" and "may" as they pertain to requirements; the effective date of 2 CFR; applicability and documentation requirements when a non-Federal entity elects to charge the de minimus indirect cost rate of modified total direct costs (MTDC); pass-through entity responsibilities related to indirect cost rates and audits; and applicability of 2 CFR to FAR based contracts. These proposed revisions are intended to improve clarity and reduce recipient burden by providing guidance on implementing 2 CFR.

D. Applicability of Guidance to Federal Agencies

OMB proposes changes to 2 CFR 200.101 (Applicability) to clarify that Federal awarding agencies may apply the requirements of 2 CFR 200 to other Federal agencies, to the extent permitted by law. This proposed change recognizes that there are instances when Federal awarding agencies or pass-through entities have the authority to issue Federal awards to Federal agencies and in these instances, the provisions of 2 CFR 200 may be applied, as appropriate. This proposed change is consistent with how for-profit entities, foreign public entities, or foreign organizations are treated in the Uniform Guidance.

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The revision of 2 CFR is not a regulatory action and therefore it is not subject to the 12866 review by OIRA.

Regulatory Flexibilities Act

The Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, requires that an agency provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. OMB does not expect this guidance to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. There are some proposed revisions that may impose burden, however, there are more proposed revisions that reduce burden to small entities. When reviewing all proposed revisions, the burden that will be reduced for recipients is much greater than the burden imposed.

OMB's proposal to expand the applicability of Federal financial assistance in 2 CFR part 25 beyond grants and cooperative agreements so that it includes other types of financial assistance that Federal agencies receive or administer such as loans and insurance will impact small entities, but it will not have a significant impact on a substantial number of small entities. Currently, 2 CFR part 25 requires all non-Federal entities that apply for grants and cooperative agreements to register in the System for Award Management (SAM). OMB proposes to require all entities that apply for Federal financial assistance such as loans and insurance to register in SAM, which requires the establishment of a unique entity identifier. In practice, some Federal awarding agencies already require SAM registration for all types of Federal financial assistance and the proposed change would make this practice consistent among agencies. As noted in the Paperwork Reduction Act section, as of June 20, 2019, there were 159,477 unique Federal financial assistance registrants in the System for Awards Management (SAM). According to data accessed from www.usaspending.gov, in FY 2018, approximately 2,952 small businesses who received awards for other types of

financial assistance did not have a unique entity identifier. Assuming that non-Federal entities with a unique entity identifier reported to *www.usaspending.gov* are already registered in SAM, this change will impact approximately 2,952 small entities annually. SAM registration is estimated to take two and a half hours per response, which results in 7,380 burden hours annually. Individuals who receive Federal financial assistance as a natural person remain exempt from this requirement. This change is proposed to successfully implement FFATA, as amended by the DATA Act. There is no exemption from the guidance for small entities, because the law does not provide for any such exemption. Recognizing that there are limitations to relying on *www.usaspending.gov* data to estimate the impact of this change on small entities, OMB requests comments on how burdensome this proposed requirement may be for small entities.

The proposed guidance also clarifies requirements regarding pass-through entities' responsibility for sub-award audit findings and clarifies the timing of a disclosure statement which is only required for universities that meet certain thresholds. These proposed changes are intended to reduce burden and will not have a significant economic impact on a substantial number of small entities because they clarify existing requirements; they do not include any new requirements for non-Federal entities.

OMB proposes to add a provision to 2 CFR part 200 Subpart D—Post Federal Award Requirements, 2 CFR 200.321 (Domestic preferences for procurement), encouraging Federal award recipients, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States when procuring goods and services under Federal awards. This revision was added in response to Executive Order 13788 of April 18, 2017 (Buy American and Hire American) and Executive Order 13858 of January 21, 2019 (Executive Order on Strengthening Buy-American Preferences for Infrastructure Projects). This may impose burden on small entities that primarily procure goods and services produced outside the U.S.

The proposed guidance also provides consistency among definitions and terms and proposes several provisions to increase transparency regarding Federal spending. These proposed changes are intended to reduce recipient burden and not have a significant economic impact on a substantial number of small entities because they will affect Federal awarding agencies;

they do not include any new requirements for non-Federal entities.

The proposed guidance introduces a new provision to align with section 889 of the NDAA 2019, Prohibition on certain telecommunication and video surveillance services or equipment. This statutory requirement may introduce burden to small entities that are prohibited from obligating or expending grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter in a contract with, as identified in the NDAA 2019.

This proposed guidance implements a new statute that requires applicants of Federal assistance to provide information on their owner, predecessor and subsidiary, including the Commercial and Government Entity (CAGE) Code and name of all predecessors, if applicable. This will not have a significant economic impact on a substantial number of small entities because small entities typically do not have a complex corporate structure requiring them to report information on their owner, predecessor, and subsidiary. Further, the burden is minimal for a non-Federal entity to provide the name of its immediate owner and highest-level owner.

The proposed guidance also implements a statute, Never Contract with the Enemy, which will not have a significant economic impact on a substantial number of small entities because it will affect only a small number of grants and cooperative agreements. Never Contract with the Enemy applies only to grants and cooperative agreements that exceed \$50,000, are performed outside the United States, including U.S. territories, to a person or entity that is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

The NDAA for FY2018 increased the micro-purchase threshold from \$3,500 to \$10,000 and increased the simplified acquisition threshold from \$100,000 to \$250,000 for all recipients. OMB's proposed revisions reduces burden and will not have a significant economic impact on a substantial number of small entities because it is likely to reduce burden for all non-Federal entities.

Paperwork Reduction Act

Consistent with the Regulatory Flexibility Act analysis discussion, the Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed guidance contains information collection requirements and will impact the current Information Collection

Requests approved under OMB control number 3090–0290 managed by the General Services Administration. Accordingly, the Regulatory Secretariat Division of GSA will submit a request for approval to amend the existing Information Collection Requests for System for Award Management (SAM) registration requirements for prime Federal financial assistance recipients.

Annual Reporting Burden: The estimated annual reporting burden includes all possible entities for Federal financial assistance that may be required to register in SAM. The estimated annual reporting burden also includes entities that receive Federal financial assistance reported in *USASpending.gov* and either may or may not be required to register in SAM.

The current guidance only requires that prime applicants and recipients of Federal financial assistance in the form of grants register in SAM. Pursuant to 2 CFR Subtitle A, Chapter I, and Part 25 (75 FR 5672), prime applicants and recipients are required to maintain accurate SAM registration accounts with current information at all times during which they have an active Federal award, an application, or a plan under consideration by a Federal awarding agency.

The burden estimates are approximations based on the best available data.

As of July 7, 2019, there were 159,477 unique Federal financial assistance registrants in SAM. However, it is important to note that not all registrants in SAM ultimately apply for, or receive, Federal financial assistance. To develop a more accurate estimate for the total number of Federal financial assistance recipients, including loans and other types of Federal financial assistance, OMB used data from SAM combined with data from *USASpending.gov* on non-grant recipients of Federal financial assistance to determine the anticipated number of registrants for Federal financial assistance in SAM.

The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended by section 6202(a) of Pub. L. 110–252) established the requirement to create *USASpending.gov*. *USASpending.gov* is a single, searchable website, accessible by the public that hosts financial data on both Federal financial assistance and contracts. Recipients of all types of Federal financial assistance, including loans, submit their financial data to their Federal awarding agency. Federal awarding agencies are then responsible for accurately submitting recipient financial data to *USASpending.gov*. OMB ran reports in *USASpending.gov*

to identify the number of unique Federal financial assistance recipients that receive Federal financial assistance other than grants to isolate the total number of potential registrants that may be expected to register in SAM as a result of the updates to the proposed guidance.

To account for the number of loan and other types of Federal financial assistance recipients that do not also receive grants, OMB removed duplicate recipients based on recipient Data Universal Numbering System Number (DUNS) numbers, from Dun & Bradstreet (D&B). At this time all Federal financial assistance recipients are required to register for DUNS numbers; however, DUNS numbers will be phased out as the primary key to identify every entity record by 2020 in place of a non-proprietary, SAM-generated, Unique Entity ID (UEI) number.

As of June 30, 2019 there were 41,795 grant, 122 loan, and 12,485 other Federal financial assistance recipients with unique DUNS numbers reported in *USASpending.gov*. Therefore, based on the number of entities with unique DUNS numbers that are registered in SAM (159,477), plus entities that receive loans (122) or other Federal financial assistance (12,485) reported in *USASpending.gov* that may not be reflected in SAM, the total number of entities that may be impacted by the proposed guidance associated Information Collection Requests under OMB control number 3090–0290 could be 172,084 registrants.

Public reporting burden for Information Collection Requests under OMB control number 3090–0290 is managed by the General Services Administration and estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 172,084.

Responses per Respondent: 1.

Total Annual Responses: 172,084.

Hours per Response: 2.5.

Total Response Burden Hours: 430,210.

The proposed guidance also requires that registrants for Federal financial assistance provide information on their owner, predecessor, and subsidiary, including the Commercial and Government Entity (CAGE) Code and name of all predecessors, if applicable. This information is required to implement Sec. 852 of the NDAA of FY 2013, which requires that the Federal

Awardee Performance and Integrity Information System (FAPIIS) include information on a non-Federal entity's parent, subsidiary, or successor entities. Non-Federal entities are already required to obtain a CAGE code for purposes of SAM registration. It is anticipated that including this information as part of SAM registration or for a renewal should not result in significant additional time. Public reporting burden for this collection of information is estimated to average .1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Based on the burden estimates for the total number of SAM registrants indicated in the previous section, the annual reporting burden for this proposal is estimated as follows:

Respondents: 172,084.

Responses per respondent: 1.

Total annual responses: 172,084.

Preparation hours per response: .1.

Total response burden hours: 17,208.

The number of respondents estimated in this section is based on the best available data from SAM and *USASpending.gov*. It is important to note that not all registrants in SAM complete applications for Federal financial assistance. Based on the financial data from *USASpending.gov*, less than one third of registrants in SAM receive Federal financial assistance. Therefore, the actual number of respondents and the relative burden may be significantly lower than the estimated amounts.

Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than March 23, 2020.

Submit comments identified by “Information Collection 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients” by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number 3090–0290 Docket No. 2019–0005. Select the link “Comment Now” that corresponds with “Information Collection 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients”. Follow the instructions provided on the screen. Please include your name, company name (if any), and “Information Collection 3090–0290, System for Award Management

Registration Requirements for Prime Grant Recipients” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0290.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the System for Award Management Registration Requirements for Prime Financial Assistance Recipients, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat (MVCB), Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients, in all correspondence.

List of Subjects

2 CFR Part 25

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

2 CFR Part 170

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

2 CFR Part 183

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

2 CFR Part 200

Accounting; Colleges and universities; Grants administration; Grant programs; Hospitals; Indians; Nonprofit organizations; Reporting and recordkeeping requirements; State and local governments.

Timothy F. Soltis,
Deputy Controller.

For the reasons stated in the preamble, the Office of Management and Budget proposes to amend 2 CFR parts

25, 170, 200 and add part 183 as set forth below:

PART 25—UNIVERSAL IDENTIFIER AND SYSTEM FOR AWARD MANAGEMENT

■ 1. The authority citation for part 25 continues to read as follows:

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

■ 2. Amend § 25.100 by revising the introductory text to read as follows:

§ 25.100 Purposes of this part.

This part provides guidance to recipients to establish:

* * * * *

■ 3. Revise § 25.105 to read as follows:

§ 25.105 Types of awards to which this part applies.

This part applies to a Federal awarding agency's grants, cooperative agreements, loans, and other types of Federal financial assistance as defined in § 25.306.

■ 4. Revise § 25.110 to read as follows:

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

(a) *General.* Through a Federal awarding agency's implementation of the guidance in this part, this part applies to all Federal agencies and non-Federal entities, other than those exempted by statute or exempted in paragraphs (b), and (c) of this section, that—

(1) Apply for or receive Federal awards; or

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

(b) *Exemptions 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) *Other exemptions required by law (e.g. statutory).* (1) Under a condition identified in paragraph (c)(2) of this section, a Federal awarding agency may exempt a non-Federal entity or Federal agency from an applicable requirement to obtain a unique entity identifier, register in the SAM, or both.

(i) In that case, the Federal awarding agency must use a generic unique entity identifier in data it reports to *USASpending.gov* if reporting for a prime award to the non-Federal entity or Federal agency is required by the Federal Funding Accountability and Transparency Act (Pub. L. 109–282, hereafter cited as “Transparency Act”).

(ii) Federal awarding agency use of a generic unique entity identifier should be used rarely for prime award reporting because it prevents prime awardees from being able to fulfill the subaward or executive compensation reporting required by the Transparency Act.

(2) The conditions under which a Federal awarding agency may exempt a non-Federal entity are—

(i) For any non-Federal entity or Federal agency, if the Federal awarding agency determines that it must protect information about the entity from disclosure if it is in the national security or foreign policy interests of the United States, or to avoid jeopardizing the personal safety of the Federal agency or non-Federal entity's staff or clients.

(ii) For a foreign organization or foreign public entity applying for or receiving a Federal award or subaward for a project or program performed outside the United States valued at less than \$100,000, if the Federal awarding agency deems it to be impractical for the entity to comply with the requirement(s). This exemption must be determined by the Federal awarding agency on a case-by-case basis while utilizing a risk-based approach and does not apply if subawards are anticipated.

(3) Federal awarding agencies' use of generic unique entity identifier, as described in paragraphs (c)(1) and (2) of this section, should be rare. Having a generic unique entity identifier limits a recipient's ability to use Governmentwide systems that are needed to comply with some reporting requirements.

■ 5. Revise § 25.200 to read as follows:

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

(a) Each Federal awarding agency that awards the types of Federal financial assistance defined in § 25.306 must include the requirements described in paragraph (b) of this section in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants that is issued either on or after the effective date of this part; or

(b) The notice of funding opportunity, regulation, or other issuance must require each non-Federal entity and Federal agency that applies and does not have an exemption under § 25.110 to:

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

(2) Maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all

predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, as defined in the FAR (52 part 204–20), at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency; and

(3) Provide its unique entity identifier in each application or plan it submits to the Federal awarding agency.

(c) For purposes of this policy:

(1) The applicant is the non-Federal entity or Federal agency that meets the Federal awarding agency's eligibility criteria and has the legal authority to apply and to receive the Federal award. For example, if a consortium applies for a Federal award to be made to the consortium as the recipient, the consortium must have a unique entity identifier. If a consortium is eligible to receive funding under a Federal awarding agency program but the Federal awarding agency's policy is to make the Federal award to a lead entity for the consortium, the unique entity identifier of the lead non-Federal entity will be used.

(2) A “notice of funding opportunity” is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a “program announcement,” “notice of funding availability,” “broad agency announcement,” “research announcement,” “solicitation,” or some other term.

(3) To remain registered in the SAM database after the initial registration, the applicant is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate and complete.

■ 6. Revise § 25.205 to read as follows:

§ 25.205 Effect of noncompliance with a requirement to obtain a unique entity identifier or register in the SAM.

(a) A Federal awarding agency may not make a Federal award or financial modification to an existing Federal award to a non-Federal entity or Federal agency until the non-Federal entity or Federal agency has complied with the requirements described in § 25.200 to provide a valid unique entity identifier and maintain an active SAM registration with current information (other than any requirement that is not applicable because the entity is exempted under § 25.110).

(b) At the time a Federal awarding agency is ready to make a Federal award, if the intended recipient has not complied with an applicable requirement to provide a unique entity

identifier or maintain an active SAM registration with current information, the Federal awarding agency:

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

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

■ 7. Revise § 25.210 to read as follows:

§ 25.210 Authority to modify agency application forms or formats.

To implement the policies in §§ 25.200 and 25.205, a Federal awarding agency may add a unique entity identifier field to information collections previously approved by OMB, without having to obtain further approval to add the field.

■ 8. Revise § 25.215 to read as follows:

§ 25.215 Requirements for agency information systems.

Each Federal awarding agency that awards Federal financial assistance (as defined in § 25.306) must ensure that systems processing information related to the Federal awards, and other systems as appropriate, are able to accept and use the unique entity identifier as the universal identifier for financial assistance applicants and recipients.

■ 9. Revise § 25.220 to read as follows:

§ 25.220 Use of award term.

(a) To accomplish the purposes described in § 25.100, a Federal agency must include in each Federal award (as defined in § 25.305) the award term in appendix A to this part.

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

■ 10. Revise § 25.300 to read as follows:

§ 25.300 Federal awarding agency.

Federal awarding agency has the meaning given in 2 CFR 200.1.

■ 11. Revise § 25.305 to read as follows:

§ 25.305 Federal award.

Federal award, for the purposes of this part, means an award of Federal financial assistance that a non-Federal entity or Federal agency receives directly from a Federal awarding agency.

■ 12. Add § 25.306 to subpart C to read as follows:

§ 25.306 Federal financial assistance.

(a) *Federal financial assistance* has the meaning given in 2 CFR 200.1 and

also includes assessed or voluntary contributions, for purposes of this part.

(b) *Federal financial assistance*, for purposes of this part, does not include:

(1) Technical assistance, which provides services in lieu of money; and

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

■ 13. Amend § 25.310 by revising the section heading to read as follows:

§ 25.310 System for Award Management.

§ 25.320 [Removed]

■ 14. Remove § 25.320.

■ 15. Revise § 25.330 to read as follows:

§ 25.330 Foreign organization.

Foreign organization has the meaning given in 2 CFR 200.1.

■ 16. Add § 25.331 to subpart C to read as follows:

§ 25.331 Foreign public entity.

Foreign public entity has the meaning given in 2 CFR 200.1.

■ 17. Add § 25.333 to subpart C to read as follows:

§ 25.333 Highest level owner.

Highest level owner has the meaning given in 2 CFR 200.1.

■ 18. Revise § 25.335 to read as follows:

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

Indian Tribe (or “*Federally recognized Indian Tribe*”) has the meaning given in 2 CFR 200.1.

■ 19. Revise § 25.340 to read as follows:

§ 25.340 Local government.

Local government has the meaning given in 2 CFR 200.1.

■ 20. Add § 25.343 to subpart C to read as follows:

§ 25.343 Non-Federal entity.

Non-Federal 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.

■ 21. Revise § 25.345 to read as follows:

§ 25.345 Nonprofit organization.

Nonprofit organization has the meaning given in § 200.1.

■ 22. Add § 25.347 to subpart C to read as follows:

§ 25.347 Predecessor.

Predecessor means a non-Federal entity that is replaced by a successor.

■ 23. Revise § 25.350 to read as follows:

§ 25.350 State.

State has the meaning given in 2 CFR 200.1.

■ 24. Revise § 25.355 to read as follows:

§ 25.355 Subaward.

Subaward has the meaning given in 2 CFR 200.1.

■ 25. Add § 25.357 to subpart C to read as follows:

§ 25.357 Successor.

Successor means a non-Federal entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term “successor” does not include new offices or divisions of the same company or a company that only changes its name.

■ 26. Revise § 25.360 to read as follows:

§ 25.360 Subrecipient.

Subrecipient has the meaning given in 2 CFR 200.1.

■ 27. Add § 25.362 to subpart C to read as follows:

§ 25.362 Subsidiary.

Subsidiary has the meaning given in 2 CFR 200.1.

■ 28. Revise Appendix A to Part 25 to read as follows:

Appendix A to Part 25—Award Term

I. System for Award Management and Universal Identifier Requirements

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or grant within the last three years, if applicable as defined in the FAR (9 CFR part 104–6), until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.

B. Requirement for Unique Entity Identifier

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

1. Must notify potential subrecipients that no non-Federal entity (see definition in paragraph C of this award term) or Federal agency may receive a subaward from you until the non-Federal entity or Federal agency has provided its Unique Entity Identifier to you.

2. May not make a subaward to a non-Federal entity or Federal agency until the non-Federal entity or Federal agency has provided its Unique Entity Identifier to you.

C. Definitions

For purposes of this term:

1. *System for Award Management (SAM)* means the Federal repository into which a

non-Federal entity or Federal agency must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM internet site (currently at <https://www.sam.gov>).

2. *Unique Entity Identifier* means the identifier required for SAM registration to uniquely identify business entities.

3. *Non-Federal entity* has meaning given in 2 CFR 200.1 and also includes all of the following, for purposes of this part:

- a. A foreign organization;
- b. A foreign public entity; and
- c. A domestic for-profit organization.

4. *Subaward* has the meaning given in 2 CFR 200.1.

5. *Subrecipient* has the meaning given in 2 CFR 200.1.

PART 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

■ 29. The authority citation for part 170 continues to read as follows:

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

■ 30. Revise § 170.100 to read as follows:

§ 170.100 Purposes of this part.

This part provides guidance to Federal awarding agencies on reporting Federal awards to establish requirements for recipients' reporting of information on subawards and executive total compensation, as required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of Public Law 110–252, hereafter referred to as “the Transparency Act”.

■ 31. Revise § 170.105 to read as follows:

§ 170.105 Types of awards to which this part applies.

This part applies to a Federal awarding agency's grants, cooperative agreements, loans, and other forms of Federal financial assistance subject to the Transparency Act, as defined in § 170.320.

■ 32. Revise § 170.110 by revising paragraphs (a) and (b)(1), paragraph (b)(2) introductory text, and paragraph (b)(3) to read as follows:

§ 170.110 Types of entities to which this part applies.

(a) *General*. Through a Federal awarding agency's implementation of the guidance in this part, this part applies to all non-Federal entities and Federal agencies, other than those exempted by law or excepted in paragraph (b) of this section, that—

(1) Apply for or receive Federal awards; or

(2) Receive subawards under Federal awards.

(b) * * * (1) None of the requirements in this part apply to an individual who applies for or receives a Federal award 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).

(2) None of the requirements regarding reporting names and total compensation of a non-Federal entity's five most highly compensated executives apply unless in the non-Federal entity's preceding fiscal year, it received—

* * * * *

(3) The public does not have access to information about the compensation of senior executives, unless otherwise publically available, through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

■ 33. Revise § 170.200 to read as follows:

§ 170.200 Federal awarding agency reporting requirements.

(a) Federal awarding agencies are required to publically report Federal awards that equal or exceed the micro-purchase threshold and publish the required information on a public-facing, OMB-designated, governmentwide website and follow other relevant OMB guidance to support Transparency Act implementation.

(b) Federal awarding agencies that obtain post-award data on subaward obligations outside of this policy should take the necessary steps to ensure that their recipients are not required, due to the combination of agency-specific and Transparency Act reporting requirements, to submit the same or similar data multiple times during a given reporting period.

■ 34. Add § 170.210 to subpart B to read as follows:

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

(a) Each Federal awarding agency that makes awards of Federal financial assistance subject to the Transparency Act must include the requirements described in paragraph (b) of this section in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants and is issued on or after the effective date of this part.

(b) The notice of funding opportunity, regulation, or other issuance must require each non-Federal entity that

applies and for Federal financial assistance and that does not have an exception under § 170.110(b) to ensure they have the necessary processes and systems in place to comply with the reporting requirements should they receive funding.

■ 35. Revise § 170.220 to read as follows:

§ 170.220 Award term.

(a) To accomplish the purposes described in § 170.100, a Federal awarding agency must include the award term in Appendix A to this part in each Federal award to a non-Federal entity and Federal agency under which the total funding is anticipated to equal or exceed \$30,000 in Federal funding.

(b) A Federal awarding agency, consistent with paragraph (a) of this section, is not required to include the award term in Appendix A to this part if it determines there is no possibility that the total amount of Federal funding under the Federal award will equal or exceed \$30,000. However, the Federal awarding agency must subsequently modify the award to add the award term if changes in circumstances increase the total Federal funding under the award is anticipated to equal or exceed \$30,000 during the period of performance.

■ 36. Revise § 170.300 to read as follows:

§ 170.300 Federal awarding agency.

Federal awarding agency has the meaning given in 2 CFR 200.1.

■ 37. Revise § 170.305 to read as follows:

§ 170.305 Federal award.

Federal award, for the purposes of this part, means an award of Federal financial assistance that a non-Federal entity or Federal agency receives directly from a Federal awarding agency.

■ 38. Add § 170.307 to subpart C to read as follows:

§ 170.307 Foreign organization.

Foreign organization has the meaning given in 2 CFR 200.1.

■ 39. Add § 170.308 to subpart C to read as follows:

§ 170.308 Federal public entity.

Foreign public entity has the meaning given in 2 CFR 200.1.

■ 40. Revise § 170.310 to read as follows:

§ 170.310 Non-Federal entity.

Non-Federal entity has the meaning given in 2 CFR 200.1 and also includes all of the following, for purposes of this part:

(a) A foreign organization;

(b) A foreign public entity; and
(c) A domestic or foreign for-profit organization.

■ 41. Revise § 170.320 to read as follows:

§ 170.320 Federal financial assistance subject to the Transparency Act.

Federal financial assistance subject to the Transparency Act has the meaning given in 2 CFR 200.1. Federal financial assistance, for purposes of this part, does not include—

(a) Technical assistance, which provides services in lieu of money;

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

(c) Any classified award; or

(d) Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

■ 42. Revise § 170.325 to read as follows:

§ 170.325 Subaward.

Subaward has the meaning given in 2 CFR 200.1.

■ 43. Amend Appendix A to part 179 by revising paragraphs (a)(1), paragraph (b) introductory text, paragraphs (b)(1)(i), paragraph (b)(1)(ii) introductory text, (b)(1)(iii), paragraph (c)(1) introductory text, paragraph (c)(1)(ii), paragraph (e)(1) introductory text, paragraph (e)(1)(iii), (e)(3)(ii), and (e)(4) and removing (e)(1)(v) to read as follows:

Appendix A to Part 170—Award Term

(I) * * *

(a) * * *

(1) *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5) for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).

* * * * *

(b) *Reporting total compensation of recipient executives for non-Federal entities.*

(1) * * *

(i) The total Federal funding authorized to date under this Federal award that equals or exceeds \$30,000 as defined in 2 CFR 170.322;

(ii) In the preceding fiscal year, you received—

* * * * *

(iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the

public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execcomp.htm>.)

* * * * *

(c) * * *

(1) *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient’s five most highly compensated executives for the subrecipient’s preceding completed fiscal year, if—

* * * * *

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execcomp.htm>.)

* * * * *

(e) * * *

(1) Non-Federal entity means all of the following as defined in 2 CFR part 25:

* * * * *

(iii) A domestic or foreign nonprofit organization; and

(iv) A domestic or foreign for-profit organization

* * * * *

(3) * * *

(ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).

* * * * *

(4) *Subrecipient* means a non-Federal entity or Federal agency that:

* * * * *

■ 44. Add part 183 to read as follows:

PART 183—NEVER CONTRACT WITH THE ENEMY

Sec.

183.5 Purpose of this part.

183.10 Applicability.

183.15 Responsibilities of Federal awarding agencies.

183.20 Reporting responsibilities of Federal Awarding Agencies.

183.25 Responsibilities of non-Federal entities.

183.30 Access to records.

183.35 Definitions.

Appendix to Part 183—Clauses for Award Agreements

Authority: Pub. L. 113–291.

§ 183.5 Purpose of this part.

This part provides Office of Management and Budget (OMB) guidance for Federal awarding agencies on applying Never Contract with the

Enemy to grants and cooperative agreements, as required by subtitle E, title VIII of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113–291).

§ 183.10 Applicability.

(a) Part 183 applies only to grants and cooperative agreements that are expected to exceed \$50,000 and that are performed outside the United States, including U.S. territories, and that are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. It does not apply to the authorized intelligence or law enforcement activities of the Federal Government.

(b) All elements of part 183 are applicable until December 31, 2019, except for Access to Records which has no sunset date.

§ 183.15 Responsibilities of Federal awarding agencies.

(a) Prior to making an award for a covered grant or cooperative agreement that meets the thresholds in § 183.10 for Never Contract with the Enemy, the Federal awarding agency must check the current list of prohibited or restricted persons or entities in the System Award Management (SAM) Exclusions. If a person or entity is on the current list of prohibited or restricted persons or entities in SAM Exclusions pursuant to Never Contract with the Enemy, the agency must not make an award.

(b) The Federal awarding agency must include a clause in all covered grant and cooperative agreement awards in accordance with Never Contract with the Enemy (see Appendix A of this part).

(c) A Federal awarding agency may become aware of a person or entity that:

(1) Provides funds, including goods and services, received under a covered grant or cooperative agreement of an executive agency directly or indirectly to persons or entities that are actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities; or

(2) Fails to exercise due diligence to ensure that none of the funds, including goods and services, received under a covered grant or cooperative agreement of an executive agency are provided directly or indirectly to persons or entities that are actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(d) When a Federal awarding agency becomes aware of such a person or

entity, it may do any of the following actions:

(1) Restrict the future award of all Federal grants and cooperative agreements to the person or entity based upon concerns that Federal awards to the entity would provide grant funds directly or indirectly to a covered person or entity.

(2) Terminate any grant or cooperative agreement upon becoming aware that the non-Federal recipient has failed to exercise due diligence to ensure that none of the award funds are provided directly or indirectly to a covered person or entity.

(e) The Federal awarding agency must notify non-Federal entities in writing regarding its decision to restrict all future awards and/or to terminate a grant. The agency must also notify the non-Federal entity in writing about the non-Federal entity's right to request an administrative review (using the agency's procedures) of the restriction or termination of the grant or cooperative agreement within 30 days of receiving notification.

§ 183.20 Reporting responsibilities of Federal awarding agencies.

(a) If a Federal awarding agency restricts all future awards to a covered person or entity in accordance with Never Contract with the Enemy, it must enter information on the ineligible person or entity into SAM Exclusions as a prohibited or restricted source pursuant to Subtitle E, Title VIII of the NDAA for FY 2015 (Pub. L. 113–291).

(b) When a Federal awarding agency terminates a grant or cooperative agreement due to Never Contract with the Enemy, it must report the termination as a Termination for Material Failure to Comply in the OMB-designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)).

(c) The Federal awarding agency must report in writing any action to restrict all future awards or to terminate the award. The Federal awarding agency must also report in writing any decision not to restrict all future awards or terminate an award along with the agency's reasoning for not taking one of these actions after the agency became aware that a person or entity is a prohibited or restricted source pursuant to Subtitle E Title VIII of the NDAA for FY 2015 (Pub. L. 113–291). The Federal awarding agency shall submit these reports to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned

(or specific deputies). See section 843(4) of the NDAA for FY 2015 for definition of covered combatant command: <https://www.armed-services.senate.gov/imo/media/doc/CPRT-113-HPRT-RU00-S1847.pdf>. See section 841(h)(3) of the NDAA for FY 2015: <https://www.armed-services.senate.gov/imo/media/doc/CPRT-113-HPRT-RU00-S1847.pdf>.

(d) For each instance in which an executive agency exercised the authority to restrict all future awards or to terminate, or a grant or cooperative agreement, the agency must report in writing the following to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies). See section 841(h)(3) of the NDAA for FY 2015: <https://www.armed-services.senate.gov/imo/media/doc/CPRT-113-HPRT-RU00-S1847.pdf>:

(1) The executive agency taking such action.

(2) An explanation of the basis for the action taken.

(3) The value of the grant or cooperative agreement terminated.

(4) The value of all grants and cooperative agreements of the executive agency with the person or entity concerned at the time the grant or cooperative agreement was terminated.

(e) For each instance in which the Federal awarding agency did not exercise the authority to terminate or restrict a grant or cooperative agreement after becoming aware that a person or entity is a prohibited or restricted source pursuant to Subtitle E Title VIII of the NDAA for FY 2015 (Pub. L. 113–291), the Federal awarding agency must report in writing to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies) the following. (See section 841(h)(3) of the NDAA for FY 2015: <https://www.armed-services.senate.gov/imo/media/doc/CPRT-113-HPRT-RU00-S1847.pdf>):

(1) The executive agency concerned.

(2) An explanation of the basis for not taking the action.

(f) For each instance in which an executive agency exercised the additional authority to examine grantee and subaward records, the agency must report in writing to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies) the following (See section 841(h)(3) of the NDAA for FY 2015: <https://www.armed-services.senate.gov/imo/media/doc/CPRT-113-HPRT-RU00-S1847.pdf>):

[imo/media/doc/CPRT-113-HPRT-RU00-S1847.pdf](https://www.armed-services.senate.gov/imo/media/doc/CPRT-113-HPRT-RU00-S1847.pdf)):

(1) An explanation of the basis for the action taken; and

(2) A summary of the results of any examination of records.

§ 183.25 Responsibilities of non-Federal entities.

Non-Federal entities must include two clauses in all covered subawards in accordance with Never Contract with the Enemy (see appendix to this Part).

§ 183.30 Access to records.

In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards, to the extent necessary, to ensure that funds, including supplies and services, received under a covered grant or cooperative agreement (see § 183.30) are not provided directly or indirectly to a covered person or entity in accordance with Never Contract with the Enemy. The Federal awarding agency may only exercise this authority upon a written determination by the Federal awarding agency that relies on a finding by the commander of a covered combatant command that there is reason to believe that funds, including supplies and services, received under the grant or cooperative agreement may have been provided directly or indirectly to a covered person or entity.

§ 183.35 Definitions.

Terms used in this part are defined as follows:

Contingency operation, as defined in 10 U.S.C. 101a, means a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under 10 U.S.C. 688, 12301a, 12302, 12304, 12304a, 12305, 12406 of 10 U.S.C. chapter 15, 14 U.S.C. 712 or any other provision of law during a war or during a national emergency declared by the President or Congress.

Covered combatant command means the following:

(1) The United States Africa Command

(2) The United States Central Command

(3) The United States European Command

- (4) The United States Pacific Command
 (5) The United States Southern Command
 (6) The United States Transportation Command.

Covered grant, cooperative agreement means a grant or cooperative agreement, as defined in 2 CFR 200.1 with an estimated value in excess of \$50,000 that is performed outside the United States, including its possessions and territories, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. Except for U.S. Department of Defense grants and cooperative agreements that were awarded on or before December 19, 2017 that will be performed in the United States Central Command, where the estimated value is in excess of \$100,000.

Covered person or entity means a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

Appendix to Part 183—Clauses for Award Agreements

Federal awarding agencies must include the following two clauses in all awards for covered grants and cooperative agreements in accordance with Never Contract with the Enemy:

Clause 1:

Prohibition on Providing Funds to the Enemy

- (a) The non-Federal Entity must—
- (1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or Coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities;
 - (2) Check the list of prohibited/restricted sources in the System for Award Management (SAM) at www.sam.gov—
 - (i) Prior to issuing a subaward or contract; and
 - (ii) At least on a monthly basis; and
 - (3) Terminate in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.

(4) Include the substance of this clause, including this paragraph (a), in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

(b) The Federal awarding agency has the authority to terminate this grant or

cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the grantee failed to exercise due diligence as required by paragraph (a) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing or Coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(End of clause)

Clause 2:

Additional Access to Non-Federal Entity Records

(a) In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the non-Federal entity and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations.

(b) The substance of this clause, including this paragraph (b), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

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

■ 45. The authority citation for part 200 continues to read as follows:

Authority: 31 U.S.C. 503.

■ 46. Amend § 200.0 by adding in alphabetical order the acronym NFE and revising the existing acronym SAM.

§ 200.0 Acronyms.

*	*	*	*	*
NFE	Non-Federal Entity			
*	*	*	*	*
SAM	System for Award Management			
*	*	*	*	*

■ 47. Revise § 200.1 to read as follows:

§ 200.1 Definitions

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities. These definitions could be supplemented by additional

instructional information provided in governmentwide standard information collections.

Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

Advance payment means a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

Assistance listings refers to the publically available listing of Federal assistance programs managed and administered by the General Services Administration. Formally known as the Catalog of Federal Domestic Assistance (CFDA).

Assistance listing number means a unique number assigned to identify a Federal assistance listing. Formerly known as the CFDA Number.

Assistance listing program title means the title that corresponds to the Federal Assistance number. Formerly known as the CFDA program title.

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

Auditee means any non-Federal entity that expends Federal awards which must be audited under subpart F of this part.

Auditor means an auditor who is a public accountant or a Federal, state, local government, or Indian tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term

auditor does not include internal auditors of nonprofit organizations.

Budget means the financial plan for the Federal award that the Federal awarding agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal awarding agency or pass-through entity.

Budget period means the time interval during which recipients are authorized to expend the current funds awarded and must meet the matching or cost-sharing requirement, if any.

Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a state, local government, or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

Capital assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

(1) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under GASB standards or a finance lease under FSAB standards; and

(2) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance). For purpose of this Part, capital assets do not include intangible right-to-use assets (per GASB) and right to use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property and/or equipment for a period of time under a lease contract. See also § 200.465.

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

Claim means, depending on the context, either:

(1) A written demand or written assertion by one of the parties to a

Federal award seeking as a matter of right:

(i) The payment of money in a sum certain;

(ii) The adjustment or interpretation of the terms and conditions of the Federal award; or

(iii) Other relief arising under or relating to a Federal award.

(2) A request for payment that is not in dispute when submitted.

Class of Federal awards means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of non-Federal entity or group of non-Federal entities to which specific provisions or exceptions may apply.

Closeout means the process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in § 200.343.

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by OMB in the compliance supplement or as designated by a state for Federal awards the state provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a state must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 200.331(a). A cluster of programs must be considered as one program for determining major programs, as described in § 200.518, and, with the exception of R&D as described in § 200.501(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 200.513(a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit can be found on the Federal Audit Clearinghouse (FAC) website.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this part on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies see the following:

(1) For IHEs: Appendix III to Part 200, paragraph C.11.

(2) For nonprofit organizations: Appendix IV to Part 200, paragraph C.2.a.

(3) For state and local governments: Appendix V to Part 200, paragraph F.1.

(4) For Indian tribes: Appendix VII to Part 200, paragraph D.1.

Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information. See also Supplies and Information technology systems.

Compliance supplement means an annually updated source of information for auditors to understand the Federal program's objectives, procedures, and compliance requirements relevant to the audit, as well as audit objectives and suggested audit procedures for determining compliance with the relevant Federal program Assistance listing title and number.

Contract means, for the purpose of Federal financial assistance, a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward. (see also *Subaward*).

Contractor means an entity that receives a contract as defined in this section.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302–6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

- (ii) An agreement that provides only:
- (A) Direct United States Government cash assistance to an individual;
 - (B) A subsidy;
 - (C) A loan;
 - (D) A loan guarantee; or
 - (E) Insurance.

Cooperative audit resolution means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

- (1) A strong commitment by Federal agency and non-Federal entity leadership to program integrity;
- (2) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies;
- (3) A focus on current conditions and corrective action going forward;
- (4) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and
- (5) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

Corrective action means action taken by the auditee that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or
- (3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Cost allocation plan means central service cost allocation plan or public assistance cost allocation plan.

Cost objective means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a major function of the non-Federal entity, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in Subpart E of this part. See also *Final cost objective* and *Intermediate cost objective*.

Cost sharing or matching means the portion of project costs not paid by

Federal funds (unless otherwise authorized by Federal statute). See also § 200.306.

Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects Federal awards of more than one Federal awarding agency or pass-through entity.

Discretionary award means an award in which the awarding agency, in keeping with specific statutory authority which enable the agency to exercise judgement (“discretion”) in selection the grant award recipient through a competitive process or based on merit of existing grant recipients. Some discretionary grants to organizations may be awarded on a non-competitive basis, often based on congressional direction.

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See also *Capital assets*, *Computing devices*, *General purpose equipment*, *Information technology systems*, *Special purpose equipment*, and *Supplies*.

Expenditures means charges made by a non-Federal entity to a project or program for which a Federal award was received.

(1) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

(2) For reports prepared on a cash basis, expenditures are the sum of:

- (i) Cash disbursements for direct charges for property and services;
- (ii) The amount of indirect expense charged;
- (iii) The value of third-party in-kind contributions applied; and
- (iv) The amount of cash advance payments and payments made to subrecipients.

(3) For reports prepared on an accrual basis, expenditures are the sum of:

- (i) Cash disbursements for direct charges for property and services;
- (ii) The amount of indirect expense incurred;
- (iii) The value of third-party in-kind contributions applied; and

(iv) The net increase or decrease in the amounts owed by the non-Federal entity for:

- (A) Goods and other property received;
- (B) Services performed by employees, contractors, subrecipients, and other payees; and
- (C) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

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

Federal Audit Clearinghouse (FAC) means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the information required by subpart F of this part.

Federal awarding agency means the Federal agency that provides a Federal award directly to a non-Federal entity.

Federal award has the meaning, depending on the context, in either paragraph (1) or (2) of this definition:

(1)(i) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101; or

(ii) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101.

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

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

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

Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency.

(1) *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of:

- (i) Grants;
- (ii) Cooperative agreements;
- (iii) Non-cash contributions or donations of property (including donated surplus property);

(iv) Direct appropriations;
 (v) Food commodities; and
 (vi) Other financial assistance (except assistance listed in paragraph (b) of this section).

(2) For § 200.203 and Subpart F of this part, *Federal financial assistance* also includes assistance that non-Federal entities receive or administer in the form of:

- (i) Loans;
- (ii) Loan Guarantees;
- (iii) Interest subsidies; and
- (iv) Insurance.

(3) *Federal financial assistance* does not include amounts received as reimbursement for services rendered to individuals as described in § 200.502(h) and (i).

Federal interest means, for purposes of § 200.329 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:

(1) Federal share of total project costs; and

(2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

Federal program means:

(1) All Federal awards which are assigned a single Assistance listing number.

(2) When no Assistance listing number is assigned, all Federal awards to non-Federal entities from the same agency made for the same purpose must be combined and considered one program.

(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

- (i) Research and development (R&D);
- (ii) Student financial aid (SFA); and
- (iii) "Other clusters," as described in the definition of Cluster of Programs.

Federal share means the portion of the federal award costs that are paid using Federal funds.

Final cost objective means a cost objective which has allocated to it both direct and indirect costs and, in the non-Federal entity's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a non-Federal entity. See also the definitions for *Cost objective* and *Intermediate cost objective* in this section.

Financial obligations, when used in connection with a non-Federal entity or recipient's utilization of funds under a Federal award, means orders placed for property and services, contracts and

subawards made, and similar transactions that require payment.

Fixed amount awards means a type of grant or cooperative agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. See §§ 200.201, 200.332(b) and 200.102(d).

Foreign public entity means:

(1) A foreign government or foreign governmental entity;

(2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f);

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

Foreign organization means an entity that is:

(1) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

(2) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;

(3) A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or

(4) An organization located in a country other than the United States not recognized as a Foreign Public Entity.

General purpose equipment means equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks,

information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also *Equipment* and *Special Purpose Equipment*.

GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

GAGAS, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;

(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

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

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

Highest level owner means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest-level owner as defined in the FAR (48 CFR 52 204–17).

Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

Improper payment. See definition of improper payment in OMB Circular A–123 Appendix C, Part I A (2) "What is an improper payment?" Questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A–123 Appendix C.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

Institutions of Higher Education (IHEs) is defined at 20 U.S.C. 1001.

Indirect (facilities & administrative (F&A)) costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Indirect cost rate proposal means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate as described in Appendix III to Part 200 through Appendix VII to part 200, and Appendix IX to part 200.

Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also *Computing devices* and *Equipment*.

Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See also *Cost objective* and *Final cost objective*.

Internal controls for non-Federal entities means processes designed and implemented by non-Federal entities to provide reasonable assurance regarding

the achievement of objectives in the following categories:

- (1) Effectiveness and efficiency of operations;
- (2) Reliability of reporting for internal and external use; and
- (3) Compliance with applicable laws and regulations.

(4) Internal controls Federal awarding agencies are required to follow are located in OMB Circular A-123.

Internal control over compliance requirements for Federal awards. Federal awarding agencies are required to follow internal control compliance requirements located in OMB Circular A-123.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity, except as used in the definition of Program income in § 200.1 Definitions.

(1) The term “direct loan” means a disbursement of funds by the Federal Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(2) The term “direct loan obligation” means a binding agreement by a Federal awarding agency to make a direct loan when specified conditions are fulfilled by the borrower.

(3) The term “loan guarantee” means any Federal Government guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

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

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

- (1) County;
- (2) Borough;
- (3) Municipality;
- (4) City;
- (5) Town;
- (6) Township;
- (7) Parish;

(8) Local public authority, including any public housing agency under the United States Housing Act of 1937;

- (9) Special district;
- (10) School district;
- (11) Intrastate district;
- (12) Council of governments, whether or not incorporated as a nonprofit corporation under state law; and
- (13) Any other agency or instrumentality of a multi-, regional, or intra-state or local government.

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

Management decision means the Federal awarding agency’s or pass-through entity’s written determination, provided to the auditee, of the adequacy of the auditee’s proposed corrective actions to address the findings, based on its evaluation of the audit findings and proposed corrective actions.

Micro-purchase means a purchase of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase comprise a subset of a non-Federal entity’s small purchases as defined in § 200.319. Micro-purchase threshold means the dollar amount at or below which a non-Federal entity may purchase property or services using micro-purchase procedures (see § 200.319). Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the Federal Acquisition Regulation (FAR) at 48 CFR 2.101 (unless a higher threshold is requested by the non-Federal entity and approved by the cognizant agency).

Modified Total Direct Cost (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

Non-discretionary award means an award made by the awarding agency as defined by statute to specific recipients, assuming recipient application meets

eligibility and compliance requirements, such that in keeping with specific statutory authority the agency has no ability to exercise judgment (“discretion”), due to “mandatory” award requirements, in selecting the applicant/recipient organization through a competitive process. Non-discretionary awards can be both formula and non-formula based.

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

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, 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.

Notice of funding opportunity means a formal announcement of the availability of Federal funding through a financial assistance program from a Federal awarding agency. The Notice of Funding Opportunity announcement provides information on the award, who is eligible to apply, the evaluation criteria for selection of an awardee, required components of an application, and how to submit the application.

Office of Management and Budget (OMB) means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of funding directly (direct funding) to a non-Federal entity not assigned a cognizant agency for audit. When the direct funding represents less than 25 percent of the total funding received from the non-Federal entity (as prime and subawards), then the Federal agency with the predominant amount of funding is the designated oversight agency for award. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 200.513(b).

Pass-through entity (PTE) means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Participant support costs means direct costs for items such as stipends or

subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Period of performance means the anticipated time interval between the start and end date of an initial Federal award or Renewal. See also *Budget period* and *Renewal*.

Personal property means property other than real property. It may be tangible, having physical existence, or intangible.

Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.

Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(f). (See *Period of performance* in § 200.1) Program income includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on

advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also § 200.407 *Prior written approval* (prior approval). See also 35 U.S.C. 200–212 “Disposition of Rights in Educational Awards” applies to inventions made under Federal awards.

Property means real property or personal property. See also *Real property* and *personal property*.

Protected Personally Identifiable Information (Protected PII) means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed. See also *Personally Identifiable Information* (PII).

Project cost means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

- (1) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;
- (2) Where the costs, at the time of the audit, are not supported by adequate documentation; or
- (3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

(4) Questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A–123 Appendix C. (see also *Improper payment*)

Real property means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.

Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or an individual that is a beneficiary of the award.

Renewal means a subsequent Federal award to a current Federal award; each renewal must have a distinct period of performance.

Research and Development (R&D) means all research activities, both basic and applied, and all development activities that are performed by non-Federal entities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. “Research” is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. “Development” is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods (see § 200.319). Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold for procurement activities administered under Federal awards is set by the Federal Acquisition Regulation at 48 CFR subpart 2.1. Thresholds differ from the FAR. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures. States, IHEs and local governments should determine if local government laws on purchasing apply.

Special purpose equipment means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. See also *Equipment* and *General purpose equipment*.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

Student Financial Aid (SFA) means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070–1099d), which are administered by the U.S. Department of

Education, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Subsidiary means an entity in which more than 50 percent of the non-Federal entity is owned directly by a parent corporation or through another subsidiary of a parent corporation as defined in the FAR (48 CFR 52.209–10).

Supplies means all tangible personal property other than those described in the definition of *Equipment*. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. See also *Computing devices* and *Equipment*.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance. A lack of available funds is not a termination.

Third-party in-kind contributions means the value of non-cash contributions (*i.e.*, property or services) that—

(1) Benefit a federally assisted project or program; and

(2) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.

Unliquidated financial obligations means, for financial reports prepared on a cash basis, financial obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are financial obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

Unobligated balance means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity’s unliquidated financial obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal’s budget on the part of the non-Federal entity and that becomes a binding requirement of Federal award. See also § 200.306.

§§ 200.2 through 200.99 [Removed]

■ 48. Remove §§ 200.2 through 200.99

■ 49. Amend § 200.100 by revising paragraph (a)(1) to read as follow:

§ 200.100 Purpose.

(a)(1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in § 200.101. Federal awarding agencies must not impose additional or inconsistent requirements, except as provided in §§ 200.102 and 200.211, or unless specifically required by Federal statute, regulation, or Executive Order.

* * * * *

■ 50. Revise § 200.101 to read as follows:

§ 200.101 Applicability.

(a) *General applicability to Federal agencies.* (1) The requirements established in this part apply to Federal agencies that make Federal awards to non-Federal entities. These requirements are applicable to all costs related to Federal awards.

(2) Federal awarding agencies may apply subparts A through E of this part to Federal agencies, for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international responsibilities of the United States or the statutes or regulations of a foreign government.

(b) *Applicability to different types of Federal awards.* (1) Throughout this part when the word “must” is used it indicates a requirement. Whereas, use of the word “should” or “may” indicates a best practice or recommended approach rather than a requirement and permits discretion.

(2) The following table describes what portions of this part apply to which types of Federal awards. The terms and conditions of Federal awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically

indicate otherwise. This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. Pass-through entities must comply with the requirements described in Subpart D of this part, §§ 200.330

through 200.332, but not any requirements in this part directed towards Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award indicate otherwise.

TABLE 1 TO PARAGRAPH (b)

The following portions of this part	Are applicable to the following types of Federal Awards and fixed-price contracts and subcontracts (except as noted in paragraphs (d) and (e) below):	Are NOT applicable to the following types of Federal Awards and fixed-price contracts and subcontracts:
Subpart A—Acronyms and Definitions Subpart B—General Provisions, except for §§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures. §§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures.	—All. —All. —Grant Agreements and cooperative agreements.	—Agreements for loans, loan guarantees, interest subsidies and insurance. —Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
Subparts C–D, except for §§ 200.203 Requirement to provide public notice of Federal financial assistance programs, 200.303 Internal controls, 200.330–332 Subrecipient Monitoring and Management.	—Grant Agreements and cooperative agreements.	—Agreements for loans, loan guarantees, interest subsidies and insurance. —Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
§ 200.203 Requirement to provide public notice of Federal financial assistance programs.	—Grant Agreements and cooperative agreements.	—Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
§§ 200.303 Internal controls, 200.330–332 Subrecipient Monitoring and Management.	—Agreements for loans, loan guarantees, interest subsidies and insurance.	—Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
Subpart E—Cost Principles	—All.	—Fixed amount awards.
Subpart F—Audit Requirements	—Grant Agreements and cooperative agreements, except those providing food commodities. —All procurement contracts under the Federal Acquisition Regulations except those that are not negotiated.	—Grant agreements and cooperative agreements providing foods commodities. —Agreements for loans, loans guarantees, interest subsidies and insurance.
Subpart F—Audit Requirements	—Grant Agreements and cooperative agreements.	—Federal awards to hospitals (see Appendix IX Hospital Cost Principles).
Subpart F—Audit Requirements	—Contracts and subcontracts, except for fixed price contacts and subcontracts, awarded under the Federal Acquisition Regulation.	—Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation.
Subpart F—Audit Requirements	—Agreements for loans, loans guarantees, interest subsidies and insurance and other forms of Federal Financial Assistance as defined by the Single Audit Act Amendment of 1996.	—Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation.

(c) *Federal award of cost-reimbursement contract under the FAR to a non-Federal entity.* When a non-Federal entity is awarded a cost-reimbursement contract, only Subpart D of this part, §§ 200.330 through 200.332, subpart E of this part and subpart F of this part are incorporated by reference into the contract, but the requirements of subparts D, E, and F are supplementary to the FAR contract and only have effect to the extent that they do not conflict with the FAR and the contract. When the Cost Accounting

Standards (CAS) are applicable to the contract, they take precedence over the requirements of this part, including subpart F of this part, which are supplementary to the CAS requirements. In addition, costs that are made unallowable under 10 U.S.C. 2324(e) and 41 U.S.C. 4304(a) as described in the FAR 48 CFR subpart 31.2 and 48 CFR 31.603 are always unallowable. For requirements other than those covered in subpart D of this part, §§ 200.330 through 200.332, subpart E of this part and subpart F of

this part, the terms of the contract and the FAR apply. Note that when a non-Federal entity is awarded a FAR contract, the FAR applies, and the terms and conditions of the contract shall prevail over the requirements of this part.

(d) With the exception of subpart F of this part, which is required by the Single Audit Act, in any circumstances where the provisions of Federal statutes or regulations differ from the provisions of this part, the provision of the Federal statutes or regulations govern. This

includes, for agreements with Indian tribes, the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, 25 U.S.C 450—458ddd-2.

(e) Except for § 200.203, and §§ 200.330 through 200.332, the requirements in Subpart C, Subpart D, and Subpart E of this part do not apply to the following programs:

(1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services), except to the extent that Subpart E—Cost Principles of this Part apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B);

(2) Federal awards to local education agencies under 20 U.S.C. 7702–7703b, (portions of the Impact Aid program);

(3) Payments under the Department of Veterans Affairs' State Home Per Diem Program (38 U.S.C. 1741); and

(4) Federal awards authorized under the Child Care and Development Block Grant Act of 1990, as amended:

(i) Child Care and Development Block Grant (42 U.S.C. 9858)

(ii) Child Care Mandatory and Matching Funds of the Child Care and Development Fund (42 U.S.C. 9858)

(f) Except for § 200.203, the guidance in subpart C of this part does not apply to the following programs:

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

(i) Temporary Assistance to Needy Families (title IV–A of the Social Security Act, 42 U.S.C. 601–619);

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

(iii) Foster Care and Adoption Assistance (title IV–E of the Act, 42 U.S.C. 670–679c);

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

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

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

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

(3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of

the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits (8 U.S.C. 1522(e));

(4) Entitlement awards under the following programs of The National School Lunch Act:

(i) National School Lunch Program (section 4 of the Act, 42 U.S.C. 1753),

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

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

(iv) Summer Food Service Program for Children (section 13 of the Act, 42 U.S.C. 1761), and

(v) Child and Adult Care Food Program (section 17 of the Act, 42 U.S.C. 1766).

(5) Entitlement awards under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk Program (section 3 of the Act, 42 U.S.C. 1772),

(ii) School Breakfast Program (section 4 of the Act, 42 U.S.C. 1773), and

(iii) State Administrative Expenses (section 7 of the Act, 42 U.S.C. 1776).

(6) Entitlement awards for State Administrative Expenses under The Food and Nutrition Act of 2008 (section 16 of the Act, 7 U.S.C. 2025).

(7) Non-discretionary Federal awards under the following non-entitlement programs:

(i) Special Supplemental Nutrition Program for Women, Infants and Children (section 17 of the Child Nutrition Act of 1966) 42 U.S.C. 1786;

(ii) The Emergency Food Assistance Programs (Emergency Food Assistance Act of 1983) 7 U.S.C. 7501 note; and

(iii) Commodity Supplemental Food Program (section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

■ 51. Amend § 200.102 by revising paragraphs (a), (c), and (d) to read as follows:

§ 200.102 Exceptions.

(a) With the exception of subpart F of this part, OMB may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. In the interest of maximum uniformity, exceptions from the requirements of this part will be permitted only as described in paragraph (d) of this section or in unusual circumstances.

* * * * *

(c) The Federal awarding agency may apply more or less restrictive

requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when, required by Federal statutes or regulations, except for the requirements in subpart F of this part. A Federal awarding agency may apply less restrictive requirements when making fixed amount awards as defined in subpart A of this part, except for those requirements imposed by statute or in subpart F of this part.

(d) OMB encourages Federal awarding agencies to request exceptions in support of innovative program designs that apply a risk-based, data-driven framework to alleviate select compliance requirements and hold recipients accountable for good performance. OMB also encourages agencies to apply more restrictive terms and conditions when a risk-assessment indicates it may be merited.

■ 52. Revise § 200.110 to read as follows:

§ 200.110 Effective/applicability date.

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

(b) Existing negotiated indirect cost rates will remain in place until they are re-negotiated. The effective date of changes to indirect cost rates must be based upon the date that a newly re-negotiated rate goes into effect for a specific non-Federal entity's fiscal year. Therefore, for indirect cost rates and cost allocation plans, Federal awarding and indirect cost rate negotiating agencies will use the Uniform Guidance both in generating proposals for and negotiating a new rate (when the rate is re-negotiated) for non-Federal entities.

■ 53. Revise Subpart C to read as follows:

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

Sec.

200.200 Purpose.

200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

200.202 Program planning and design.

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

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200.205 Federal awarding agency review of merit of proposals.

200.206 Federal awarding agency review of risk posed by applicants.

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- 200.210 Pre-award costs.
 200.211 Information contained in a Federal award.
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 200.214 Suspension and debarment.
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 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

§ 200.200 Purpose.

(a) Sections 200.201 through 200.209 prescribe instructions and other pre-award matters to be used in the announcement and application process.

(b) Use of §§ 200.204, 200.205, 200.206, and 200.208, is required only for competitive Federal awards, but may also be used by the Federal awarding agency for non-competitive awards where appropriate or where required by Federal statute.

§ 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(a) The Federal awarding agency or pass-through entity must decide on the appropriate instrument for the Federal award (*i.e.*, grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08).

(b) Fixed Amount Awards. In addition to the options described in paragraph (a) of this section, Federal awarding agencies, or pass-through entities as permitted in § 200.332, may use fixed amount awards (*see Fixed amount awards* in § 200.1) to which the following conditions apply:

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal awarding agency or pass-through entity may use fixed amount awards if the project scope has measurable goals and objectives and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to:

(i) In several partial payments, the amount of each agreed upon in advance, and the “milestone” or event triggering the payment also agreed upon in

advance, and set forth in the Federal award;

(ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; or,

(iii) In one payment at Federal award completion.

(2) A fixed amount award cannot be used in programs which require mandatory cost sharing or match.

(3) The non-Federal entity must certify in writing to the Federal awarding agency or pass-through entity at the end of the Federal award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.

(4) Periodic reports may be established for each Federal award.

(5) Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the Federal awarding agency or pass-through entity.

§ 200.202 Program planning and design.

In designing the Federal financial assistance programs, the Federal awarding agency must establish program goals, objectives, and indicators at the assistance listing (*e.g.*, program) level, to the extent permitted by law. Program design must occur before the Federal awarding agency drafts the Notice of Funding Opportunity. The program goals and outcomes designed must be aligned with the Congressional intent of the program, agency leadership goals, as well as agency strategic plan and priority goals. Programs must be designed with clear goals and objectives to achieve intended results. Program goals, objectives and metrics for measuring performance must also be published in the assistance listing. Program design elements may include a problem or needs statement, goals and objectives, a logic model depicting the program’s structure, program activities, performance indicators to measure program accomplishments which may include independently available sources of data, learning communities which may benefit from a common understanding of promising practices, and a system to periodically review award selection criteria. Federal awarding agencies should use program design to inform the management of Federal awards at all stages of the financial assistance lifecycle. Federal awarding agencies are responsible for collecting relevant performance data to demonstrate the results of Federal

financial assistance programs. Federal awarding agencies are also responsible for ensuring taxpayer dollars are providing critical Federal services to citizens efficiently and cost-effectively while managing government programs, as described in the Program Management Improvement Accountability Act (Pub. L. 114–264), the OMB Memorandum M–18–19 (Improving the Management of Federal Programs and Projects through Implementing the Program Management Improvement Accountability Act) and OMB circular A–11 (Preparation, Submission, and Execution of the Budget). See also § 200.1 Definition for Assistance listing.

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

(a) The Federal awarding agency must notify the public of Federal programs in the Assistance listings maintained by the General Services Administration (GSA).

(1) The Assistance listings is the single, authoritative, governmentwide comprehensive source of Federal financial assistance program information produced by the executive branch of the Federal Government.

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

(3) The Federal awarding agency may not award Federal financial assistance without assigning it to a program that has been included in the Assistance listings as required in this section unless there are exigent circumstances requiring otherwise, such as timing requirements imposed by statute.

(b) For each program that awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance, the Federal awarding agency must, to the extent practicable, create, update, and manage Assistance listing entries based on the authorizing statute for the program and comply with additional guidance provided by GSA in consultation with OMB to ensure consistent, accurate information is available to prospective applicants. At a minimum, Federal awarding agencies must submit the following information to GSA:

(1) *Program description, purpose, goals and measurement.* A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate,

the Program description, purpose, goals, and measurement should align with the strategic goals and objectives within the Federal awarding agency's performance plan as required by Part 6 of OMB Circular A-11 and should support the Federal awarding agency's performance measurement, management, and any required reporting;

(2) *Identification.* Whether the program makes Federal awards on a discretionary basis or the Federal awards are prescribed by Federal statute, such as in the case of formula grants.

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

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

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

(6) *Applicability.* The applicability of Single Audit Requirements as required by subpart F of this part.

§ 200.204 Notices of funding opportunities.

For discretionary grants and cooperative agreements, the Federal awarding agency must announce specific funding opportunities by providing the following information in a public notice:

(a) *Summary information in notices of funding opportunities.* The Federal awarding agency must display the following information posted on the OMB-designated governmentwide website for finding and applying for Federal financial assistance, in a location preceding the full text of the announcement:

(1) Federal Awarding Agency Name;

(2) Funding Opportunity Title;

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

(4) Funding Opportunity Number (required, if applicable). If the Federal awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided;

(5) Assistance listing number(s);

(6) *Key Dates.* Key dates include due dates for applications or Executive Order 12372 submissions, as well as for 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; and any other additional information, as deemed applicable by the relevant Federal awarding agency.

(b) *Availability period.* The Federal awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. The Federal awarding agency may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days unless exigent circumstances require as determined by the Federal awarding agency head or delegate.

(c) *Full text of funding opportunities.* The Federal awarding agency must include the following information in the full text of each funding opportunity. For specific instructions on the content required in this section, refer to Appendix I to Part 200.

(1) Full programmatic description of the funding opportunity.

(2) Federal award information, including sufficient information to help an applicant make an informed decision about whether to submit an application. (See also § 200.414(c)(4)).

(3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.

(4) Application Preparation and Submission Information, including the applicable submission dates and time.

(5) Application Review Information including the criteria and process to be used to evaluate applications. See also §§ 200.205 and 200.206.

(6) Federal Award Administration Information. See also § 200.211.

§ 200.205 Federal awarding agency review of merit of proposals.

For discretionary grants or cooperative agreements, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications, with the objective of selecting the recipients most likely to be successful in delivering results based on the program objectives outlined in section § 200.202. This process must be described or incorporated by reference in the applicable funding opportunity (see Appendix I to this part.) See also § 200.204. The Federal awarding agency

must also systematically review award selection criteria for effectiveness.

§ 200.206 Federal awarding agency review of risk posed by applicants.

(a) *Review of OMB-designated repositories of governmentwide data.* (1) Prior to making a Federal award, the Federal awarding agency is required by the Improper Payments Elimination and Recovery Improvement Act of 2012, 31 U.S.C. 3321, note and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information as appropriate. See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.

(2) In accordance 41 U.S.C. 2313, the Federal awarding agency is required to review the non-public segment of the OMB-designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) prior to making a Federal award where the Federal share is expected to exceed the simplified acquisition threshold, defined in 41 U.S.C. 134, over the period of performance. As required by Public Law 112-239 National Defense Authorization Act for Fiscal Year 2013, prior to making a Federal award, the Federal awarding agency must consider all of the information available through FAPIIS with regard to the applicant and any immediate highest level owner, predecessor (i.e., a non-Federal entity that is replaced by a successor), or subsidiary, identified for that applicant in FAPIIS, if applicable. At a minimum, the information in the system for a prior Federal award recipient must demonstrate a satisfactory record of executing programs or activities under Federal grants, cooperative agreements, or procurement awards; and integrity and business ethics. The Federal awarding agency may make a Federal award to a recipient who does not fully meet these standards, if it is determined that the information is not relevant to the current Federal award under consideration or there are specific conditions that can appropriately mitigate the effects of the non-Federal entity's risk in accordance with § 200.208 Specific conditions.

(b) *Risk evaluation.* (1) In addition, for competitive grants or cooperative agreements, the Federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal

awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the Federal awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in § 200.204 Notices of funding opportunities.

(2) In evaluating risks posed by applicants, the Federal awarding agency may use a risk-based approach and may consider any items such as the following:

- (i) Financial stability;
- (ii) Quality of management systems and ability to meet the management standards prescribed in this part;
- (iii) History of performance. The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;
- (iv) Reports and findings from audits performed under Subpart F of this part or the reports and findings of any other available audits; and
- (v) The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.

(c) *Suspension and debarment compliance.* The Federal awarding agency must comply with the guidelines on governmentwide suspension and debarment in 2 CFR part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

§ 200.207 Standard application requirements.

(a) *Paperwork clearances.* The Federal awarding agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320, Controlling Paperwork Burdens on the Public and in alignment with OMB-approved, governmentwide data elements available from the OMB-designated standards lead. Consistent with these requirements, OMB will

authorize additional information collections only on a limited basis.

(b) If applicable, the Federal awarding agency may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.

§ 200.208 Specific conditions.

(a) Federal awarding agencies are responsible for ensuring that specific Federal award conditions are consistent with the program design reflected in § 200.202 and include clear performance expectations of recipients as required in § 200.301.

(b) Risk-based specific conditions.
(1) The Federal awarding agency or pass-through entity may impose more or less restrictive or additional specific Federal award conditions as needed, in accordance with paragraphs (b)(2) and (3) of this section, based on an analysis of the following factors:

- (i) Based on the criteria set forth in § 200.206;
- (ii) The an applicant or recipient's history of compliance with the general or specific terms and conditions of a Federal award;
- (iii) The applicant or recipient's ability to meet expected performance goals as described in § 200.211; or
- (iv) A responsibility determination of an applicant or recipient

(2) Additional Federal award conditions may include items such as the following:

- (i) Requiring payments as reimbursements rather than advance payments;
- (ii) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given budget period;
- (iii) Requiring additional, more detailed financial reports;
- (iv) Requiring additional project monitoring;
- (v) Requiring the non-Federal entity to obtain technical or management assistance; or
- (vi) Establishing additional prior approvals.

(3) If the Federal awarding agency or pass-through entity is imposing additional requirements, they must notify the applicant or non-Federal entity as to:

- (i) The nature of the additional requirements;
- (ii) The reason why the additional requirements are being imposed;
- (iii) The nature of the action needed to remove the additional requirement, if applicable;
- (iv) The time allowed for completing the actions if applicable, and

(v) The method for requesting reconsideration of the additional requirements imposed.

(c) Any additional requirements must be promptly removed once the conditions that prompted them have been satisfied.

§ 200.209 Certifications and representations.

Unless prohibited by the U.S. Constitution, Federal statutes or regulations, each Federal awarding agency or pass-through entity is authorized to require the non-Federal entity to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the non-Federal entity fails to meet a requirement of a Federal award.

§ 200.210 Pre-award costs.

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

§ 200.211 Information contained in a Federal award.

A Federal award must include the following information:

(a) *Federal award performance goals.* The Federal awarding agency must include in the Federal award of the timing and scope of expected performance by the non-Federal entity as related to the outcomes intended to be achieved by the program. Where applicable, this should also include any performance measures or independent sources of data that may be used to measure progress. In some instances (e.g., discretionary research awards), this must be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy). Where appropriate, the Federal award may include specific performance goals, indicators, milestones, or expected outcomes (such as outputs, or services performed or public impacts of any of these) with an expected timeline for accomplishment. Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured. The Federal awarding agency may include program-specific requirements, as applicable. These requirements must be aligned, to the extent permitted by law, with Federal awarding agency strategic goals, strategic objectives or performance goals that are relevant to the program. See

also OMB Circular A-11, Preparation, Submission and Execution of the Budget Part 6 for definitions of strategic objectives and performance goals.

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

(1) Recipient name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.315);

(2) Recipient's unique entity identifier;

(3) Unique Federal Award Identification Number (FAIN);

(4) Federal Award Date (see Federal award date in § 200.1 Definitions);

(5) Period of Performance Start and End Date;

(6) Budget Period Start and End Date;

(7) Amount of Federal Funds

Obligated by this action;

(8) Total Amount of Federal Funds Obligated;

(9) Total Approved Cost Sharing or Matching, where applicable;

(10) Total Amount of the Federal Award including approved Cost Sharing or Matching;

(11) Budget Approved by the Federal Awarding Agency;

(12) Federal award description, (to comply with statutory requirements (e.g., FFATA));

(13) Name of Federal awarding agency and contact information for awarding official,

(14) Assistance listing number and title;

(15) Identification of whether the award is R&D; and

(16) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414).

(17) Performance goals, indicators, targets, baseline data, and data collection plan

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

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

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

(iii) *Recipient integrity and performance matters.* If the total Federal share of the Federal award may include more than \$500,000 over the period of

performance, the Federal awarding agency must include the term and condition available in Appendix XII of this part. See also § 200.113.

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

(v) *Termination provisions.* Recipients must be made aware of the termination provisions in § 200.339, including the applicable termination provisions in the Federal awarding agency's regulations and in each Federal award.

(2) The Federal award must include wording to incorporate, by reference, all terms and conditions of the award. Any reference within the award to general terms and conditions must be to the website at which the Federal awarding agency maintains.

(3) If a non-Federal entity requests a copy of the full text of the general terms and conditions, the Federal awarding agency must provide it.

(4) Wherever the general terms and conditions are publicly available, the Federal awarding agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the non-Federal entity, auditors, or others.

(d) *Federal awarding agency, program, or federal award specific terms and conditions.* The Federal awarding agency must include with each Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the Federal awarding agency's general terms and conditions as required in § 200.208. Whenever practicable, these specific terms and conditions also should be shared on a public website and in notices of funding opportunities (as outlined in § 200.204) in addition to being included in a Federal award. See also § 200.207.

(e) *Prohibition of Including References to Non-Binding Guidance Documents.* Federal awarding agencies are prohibited from including references to non-binding guidance in the terms and conditions of award. As described in Executive Order (E.O.) 13891, references to non-binding guidance include references to promising practices and other documents that the inclusion of by reference carries the implicit threat of enforcement action. These resources may be shared outside of the terms and conditions for reference purposes.

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

§ 200.212 Public access to Federal award information.

(a) In accordance with statutory requirements for Federal spending transparency (e.g., FFATA), except as noted in this section, for applicable Federal awards the Federal awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated governmentwide website.

(b) All information posted in the designated integrity and performance system accessible through SAM (currently FAPIIS) on or after April 15, 2011 will be publicly available after a waiting period of 14 calendar days, except for:

(1) Past performance reviews required by Federal Government contractors in accordance with the Federal Acquisition Regulation (FAR) 48 CFR subpart 42.15;

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

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

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

§ 200.213 Reporting a determination that a non-Federal entity is not qualified for a Federal award.

(a) If a Federal awarding agency does not make a Federal award to a non-Federal entity because the official determines that the non-Federal entity does not meet either or both of the minimum qualification standards as described in § 200.206(a)(2), the Federal awarding agency must report that determination to the designated integrity and performance system accessible through SAM (currently FAPIIS), only if all of the following apply:

(1) The only basis for the determination described in paragraph (a) of this section is the non-Federal entity's prior record of executing programs or activities under Federal awards or its record of integrity and business ethics, as described in § 200.206(a)(2) (i.e., the entity was determined to be qualified based on all factors other than those two standards), and

(2) The total Federal share of the Federal award that otherwise would be made to the non-Federal entity is expected to exceed the simplified acquisition threshold over the period of performance.

(b) The Federal awarding agency is not required to report a determination that a non-Federal entity is not qualified for a Federal award if they make the Federal award to the non-Federal entity and includes specific award terms and conditions, as described in § 200.208.

(c) If a Federal awarding agency reports a determination that a non-Federal entity is not qualified for a Federal award, as described in paragraph (a) of this section, the Federal awarding agency also must notify the non-Federal entity that—

(1) The determination was made and reported to the designated integrity and performance system accessible through SAM, and include with the notification an explanation of the basis for the determination;

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

(3) Each Federal awarding agency that considers making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award when the total Federal share of the Federal award is expected to include an amount of Federal funding in excess of the simplified acquisition threshold over the period of performance;

(4) The non-Federal entity may go to the awardee integrity and performance portal accessible through SAM (currently the Contractor Performance Assessment Reporting System (CPARS)) and comment on any information the system contains about the non-Federal entity itself; and

(5) Federal awarding agencies will consider that non-Federal entity's comments in determining whether the non-Federal entity is qualified for a future Federal award.

(d) If a Federal awarding agency enters information into the designated integrity and performance system accessible through SAM about a determination that a non-Federal entity is not qualified for a Federal award and subsequently:

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

(2) Obtains an update to that information that could be helpful to

other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(e) Federal awarding agencies must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the recipient asserts within seven calendar days to the Federal awarding agency that posted the information that some or all of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal awarding agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

§ 200.214 Suspension and debarment.

Non-federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 200.215 Never contract with the enemy.

Federal awarding agencies and non-Federal entities are subject to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. These regulations affect grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States, including U.S. territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

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

Grant, cooperative agreement, and loan recipients are prohibited from using government funds to enter into contracts (or extend or renew contracts) with entities that use covered technology. See section 889 of Public Law 115–232 (National Defense Authorization Act 2019).

■ 54. Amend § 200.300 by revising the first sentence of paragraph (a) to read as follows:

§ 200.300 Statutory and national policy requirements.

(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S.

Constitution, Federal Law, statutory, and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination. * * *

* * * * *

■ 55. Revise § 200.301 to read as follows:

§ 200.301 Performance measurement.

The Federal awarding agency must measure the recipient's performance in a way that will help the Federal awarding agencies and non-Federal entities to achieve program goals and objectives, share lessons learned, and foster adoption of promising practices. The Federal awarding agency should provide recipients with clear performance goals, indicators, and milestones as described in § 200.211. Performance reporting frequency and content should be established to not only allow the Federal awarding agency to understand the recipient's progress but also to facilitate identification of promising practices among recipients and build evidence upon which the Federal awarding agency's program and performance decisions are made. This provision is designed to operate in tandem with evidence-related statutes (e.g.; The Foundations for Evidence-Based Policymaking Act of 2018, which emphasizes collaboration and coordination to advance data and evidence-building functions in the Federal government) and related OMB implementation guidance (e.g.; OMB Memorandum M–19–23: Phase 1 implementation of the Foundations for Evidence-Based Policymaking Act of 2018. Learning Agendas, Personnel, and Planning Guidance). The Federal awarding agency must also require the recipient to use OMB-approved common information collections, as applicable, when providing financial and performance information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency should require the recipient to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned common information collections, and when applicable, recipients should also provide cost information to demonstrate cost

effective practices (e.g., through unit cost data). In some instances (e.g., discretionary research awards), these requirements may be limited to the submission of technical performance reports (to be evaluated in accordance with agency policy). The Federal awarding agency should also specify any requirements of award recipients' participation in a Federally-funded evaluation, and any evaluation activities required to be conducted by the Federal award.

§ 200.302 [Amended]

■ 56. Amend § 200.302 as follows:

■ a. In paragraph (b)(1) remove the term "CFDA" and add, in its place, "Assistance listing".

■ b. In paragraph (b)(3) remove the word "obligations" and add, in its place, "financial obligations".

■ 57. Amend § 200.303 by revising paragraphs (b) and (e) to read as follows:

§ 200.303 Internal controls.

* * * * *

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

* * * * *

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and responsibility over confidentiality.

■ 58. Revise § 200.305 to read as follows:

§ 200.305 Federal payment.

(a) For states, payments are governed by Treasury-State CMIA agreements and default procedures codified at 31 CFR part 205 and TFM 4A-2000 Overall Disbursing Rules for All Federal Agencies.

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also § 200.302(b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved, governmentwide information collection requests to request payment.

(1) The non-Federal entity must be paid in advance, provided it maintains

or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.

(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

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

(4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that

reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) Use of resources before requesting cash advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of § 200.208, subpart D of this part, § 200.338, or one or more of the following applies:

(i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.

(ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Guidance A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for financial obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(iii) A payment withheld for failure to comply with Federal award conditions,

but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with § 200.342.

(iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.

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

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

(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:

(i) The non-Federal entity receives less than \$250,000 in Federal awards per year.

(ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.

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

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

(9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.

(i) For returning interest on Federal awards paid through PMS, the refund should:

(A) Provide an explanation stating that the refund is for interest;

(B) List the PMS Payee Account Number(s) (PANs);

(C) List the Federal award number(s) for which the interest was earned; and

(D) Make returns payable to: Department of Health and Human Services.

(ii) For returning interest on Federal awards not paid through PMS, the refund should:

(A) Provide an explanation stating that the refund is for interest;

(B) Include the name of the awarding agency;

(C) List the Federal award number(s) for which the interest was earned; and

(D) Make returns payable to: Department of Health and Human Services.

(10) Funds, principal, and excess cash returns must be directed to the original Federal agency payment system. The non-Federal entity should review instructions from the original Federal agency payment system. Returns should include the following information:

(i) Payee Account Number (PAN), if the payment originated from PMS, or Agency information to indicate whom to credit the funding if the payment originated from ASAP, NSF, or another Federal agency payment system.

(ii) PMS document number and subaccount(s), if the payment originated from PMS, or relevant account numbers if the payment originated from another Federal agency payment system.

(iii) The reason for the return (*e.g.*, excess cash, funds not spent, interest, part interest part other, etc.)

(11) When returning funds or interest to PMS you must include the following as applicable:

(i) For ACH Returns:

Routing Number: 051036706.

Account number: 303000.

Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN.

(ii) For Fedwire Returns *:

Routing Number: 021030004.

Account number: 75010501.

Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY.

(* Please note organization initiating payment is likely to incur a charge from their Financial Institution for this type of payment)

(iii) For International ACH Returns:

Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS).

Bank: Citibank N.A. (New York).

Swift Code: CITIUS33.

Account Number: 36838868.

Bank Address: 388 Greenwich Street, New York, NY 10013 USA.

Payment Details (Line 70): Agency Locator Code (ALC): 75010501.

Name (abbreviated when possible) and ALC Agency POC.

(iv) For recipients that do not have electronic remittance capability, please make check ** payable to: “The Department of Health and Human Services.”

Mail Check to Treasury approved lockbox: HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353–0231.

(** Please allow 4–6 weeks for processing of a payment by check to be applied to the appropriate PMS account)

(v) Questions can be directed to PMS at 877–614–5533 or *PMSSupport@psc.hhs.gov*.

§ 200.306 [Amended]

■ 59. In § 200.306 paragraph (a) remove “200.203” and add, in its place, “200.204”.

■ 60. Amend § 200.307 by revising paragraphs (d) and (g) to read as follows:

§ 200.307 Program income.

* * * * *

(d) *Property.* Proceeds from the sale of real property, equipment, or supplies are not program income; such proceeds will be handled in accordance with the requirements of Subpart D of this part, §§ 200.310, 200.312, and 200.313, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

* * * * *

(g) Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity is not accountable to the Federal awarding agency with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401 is applicable.

■ 61. Revise § 200.308 to read as follows:

§ 200.308 Revision of budget and program plans.

(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see Federal share in § 200.1) or only the Federal share, depending upon Federal awarding agency requirements. The budget and program plans must include considerations for performance and program evaluation purposes whenever required in accordance with the terms and conditions of the award.

(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section.

(c) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for the following program or budget-related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or the Federal award.

(3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with Subpart E of this part or 45 CFR part 75 Appendix IX, or 48 CFR part 31, as applicable.

(5) The transfer of funds budgeted for participant support costs to other categories of expense.

(6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in § 200.332 Fixed amount subawards. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(7) Changes in the approved cost-sharing or matching provided by the non-Federal entity.

(8) The need arises for additional Federal funds to complete the project.

(d) No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§ 200.102 and 200.407.

(e) Except for requirements listed in paragraphs (c)(1) through (8) of this section, the Federal awarding agency is authorized, at its option, to waive other cost-related and administrative prior written approvals contained in Subparts D and E. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient's risk (*i.e.*, the Federal

awarding agency is not required to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also § 200.458 Pre-award costs.

(2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (d)(2)(i) through (iii) of this section apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension must not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior Federal awarding agency approval when:

(i) The terms and conditions of the Federal award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent budget periods.

(4) For Federal awards that support research, unless the Federal awarding agency provides otherwise in the Federal award or in the Federal awarding agency's regulations, the prior approval requirements described in paragraph (d) are automatically waived (*i.e.*, recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (d)(2) applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the Simplified Acquisition Threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. The Federal awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.

(g) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also § 200.407).

(h) For construction Federal awards, the recipient must request prior written approval promptly from the Federal awarding agency for budget revisions

whenever paragraph (h)(1), (2), or (3) of this section applies:

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in Subpart E of this part.

(4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.

(5) When a Federal awarding agency makes a Federal award that provides support for construction and non-construction work, the Federal awarding agency may require the recipient to obtain prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(i) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the Federal awarding agency indicates a letter of request suffices.

(j) Within 30 calendar days from the date of receipt of the request for budget revisions, the Federal awarding agency must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.

§ 200.309 [Removed]

■ 62. Remove § 200.309.

§§ 200.310 through 200.321 [Redesignated]

■ 63. Redesignate §§ 200.310 through 200.321 to §§ 200.309 through 200.320.

■ 64. Amend newly redesignated § 200.310 to revise paragraph (a) to read as follows:

§ 200.310 Real property.

(a) *Title.* Subject to the requirements and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

* * * * *

■ 65. Amend newly redesignated § 200.311 by revising the first sentence of paragraph (c) to read as follows:

§ 200.311 Federally-owned and exempt property.

* * * * *

(c) Exempt federally-owned property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further responsibility to the Federal Government, based upon the explicit terms and conditions of the Federal award. * * *

■ 66. Amend newly redesignated § 200.312 by revising paragraph (a), paragraph (c) introductory, paragraph (e)(1) and the first sentence of (e)(2) to read as follows:

§ 200.312 Equipment.

* * * * *

(a) *Title.* Subject to the requirements and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further responsibility to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:

* * * * *

(c) * * * (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. The Federal awarding agency may require the submission of the applicable common form for equipment. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

* * * * *

(e) * * *

(1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further responsibility to the Federal awarding agency.

(2) Except as provided in § 200.311 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. * * *

* * * * *

■ 67. Amend newly redesignated § 200.313 by revising the last sentence of paragraph (a) to read as follows:

§ 200.313 Supplies.

* * * * *

(a) * * * See § 200.312(e)(2) for the calculation methodology.

■ 68. Amend the newly redesignated § 200.314 by revising paragraph (a) to read as follows:

§ 200.314 Intangible property.

(a) Title to intangible property (see Intangible property in § 200.1) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 200.312(e).

* * * * *

■ 69. Amend the newly redesignated § 200.316 by revising the last sentence to read as follows:

§ 200.316 Procurements by states.

* * * All other non-Federal entities, including subrecipients of a state, will follow §§ 200.317 through 200.326.

■ 70. Amend the newly redesignated § 200.317 by revising the last sentence of paragraph (h) to read as follows:

§ 200.317 General procurement standards.

* * * * *

(h) * * * See also § 200.213.

■ 71. Revise the newly redesignated § 200.318 to read as follows:

§ 200.318 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.319, Methods of procurement to be followed.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws.

When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are

used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with § 200.319(b)(3).

■ 72. Revise the newly redesignated § 200.319 to read as follows:

§ 200.319 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures for the following methods of procurement for the acquisition of property or services required under a Federal award.

(a) *Informal procurement methods.* When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold, as defined in § 200.1 Definitions, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The following informal methods of procurement used for procurement of property or services at or below the simplified acquisition threshold include:

(1) *Micro-purchases.* (i) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See Micro-purchase in § 200.1 Definitions). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable and can include the use of purchase cards if documented and approved by the non-Federal entity.

(iii) Micro-purchase thresholds that differ from the FAR. The non-Federal entity is responsible for determining an appropriate micro-purchase threshold based on internal controls, an evaluation of risk and its documented procurement procedures. All non-Federal entities can establish lower thresholds. However, a non-Federal entity may request a higher micro-purchase threshold in accordance to section (iv) below. When applicable, the micro-purchase threshold used by the non-Federal entity must be authorized

or not prohibited under State, local, or tribal laws or regulations.

Requests for approval of a higher threshold must be submitted to the cognizant Federal agency for indirect cost rates (see Cognizant agency for indirect costs) for review and approval.

(iv) Cognizant agency for indirect cost evaluation of higher threshold requests are performed to determine if an entity is low risk (see § 200.520 Criteria for a low-risk auditee) and must include at a minimum a review of the entity's audit findings and any appropriate internal institutional risk assessments. Values used to set micro-purchase thresholds must also be consistent with any applicable state laws.

(2) *Small purchases.* (i) The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(ii) Simplified acquisition thresholds that differ from the FAR. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, the simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) *Formal procurement methods.* When the value of the procurement for property or services under a Federal financial assistance award exceeds the simplified acquisition threshold (SAT) (*Simplified acquisition threshold*), or a threshold established by a non-federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.318 Competition. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) *Sealed bids.* A procurement method in which bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid,

conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) *Proposals.* A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(3) *Noncompetitive procurement.* There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(i) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see § 200.319(a)(1));

(ii) The item is available only from a single source;

(iii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(iv) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(v) After solicitation of a number of sources, competition is determined inadequate.

■ 73. Add § 200.321 to read as follows:

§ 200.321 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This term must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this award term:

(1) "Produced in the United States" means, for iron and steel products, that

all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

■ 74. Amend § 200.325 by revising paragraph (b) to read as follows:

§ 200.325 Bonding requirements.

* * * * *

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

* * * * *

■ 75. Amend § 200.327 by revising the first sentence to read as follows:

§ 200.327 Financial reporting.

Unless otherwise approved by OMB, the Federal awarding agency must solicit only the OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future, OMB-approved, governmentwide data elements available from the OMB-designated standards lead. * * *

■ 76. Amend § 200.328 by revising paragraph (b) introductory text, paragraph (b)(1), and paragraph (b)(2) introductory text to read as follows:

§ 200.328 Monitoring and reporting program performance.

* * * * *

(b) *Non-construction performance reports.* The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future OMB-approved, governmentwide data elements available from the OMB-designated standards lead.

(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly

affect program outcomes. Annual reports must be due 120 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 120 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

(2) The non-Federal entity must submit performance reports using OMB-approved governmentwide common information collections when providing performance information. As applicable, these information collections must use OMB-approved, governmentwide data elements available from the OMB-designated standards lead. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:

* * * * *

■ 77. Amend § 200.330 by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 200.330 Subrecipient and contractor determinations.

* * * * *

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See Subaward in § 200.1. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

* * * * *

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See Contract in § 200.1. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

* * * * *

■ 78. Revise § 200.331 to read as follows:

§ 200.331 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward

and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

- (1) Federal award identification:
 - (i) Subrecipient name (which must match the name associated with its unique entity identifier);
 - (ii) Subrecipient's unique entity identifier;
 - (iii) Federal Award Identification Number (FAIN);
 - (iv) Federal Award Date (see Federal award date in § 200.1) of award to the recipient by the Federal agency;
 - (v) Subaward Period of Performance Start and End Date;
 - (vi) Subaward Budget Period Start and End Date;
 - (vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
 - (viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation;
 - (ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
 - (x) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
 - (xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;
 - (xii) Assistance listing number and title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance listing number at time of disbursement;
 - (xiii) Identification of whether the award is R&D; and
 - (xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414).
- (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;
- (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;
- (4) An approved federally recognized indirect cost rate negotiated between the

subrecipient and the Federal Government. The pass-through entity must not require use of a de minimus indirect cost rate if the subrecipient has a federally approved rate. If no federally approved rate exists, the pass-through entity must accept:

- (i) The negotiated indirect cost rate between the pass-through entity and the subrecipient;
- (ii) The negotiated indirect cost rate between a different pass-through entity and the subrecipient; or
- (iii) The de minimus indirect cost rate;
- (5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and
- (6) Appropriate terms and conditions concerning closeout of the subaward.
 - (b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:
 - (1) The subrecipient's prior experience with the same or similar subawards;
 - (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;
 - (3) Whether the subrecipient has new personnel or new or substantially changed systems; and
 - (4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).
 - (c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.208.
 - (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:
 - (1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means. Other means may include written confirmation from the subrecipient related to the Single Audit already performed and any audit findings related to the particular subaward.

(3) Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) The pass-through entity is only responsible for resolving audit findings specifically related to the subaward (i.e., non-systemic) and not applicable to the entire subrecipient (i.e., systemic). If a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (e.g., has been debarred or suspended), the pass-through entity may rely on the subrecipient's auditors and cognizant agency for routine audit follow-up and management decisions. Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward issued by the pass-through entity.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

- (1) Providing subrecipients with training and technical assistance on program-related matters; and
- (2) Performing on-site reviews of the subrecipient's program operations;
- (3) Arranging for agreed-upon-procedures engagements as described in § 200.425 Audit services.
- (f) Verify that every subrecipient is audited as required by Subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501.
- (g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions

that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in § 200.338 Remedies for noncompliance of this part and in program regulations.

■ 79. Revise § 200.335 to read as follows.

§ 200.335 Methods for collection, transmission and storage of information.

The Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system. The Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

§ 200.337 [Amended]

■ 80. Amend § 200.337 by removing “§ 200.315 Intangible property” and adding, in its place, “§ 200.314”.

■ 81. Amend § 200.338 by revising the introductory text to read as follows:

§ 200.338 Remedies for noncompliance.

If a non-Federal entity fails to comply with the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in § 200.208 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

* * * * *

■ 82. Revise § 200.339 to read as follows:

§ 200.339 Termination.

(a) The Federal award may be terminated in whole or in part as follows:

(1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;

(2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

(3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;

(4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or

(5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

(b) A Federal awarding agency must specify applicable termination provisions in its regulations and in each Federal award, consistent with this section.

(c) When a Federal awarding agency terminates a Federal award prior to the end of the period of performance due to the non-Federal entity's material failure to comply with the Federal award terms and conditions, the Federal awarding agency must report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS).

(1) The information required under paragraph (b) of this section is not to be reported to designated integrity and performance system until the non-Federal entity either—

(i) Has exhausted its opportunities to object or challenge the decision, see § 200.341 Opportunities to object, hearings and appeals; or

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

(2) If a Federal awarding agency, after entering information into the designated integrity and performance system about a termination, subsequently:

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

(ii) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(3) Federal awarding agencies, must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the non-Federal entity asserts within seven calendar days to the Federal awarding agency who posted the information, that some of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency who posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

(d) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§ 200.343 and 200.344.

■ 83. Revise § 200.340 paragraph (b) introductory text to read as follows:

§ 200.340 Notification of termination requirement.

* * * * *

(b) If the Federal award is terminated for the non-Federal entity's material failure to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that—

* * * * *

§ 200.342 [Amended]

■ 84. Amend § 200.342 by removing the term “obligations” wherever it appears

and adding, in its place “financial obligations”.

■ 85. Revise § 200.343 to read as follows:

§ 200.343 Closeout.

The Federal awarding agency or pass-through entity will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. If the non-Federal entity fails to complete the requirements, the Federal awarding agency or pass-through entity will proceed to close-out the Federal award with the information available. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

(a) The non-Federal entity must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. A subrecipient must submit to the pass-through entity, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested and justified by the non-Federal entity, as applicable.

(b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for costs meeting the requirements in Subpart E of this part under the Federal award being closed out.

(d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A–129 and see § 200.345, for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement

for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 200.309 through 200.315 and 200.329.

(g) When a recipient or subrecipient completes all closeout requirement, the Federal awarding agency or pass-through entity must promptly complete all closeout actions for Federal awards. The Federal awarding agency must make every effort to complete closeout actions no later than one year after the end of the period of performance unless otherwise directed by authorizing statutes. Closeout actions include Federal awarding agency actions in the grants management and payment systems.

(h) If the non-Federal entity does not submit all reports in accordance with this section, and the terms and conditions of the Federal Award, the Federal awarding agency must proceed to closeout with the information available, within one year of the period of performance end date. The Federal awarding agency must report the non-Federal entity’s failure to submit required reports to the OMB-designated integrity and performance system (currently FAPIIS) as the non-Federal entity’s material failure to comply with the terms and conditions of the award. Federal awarding agencies may also pursue other enforcement actions per § 200.338.

■ 86. Revise § 200.344 to read as follows:

§ 200.344 Post-closeout adjustments and continuing responsibilities.

(a) The closeout of a Federal award does not affect any of the following:

(1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

(2) The requirement for the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(3) The ability of the Federal awarding agency to make financial adjustments to a previously closed award.

(4) Audit requirements in Subpart F of this part.

(5) Property management and disposition requirements in Subpart D of this part, §§ 200.309 through 200.315.

(6) Records retention as required in Subpart D, §§ 200.333 through 200.337.

(b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

■ 87. Amend § 200.400 by revising the last sentence of paragraph (e) to read as follows:

§ 200.400 Policy guide.

* * * * *

(e) * * * See Indirect (facilities & administrative (F&A)) costs in § 200.1.

* * * * *

■ 88. Amend § 200.401 by revising paragraph(a)(3) to read as follows:

§ 200.401 Application.

* * * * *

(3) Fixed amount awards. See also § 200.1 and 200.201.

* * * * *

■ 89. Revise § 200.402 to read as follows:

§ 200.402 Composition and timing of costs.

(a) *Total cost.* The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

(b) *Timing of costs.* Costs must be charged to the approved budget period in which they were incurred except where noted in the specific cost principle.

■ 90. Amend § 200.403 by revising paragraph (g) to read as follows:

§ 200.403 Factors affecting allowability of costs.

* * * * *

(g) Be adequately documented. See also §§ 200.300 Statutory and national policy requirements through 200.308 Revision of budget and program plans of this part.

■ 91. Revise § 200.405 paragraph (d) to read as follows:

§ 200.405 Allocable costs.

* * * * *

(d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be

determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 200.309 through 200.315 and 200.439.

* * * * *

■ 92. Amend § 200.407 by revising paragraphs (e) and (f) to read as follows:

§ 200.407 Prior written approval (prior approval).

* * * * *

- (e) § 200.310 Real property;
- (f) § 200.312 Equipment;

* * * * *

■ 93. Amend § 200.410 by revising the last sentence to read as follows:

§ 200.410 Collection of unallowable costs.

* * * See also Subpart D of this part, §§ 200.300 through 200.308.

■ 94. Amend § 200.413 by revising paragraph (b) to read as follows:

§ 200.413 Direct costs.

* * * * *

(b) *Application to Federal awards.* Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also be considered direct cost, examples include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities, program evaluation costs, or other institutional service operations.

* * * * *

■ 95. Amend § 200.414 by revising paragraphs (a), (c)(4), and (f) and adding paragraph (h) to read as follows:

§ 200.414 Indirect (F&A) costs.

(a) *Facilities and Administration Classification.* For major Institutions of Higher Education (IHE) and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: “Facilities” and “Administration.” “Facilities” is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. “Administration” is defined as general administration and general expenses such as the director’s office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of “Facilities” (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the “Administration” category; for IHEs, they are included in the “Facilities” category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III to Part 200, and Rate Determination for Institutions of Higher Education paragraph C.11. Major nonprofit organizations are those which receive more than \$10 million dollars in direct Federal funding.

* * * * *

(c) * * *

(4) As required under § 200.204 Notices of funding opportunities, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

* * * * *

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity, except for those non-Federal entities described in Appendix VII to Part 200, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. No documentation is required to provide proof of costs that are covered under the de minimis indirect cost rate. As described in § 200.403 Factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as

both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

* * * * *

(h) All rate agreements from non-Federal entities must be available publicly on an OMB-Designated Federal website.

■ 96. Amend § 200.419 by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 200.419 Cost accounting standards and disclosure statement.

* * * * *

(b) * * *

(1) The DS–2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE’s cognizant agency for audit. The initial DS–2 and revisions to the DS–2 must be submitted in coordination with the IHE’s F&A rate proposal, unless an earlier submission is requested by the cognizant agency for indirect costs. IHEs with CAS-covered contracts or subcontracts meeting the dollar threshold in 48 CFR 9903.202–1(f) must submit their initial DS–2 or revisions no later than prior to the award of a CAS-covered contract or subcontract.

(2) An IHE must maintain an accurate DS–2 and comply with disclosed cost accounting practices. An IHE must file amendments to the DS–2 to the cognizant agency for indirect costs in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. An IHE may proceed with implementing the change after it has notified the Federal cognizant agency for indirect costs. If the change represents a variation from 2 CFR 200, the change may require approval by the Federal cognizant agency for indirect costs, in accordance with § 200.102(b). Amendments of a DS–2 may be submitted at any time. Resubmission of a complete, updated DS–2 is discouraged except when there are extensive changes to disclosed practices.

* * * * *

■ 97. Amend § 200.430 by revising paragraph (h) introductory text and the first two sentences of paragraph (h)(3) to read as follows:

§ 200.430 Compensation—personal services.

* * * * *

(h) *Institutions of Higher Education (IHEs).*

* * * * *

(3) *Intra-Institution of Higher Education (IHE) consulting.* Intra-IHE consulting by faculty should be undertaken as an IHE responsibility requiring no compensation in addition to IBS. * * *

* * * * *

■ 98. Revise § 200.431 to read as follows.

§ 200.431 Compensation—fringe benefits.

(a) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

(i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447); pension plan costs (see paragraph (i) of this section); and other similar benefits

are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.

(d) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also § 200.447(d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.

(f) *Automobiles.* That portion of automobile costs furnished by the non-Federal entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the

cost is reported as taxable income to the employees.

(g) *Pension Plan Costs.* Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Costs" (48 CFR 9904.412).

(4) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301–1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(5) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a

fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(h) *Post-Retirement Health.* Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity contribution in a future period.

(4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a

period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums, or

(ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(i) *Severance Pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by

(i) Law;

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part; or

(iv) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its responsibility to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of

employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(5) Severance payments to foreign nationals employed by the non-Federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(j) *For IHEs only.* (1) Fringe benefits in the form of undergraduate and graduate tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See § 200.466 Scholarships and student aid costs, for treatment of tuition remission provided to students.

(k) For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

(1) The costs meet the requirements of Basic Considerations in §§ 200.402 Composition of costs through 200.411 Adjustment of previously negotiated

indirect (F&A) cost rates containing unallowable costs of this subpart;

(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(3) The costs are not otherwise borne directly or indirectly by the Federal Government.

§ 200.433 [Amended]

■ 99. In § 200.433 amend paragraph (b) by removing the words “200.309 Period of Performance” and adding, in its place, “200.308 Revision of budget and program plans”.

§ 200.434 [Amended]

■ 100. In § 200.434 amend paragraph (g)(2) by removing the words “200.309 Period of Performance” wherever it appears and adding, in its place, “200.308”.

■ 101. Amend § 200.436 by revising paragraph (c) introductory text, paragraphs (c)(3), (c)(4), and (e) and adding paragraph (c)(5) to read as follows:

§ 200.436 Depreciation.

* * * * *

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the computation of depreciation, the acquisition cost will exclude:

* * * * *

(3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity that are already claimed as matching or where law or agreement prohibits recovery;

(4) Any asset acquired solely for the performance of a non-Federal award; and

(5) Assets that were directly paid for and expensed using Federal financial assistance.

* * * * *

(e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation must be maintained.

■ 102. Amend § 200.439 by revising paragraph (a), paragraph (b)(3), and (b)(7) to read as follows:

§ 200.439 Equipment and other capital expenditures.

(a) See the definitions for Capital expenditures, Equipment, Special purpose equipment, General purpose equipment, Acquisition cost, and Capital assets in § 200.1.

(b) * * *

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See § 200.436 Depreciation, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 200.465.

* * * * *

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436.

■ 103. Revise § 200.433 paragraph (d) to read as follows:

§ 200.443 Gains and losses on disposition of depreciable assets.

* * * * *

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 200.309 through 200.315.

■ 104. Revise § 200.444 paragraph (b) to read as follows:

§ 200.444 General costs of government.

* * * * *

(b) For Indian tribes and Councils of Governments (COGs) (see Local government in § 200.1), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

■ 105. Amend § 200.449 by revising paragraphs (b)(1) and (c)(4) to read as follows:

§ 200.449 Interest.

* * * * *

(b)(1) Capital assets is defined as noted in the definition of Capital assets in § 200.1. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

* * * * *

(c) * * *

(4) The non-Federal entity limits claims for Federal reimbursement of interest costs to the least expensive

alternative. For example, a lease contract that transfers ownership by the end of the contract may be determined less costly than purchasing through debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

* * * * *

■ 106. Revise § 200.456 to read as follows:

§ 200.456 Participant support costs.

Participant support costs as defined in § 200.1 and are allowable with the prior approval of the Federal awarding agency.

■ 107. Amend § 200.458 by revising the last sentence to read as follows:

§ 200.458 Pre-award costs.

* * * If charged to the award, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency.

■ 108. Amend § 200.461 by revising paragraph (b)(3) to read as follows:

§ 200.461 Publication and printing costs.

* * * * *

(b) * * *

(3) The non-Federal entity may charge the Federal award before closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award. If charged to the award, these costs must be charged to the final budget period of the award, unless otherwise specified by the Federal awarding agency.

■ 109. Amend § 200.465 by

■ a. Redesignating paragraph (c)(5) as paragraph (d).

■ b. Redesignating paragraph (c)(6) as paragraph (f);

■ c. Revising newly redesignated paragraph (d); and

■ d. Adding paragraph (e).
The addition and revision to read as follows:

§ 200.465 Rental costs of real property and equipment.

* * * * *

(d) Rental costs under leases which are required to be accounted for as a financed purchase under GASB standards or a finance lease under FASB standards under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. Interest costs related to these leases are allowable to the extent they meet the criteria in § 200.449 Interest.

Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(e) Rental or lease payments are allowable under lease contracts where the non-Federal entity is required to recognize an intangible right-to-use lease asset (per GASB) or right of use operating lease asset (per FASB) for purposes of financial reporting in accordance to GAAP.

* * * * *

■ 110. Amend § 200.509 by revising paragraph (a) to read as follows:

§ 200.509 Auditor selection.

(a) *Auditor procurement.* In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in §§ 200.316 through 20.326 or the FAR (48 CFR part 42), as applicable. When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization’s peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women’s business enterprises, in procuring audit services as stated in § 200.320, or the FAR (48 CFR part 42), as applicable.

* * * * *

■ 111. Amend § 200.510 by revising paragraph (b)(3) to read as follows:

§ 200.510 Financial statements.

* * * * *

(b) * * *

(3) Provide total Federal awards expended for each individual Federal program and the Assistance listing number or other identifying number when the Assistance listings information is not available. For a cluster of programs also provide the total for the cluster.

* * * * *

■ 112. Amend 200.513 by revising paragraphs (a)(1), (a)(3)(ii), (a)(3)(vii), paragraph (b) introductory text, paragraph (c) introductory text, and paragraph (c)(3)(iii) to read as follows:

§ 200.513 Responsibilities.

(a)(1) *Cognizant agency for audit responsibilities.* A non-Federal entity expending more than \$50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding agency that provides the predominant amount of funding directly (direct funding) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total funding received by the non-Federal entity (as prime and sub awards), then the Federal agency with the predominant amount of total funding is the designated cognizant agency for audit.

* * * * *

(3) * * *

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors, and provide the results to other interested organizations. Cooperate and provide support to the Federal agency designated by OMB to lead a governmentwide project to determine the quality of single audits by providing a statistically reliable estimate of the extent that single audits conform to applicable requirements, standards, and procedures; and to make recommendations to address noted audit quality issues, including recommendations for any changes to applicable requirements, standards and procedures indicated by the results of the project. The governmentwide project can rely on the current and on-going quality control review work performed by the agency. This governmentwide audit quality project must be performed once every 6 years beginning with audits submitted in 2021 or at such other interval as determined by OMB, and the results must be public.

* * * * *

(vii) Coordinate a management decision for cross-cutting audit findings (as defined in Cross-cutting audit finding in § 200.1) that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.

* * * * *

(b) Oversight agency for audit responsibilities. An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with the Oversight agency for audit. A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the

oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:

* * * * *

(c) *Federal awarding agency responsibilities.* The Federal awarding agency must perform the following for the Federal awards it makes (See also the requirements of § 200.211):

* * * * *

(3) * * *

(iii) Use cooperative audit resolution mechanisms (see Cooperative audit resolution) to improve Federal program outcomes through better audit resolution, follow-up, and corrective action; and

* * * * *

■ 113. Revise § 200.515 paragraph (a) to read as follows:

§ 200.515 Audit reporting.

* * * * *

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory) and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is fairly stated in all material respects in relation to the financial statements as a whole.

* * * * *

§ 200.516 [Amended]

■ 114. Amend § 200.516 by removing “CFDA” wherever it appears and adding, in its place, “Assistance listing”.

■ 115. Amend Appendix I to Part 200 by revising paragraphs (A), the first paragraph of (B), paragraphs (D)(3), (D)(4), (D)(5), (E)(3), (E)(3)(iii), and (F)(1) to read as follows:

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

* * * * *

A. Program Description—Required

This section contains the full program 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 Federal awarding agency’s funding priorities or the technical or focus areas in which the Federal awarding 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

section must include program goals and objectives, a reference to the relevant assistance listing, a description of how the award will contribute to the achievement of the program's goals and objectives, and the expected performance indicators and may include examples of successful projects that have been funded previously. This section also may include other information the Federal awarding agency deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.

B. Federal Award Information—Required

This section provides 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 the Federal awarding agency expects to award through the announcement; the expected performance indicators, targets, baseline data, and data collection; the anticipated number of Federal awards; the expected amounts of individual Federal awards (which may be a range); the amount of funding per Federal award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new Federal awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.

* * * * *

D. * * *

3. Unique entity identifier and System for Award Management (SAM)—Required.

This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) is required to:

- (i) Be registered in SAM before submitting its application;
- (ii) Provide a valid unique entity identifier in its application; and
- (iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. It also must state that the Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. Submission Dates and Times—Required. Announcements 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 Federal 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, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see § 200.204).

* * * * *

5. Intergovernmental Review—Required, if applicable. If the funding opportunity is subject to Executive Order 12372, “Intergovernmental Review of Federal Programs,” the notice must say so and applicants must contact their state’s Single Point of Contact (SPOC) to find out about and comply with the state’s process under Executive Order 12372, it may be useful to inform potential applicants that the names and addresses of the SPOCs are listed in the Office of Management and Budget’s website.

* * * * *

E. * * *

3. For any Federal award under a notice of funding opportunity, if the Federal awarding agency anticipates that the total Federal share will be greater than the simplified acquisition threshold on any Federal award under a notice of funding opportunity may include, over the period of performance, this section must also inform applicants:

* * * * *

iii. That the Federal awarding agency will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant’s integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in § 200.206.

* * * * *

F. Federal Award Administration Information

1. Federal Award Notices—Required. This section must address what a successful applicant can expect to receive following selection. If the Federal awarding agency’s practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that it allows charging to Federal awards of pre-award costs at the non-Federal entity’s own risk). This section should indicate that the notice of Federal 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. See also § 200.211.

* * * * *

■ 116. Amend Appendix II to Part 200 revising paragraph (A) and adding paragraph (K) to read as follows:

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

* * * * *

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

* * * * *

(K) See § 200.216.

■ 117. Amend Appendix III to Part 200 by

- a. Revising paragraphs (B)(4)(c)(2)(ii)(B) and (C)(2);
- b. Redesignating paragraph (C)(7)(7) as paragraph (C)(7)(a);
- c. Revising paragraph (C)(11)(a)(1); and
- d. Revising paragraph (E).

The revisions read as follows:

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

* * * * *

- B. * * *
- 4. * * *
- c. * * *
- 2. * * *
- (ii) * * *

B. In July 2012, values for these two indices (taken respectively from the Lawrence Berkeley Laboratory “Labs for the 21st Century” benchmarking tool and the US Department of Energy “Buildings Energy Databook” and were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB website.

* * * * *

C. * * *

2. The Distribution Basis

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1, Major functions of an institution) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in § 200.1 Definitions. For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is

of the modified total direct costs identified with such pool.

* * * * *

11. * * *

a. * * *

(1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds directly to the educational institution for the most recent three years. Information on funding must be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding directly to an educational institution, the cognizant agency for indirect costs assignment must default to HHS. Notwithstanding the method for cognizance determination described in this section, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and must be decided based on mutual agreement between HHS and DOD. Where a non-Federal entity only receives funds as a subrecipient, see § 200.331 Requirements for pass-through entities.

E. *Documentation requirements.* The standard format for documentation requirements for indirect (indirect (F&A)) rate proposals for claiming costs under the regular method is available on the OMB website.

* * * * *

■ 118. Amend Appendix IV to Part 200 by revising paragraphs (B)(2)(c), (B)(3)(f) and (C)(2)(a) to read as follows:

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

* * * * *

B. * * *

2. * * *

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as subawards for \$25,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in § 200.1.

* * * * *

3. * * *

f. Distribution basis. Indirect costs must be distributed to applicable Federal awards and other benefitting activities within each major function on the basis of MTDC (see definition in § 200.1 Definitions of Part 200).

* * * * *

C. * * *

2. * * *

a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards directly funded to an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards directly funded to the organization for at least three years. All concerned Federal agencies must be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates in accordance with section B.5 of this Appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs. (See also § 200.414 Indirect (F&A) costs of Part 200.) If the nonprofit does not receive any funding from any Federal agency, the pass-through entity is responsible

for the negotiation of the indirect cost rates in accordance with section 200.331(a)(4).

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■ 119. Amend Appendix V to Part 200 by revising the last sentence of paragraph (A)(2) and paragraph (B)(4) to read as follows:

Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans

A. * * *

2. * * * A copy of this brochure may be obtained from the HHS Cost Allocation Services or at their website.

B. * * *

4. *Cognizant agency for indirect costs* is defined in § 200.1. The determination of cognizant agency for indirect costs for states and local governments is described in section F.1, Negotiation and Approval of Central Service Plans.

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■ 120. Amend Appendix VII to Part 200 by revising the last sentence of paragraph (A)(3) to read as follows:

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

A. * * *

3. * * * A copy of this brochure may be obtained from HHS Cost Allocation Services or at their website.

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■ 121. Revise Appendix XI to Part 200 to read as follows:

Appendix XI to Part 200—Compliance Supplement

The compliance supplement is available on the OMB website.

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